
A BILL FOR AN ACT

RELATING TO ANATOMICAL GIFTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 327, Hawaii Revised Statutes, is
2 amended by adding a new part to be appropriately designated and
3 to read as follows:

4 **"PART . REVISED UNIFORM ANATOMICAL GIFT ACT**

5 **§327-A Definitions.** As used in this chapter:

6 "Adult" means an individual who is at least eighteen years
7 of age.

8 "Agent" means an individual:

9 (1) Authorized to make health-care decisions on the
10 principal's behalf by a power of attorney for health
11 care; or

12 (2) Expressly authorized to make an anatomical gift on the
13 principal's behalf by any other record signed by the
14 principal.

15 "Anatomical gift" means a donation of all or part of a
16 human body to take effect after the donor's death for the
17 purposes of transplantation, therapy, research, or education.



1 "Decedent" means a deceased individual whose body or body
2 part is or may be the source of an anatomical gift. The term
3 includes a stillborn infant, and subject to restrictions imposed
4 by law other than this part, a fetus.

5 "Disinterested witness" means a witness other than the
6 spouse, child, parent, sibling, grandchild, grandparent, or
7 guardian of the individual who makes, amends, revokes, or
8 refuses to make an anatomical gift, or another adult who
9 exhibited special care and concern for the individual. The term
10 does not include a person to which an anatomical gift could pass
11 under section 327-J.

12 "Document of gift" means a donor card or other record used
13 to make an anatomical gift. The term includes a statement or
14 symbol on a driver's license, identification card, or donor
15 registry.

16 "Donor" means an individual whose body or body part is the
17 subject of an anatomical gift.

18 "Donor registry" means a database that contains records of
19 anatomical gifts and amendments to or revocations of anatomical
20 gifts.



1 "Driver's license" means a license or permit issued by a
2 state or county authority to operate a vehicle whether or not
3 conditions are attached to the license or permit.

4 "Eye bank" means a person that is licensed, accredited, or
5 regulated under federal or state law to engage in the recovery,
6 screening, testing, processing, storage, or distribution of
7 human eyes or portions of human eyes.

8 "Guardian" means a person appointed by a court to make
9 decisions regarding the support, care, education, health, and
10 welfare of an individual. The term does not include a guardian
11 ad litem.

12 "Hospital" means a facility licensed as a hospital under
13 the law of any state or a facility operated as a hospital by the
14 United States, a state, or a subdivision of a state.

15 "Identification card" means an identification card issued
16 by a state or county authority or a state department of motor
17 vehicles.

18 "Know" means to have actual knowledge.

19 "Minor" means an individual who is under eighteen years of
20 age.



1 "Organ procurement organization" means a person designated
2 by the United States Secretary of Health and Human Services as
3 an organ procurement organization.

4 "Parent" means a parent whose parental rights have not been
5 terminated.

6 "Part" means an organ, an eye, or tissue of a human being.
7 The term does not include the whole body.

8 "Person" means an individual, corporation, business trust,
9 estate, trust, partnership, limited liability company,
10 association, joint venture, public corporation, government or
11 governmental subdivision, agency, or instrumentality, or any
12 other legal or commercial entity.

13 "Physician" means an individual authorized to practice
14 medicine or osteopathy under the law of any state.

15 "Procurement organization" means an eye bank, organ
16 procurement organization, or tissue bank.

17 "Prospective donor" means an individual who is dead or near
18 death and has been determined by a procurement organization to
19 have a part that could be medically suitable for
20 transplantation, therapy, research, or education. The term does
21 not include an individual who has made a refusal.



1 "Reasonably available" means able to be contacted by a
2 procurement organization without undue effort and willing and
3 able to act in a timely manner consistent with existing medical
4 criteria necessary for the making of an anatomical gift.

5 "Recipient" means an individual into whose body a
6 decedent's part has been or is intended to be transplanted.

7 "Record" means information that is inscribed on a tangible
8 medium or that is stored in an electronic or other medium and is
9 retrievable in perceivable form.

10 "Refusal" means a record created under section 327-F that
11 expressly states an intent to bar other persons from making an
12 anatomical gift of an individual's body or body part.

13 "Sign" means, with the present intent to authenticate or
14 adopt a record:

- 15 (1) To execute or adopt a tangible symbol; or
16 (2) To attach or logically associate with the record an
17 electronic symbol, sound, or process.

18 "State" means a state of the United States, the District of
19 Columbia, Puerto Rico, the United States Virgin Islands, or any
20 territory or insular possession subject to the jurisdiction of
21 the United States.



