

MAINE STATE LEGISLATURE

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122nd MAINE LEGISLATURE

FIRST REGULAR SESSION-2005

Legislative Document

No. 107

H.P. 83

House of Representatives, January 11, 2005

**An Act Guaranteeing Freedom of Choice Regarding the Disposition
of One's Own Organs**

Reference to the Committee on Health and Human Services suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative FAIRCLOTH of Bangor.
Cosponsored by Representative: PERRY of Calais.

Be it enacted by the People of the State of Maine as follows:

2
4 **Sec. 1. 22 MRSA §2904. sub-§2.** as amended by PL 1981, c. 639, §1, is further amended to read:

6 **2. Other documents.** A gift of any part of the body under
8 section 2902, subsection 1, may be made by document other than a
10 will. The gift becomes effective upon the death of the donor and
12 upon acceptance by the donee. The document, ~~which may be a card~~
14 ~~designed to be carried on the person, must be~~ may be a donor card
16 signed by the donor, in the presence of 2 witnesses who must sign
18 the document in his presence an electronic donor registry in
20 which the donor is included or a driver's license on which a
22 designation is made by organ donor decal, code or notation as
24 provided in Title 29-A, section 1402-A. If the donor cannot
26 sign, the document may be signed for him the donor at his the
28 donor's direction and in his the donor's presence, ~~and in the~~
30 ~~presence of 2 witnesses who must sign the document in his~~
32 ~~presence.~~ Delivery of the document of gift during the donor's
34 lifetime is not necessary to make the gift valid.

22 **Sec. 2. 22 MRSA §2911.** as enacted by PL 2003, c. 394, §1 and
24 affected by §6, is amended to read:

26 **§2911. Honor intent of organ donors**

28 **1. General rule.** The intention of a person to make a
30 donation of that person's own body organ or tissue after death
32 must be honored. In the absence of a ~~written statement~~
34 ~~overriding donor intent in accordance with subsection 2, or~~
36 ~~revocation or amendment of the donor's execution of the intent to~~
38 ~~donate under section 2906, Title 18-A, Article 5, Part 8 or Title~~
40 ~~29-A, section 1402-A, health care providers licensed in this~~
42 ~~State and federally designated organ procurement organizations~~
44 ~~shall act in accordance with the donor's intention and may take~~
46 ~~appropriate actions to effect the gift.~~

38 ~~**2. Overriding donor intent.** Next of kin to a person who~~
40 ~~has expressed intent to donate that person's own body organ or~~
42 ~~tissue after death may override the intention of the donor in~~
44 ~~accordance with this subsection by executing a written statement,~~
46 ~~witnessed by a person who is not a relative of the donor. The~~
48 ~~written statement must indicate that the signer has discussed~~
50 ~~honoring the intent of the organ donor with a representative of~~
~~an organ procurement organization and must include:~~

48 ~~A. An indication that the donor revoked or altered the~~
50 ~~statement of intent to donate, as provided in section 2906~~
~~or Title 18-A, Article 5, Part 8. Next of kin acting under~~
~~this paragraph shall provide evidence of revocation or~~

2 alteration--by--the--donor--after--the--date--of--the--donor's
expressing-a-willingness-or-intention-to-donate, or

4 B.--An-indication-of-the-decision-of-the-signer-to-override
the-expressed-intention-of-the-donor.

6
8 If--more--than--one--person--qualifies--as--next--of--kin--and--also
qualifies-to-execute-an-anatomical-gift-of-all-or-part-of-the
10 decedent's-body-under-this-chapter-or-any-other-provision-of-law,
the--document--used--to--override--donor--intent--must--show--the
12 agreement-of-a-majority-of-those-persons-at-the-level-of-priority
of--the--signer--under--Title--18-A,--section--5-805--or--Title--22,
14 section-2902,--subsection-2.

16 **Sec. 3. 29-A MRSA §1402-A, sub-§4, ¶E,** as enacted by PL 2003,
c. 394, §4 and affected by §6, is amended to read:

18 E. Notwithstanding Title 22, section 1711-C and any other
20 provision of law to the contrary, a health care provider
licensed in this State to provide primary health care shall
22 provide information to a federally designated organ
procurement organization regarding a patient who has
24 indicated a willingness to become an organ donor under this
section, Title 18-A, Article 5, Part 8 or Title 22, chapter
26 710 if such information is provided in accordance with
professional standards applicable to organ donation and-if
28 donor-intent-has-not-been-overridden-pursuant-to-Title-22,
section-2911,--subsection-2.

30
32

SUMMARY

34 This bill removes the provision of law that allows the next
of kin to a person who has expressed intent to donate that
36 person's own body organ or tissue after death to override the
intention of that person. It also removes the provision of law
38 that requires that a donor card be signed in the presence of 2
witnesses who must sign the donor card in the presence of the
40 donor. The bill also clarifies that a person may donate that
person's own body organ or tissue after death by way of a will, a
42 donor card, an electronic donor registry or a driver's license on
which a designation is made by organ donor decal, code or
notation.