1 "Technician" means an individual determined to be qualified
2 to remove or process parts by an appropriate organization that
3 is licensed, accredited, or regulated under federal or state
4 law. The term includes an enucleator.

5 "Tissue" means a portion of the human body other than an
6 organ or an eye. The term does not include blood unless the
7 blood is donated for purposes of research or education.

8 "Tissue bank" means a person that is licensed, accredited,
9 or regulated under federal or state law to engage in the
10 recovery, screening, testing, processing, storage, or
11 distribution of tissue.

12 "Transplant hospital" means a hospital that furnishes organ
13 transplants and other medical and surgical specialty services
14 required for the care of transplant patients.

15 **§327-B Applicability.** This part applies to an anatomical
16 gift or amendment to, revocation of, or refusal to make an
17 anatomical gift, whenever made.

18 **§327-C Who may make anatomical gift before donor's death.**

19 Subject to section 327-G, an anatomical gift of a donor's body
20 or body part may be made during the life of the donor for the
21 purpose of transplantation, therapy, research, or education in
22 the manner provided in section 327-D by:



- 1 (1) The donor, if the donor is an adult or if the donor is
- 2 a minor and is:
- 3 (A) Emancipated; or
- 4 (B) Authorized under a state law to apply for a
- 5 driver's license under part VI of chapter 286;
- 6 (2) An agent of the donor, unless the power of attorney
- 7 for health care or other record prohibits the agent
- 8 from making an anatomical gift;
- 9 (3) A parent of the donor, if the donor is an
- 10 unemancipated minor; or
- 11 (4) The donor's guardian.

12 **§327-D Manner of making anatomical gift before donor's**

13 **death.** (a) A donor may make an anatomical gift:

- 14 (1) By authorizing a statement or symbol indicating that
- 15 the donor has made an anatomical gift to be imprinted
- 16 on the donor's driver's license or identification
- 17 card;
- 18 (2) In a will;
- 19 (3) During a terminal illness or injury of the donor, by
- 20 any form of communication addressed to at least two
- 21 adults, at least one of whom is a disinterested
- 22 witness; or



1 (4) As provided in subsection (b).

2 (b) A donor or other person authorized to make an
3 anatomical gift under section 327-C may make a gift by a donor
4 card or other record signed by the donor or other person making
5 the gift or by authorizing that a statement or symbol indicating
6 that the donor has made an anatomical gift be included on a
7 donor registry. If the donor or other person is physically
8 unable to sign a record, the record may be signed by another
9 individual at the direction of the donor or the other person and
10 must:

11 (1) Be witnessed by at least two adults, at least one of
12 whom is a disinterested witness, who have signed at
13 the request of the donor or the other person; and

14 (2) State that it has been signed and witnessed as
15 provided in paragraph (1).

16 (c) Revocation, suspension, expiration, or cancellation of
17 the driver's license or identification card upon which an
18 anatomical gift is indicated does not invalidate the gift.

19 (d) An anatomical gift made by will takes effect upon the
20 donor's death whether or not the will is probated. Invalidation
21 of the will after the donor's death does not invalidate the
22 gift.



1 **§327-E Amending or revoking anatomical gift before donor's**
2 **death.** (a) Subject to section 327-G, a donor or other person
3 authorized to make an anatomical gift under section 327-C may
4 amend or revoke an anatomical gift by:

- 5 (1) A record signed by:
- 6 (A) The donor;
 - 7 (B) The other person; or
 - 8 (C) Subject to subsection (b), another individual
9 acting at the direction of the donor or the other
10 person if the donor or other person is physically
11 unable to sign; or

12 (2) A later-executed document of gift that amends or
13 revokes a previous anatomical gift or portion of an
14 anatomical gift, either expressly or by inconsistency.

15 (b) A record signed pursuant to subsection (a)(1)(C) must:

- 16 (1) Be witnessed by at least two adults, at least one of
17 whom is a disinterested witness, who have signed at
18 the request of the donor or the other person; and

19 (2) State that it has been signed and witnessed as
20 provided in paragraph (1).

21 (c) Subject to section 327-G, a donor or other person
22 authorized to make an anatomical gift under section 327-C may



1 revoke the gift by the destruction or cancellation of the
2 document of gift, or a portion of the document of gift used to
3 make the gift, with the intent to revoke the gift.

4 (d) A donor may amend or revoke an anatomical gift that
5 was not made in a will by any form of communication during a
6 terminal illness or injury addressed to at least two adults, at
7 least one of whom is a disinterested witness.

8 (e) A donor who makes an anatomical gift in a will may
9 amend or revoke the gift in the manner provided for amendment or
10 revocation of wills or as provided in subsection (a).

11 **§327-F Refusal to make anatomical gift and effect of**
12 **refusal.** (a) An individual may refuse to make an anatomical
13 gift of the individual's body or body part by:

14 (1) A record signed by:

15 (A) The individual; or

16 (B) Subject to subsection (b), another individual
17 acting at the direction of the individual if the
18 individual is physically unable to sign;

19 (2) The individual's will whether or not the will is
20 admitted to probate or invalidated after the
21 individual's death; or



1 (3) Any form of communication made by the individual
2 during the individual's terminal illness or injury
3 addressed to at least two adults, at least one of whom
4 is a disinterested witness.

5 (b) A record signed pursuant to subsection (a)(1)(B) must:

6 (1) Be witnessed by at least two adults, at least one of
7 whom is a disinterested witness, who have signed at
8 the request of the individual; and

9 (2) State that it has been signed and witnessed as
10 provided in paragraph (1).

11 (c) An individual may amend or revoke a refusal:

12 (1) In the manner provided in subsection (a) for making a
13 refusal;

14 (2) By subsequently making an anatomical gift pursuant to
15 section 327-D that is inconsistent with the refusal;
16 or

17 (3) By destroying or cancelling the record evidencing the
18 refusal, or the portion of the record used to make the
19 refusal, with the intent to revoke the refusal.

20 (d) Except as otherwise provided in section 327-G(h), in
21 the absence of an express, contrary indication by the individual
22 set forth in the refusal, an individual's unrevoked refusal to



1 make an anatomical gift of the individual's body or a part bars
2 all other persons from making an anatomical gift of the
3 individual's body or the part.

4 **§327-G Preclusive effect of anatomical gift, amendment, or**
5 **revocation.** (a) Except as otherwise provided in subsection
6 (g), and subject to subsection (f), in the absence of an
7 express, contrary indication by the donor, a person other than
8 the donor is barred from making, amending, or revoking an
9 anatomical gift of a donor's body or a part if the donor made an
10 anatomical gift of the donor's body or the part under section
11 327-D or an amendment to an anatomical gift of the donor's body
12 or the part under section 327-E.

13 (b) A donor's revocation of an anatomical gift of the
14 donor's body or a part under section 327-E is not a refusal and
15 does not bar another person specified in section 327-C or 327-H
16 from making an anatomical gift of the donor's body or a part
17 under section 327-D or 327-I.

18 (c) If a person other than the donor makes an unrevoked
19 anatomical gift of the donor's body or a part under section 327-
20 D or an amendment to an anatomical gift of the donor's body or a
21 part under section 327-E, another person may not make, amend, or



1 revoke the gift of the donor's body or body part under section
2 327-I.

3 (d) A revocation of an anatomical gift of the donor's body
4 or a part under section 327-E by a person other than the donor
5 does not bar another person from making an anatomical gift of
6 the body or a part under section 327-D or 327-I.

7 (e) In the absence of an express, contrary indication by
8 the donor or other person authorized to make an anatomical gift
9 under section 327-C, an anatomical gift of a part is neither a
10 refusal to give another part nor a limitation on the making of
11 an anatomical gift of another part at a later time by the donor
12 or another person.

13 (f) In the absence of an express, contrary indication by
14 the donor or other person authorized to make an anatomical gift
15 under section 327-C, an anatomical gift of a part for one or
16 more of the purposes set forth in section 327-C is not a
17 limitation on the making of an anatomical gift of the part for
18 any of the other purposes by the donor or any other person under
19 section 327-D or 327-I.

20 (g) If a donor who is an unemancipated minor dies, a
21 parent of the donor who is reasonably available may revoke or
22 amend an anatomical gift of the donor's body or body part.



1 (h) If an unemancipated minor who signed a refusal dies, a
2 parent of the minor who is reasonably available may revoke the
3 minor's refusal.

4 **§327-H Who may make anatomical gift of decedent's body or**
5 **body part.** (a) Subject to subsections (b) and (c) and unless
6 barred by section 327-F or 327-G, an anatomical gift of a
7 decedent's body or body part for purposes of transplantation,
8 therapy, research, or education may be made by any member of the
9 following classes of persons who is reasonably available, in the
10 order of priority listed:

- 11 (1) An agent of the decedent at the time of death who
12 could have made an anatomical gift under section
13 327-C(2) immediately before the decedent's death;
- 14 (2) The spouse of the decedent;
- 15 (3) Adult children of the decedent;
- 16 (4) Parents of the decedent;
- 17 (5) Adult siblings of the decedent;
- 18 (6) Adult grandchildren of the decedent;
- 19 (7) Grandparents of the decedent;
- 20 (8) An adult who exhibited special care and concern for
21 the decedent;

1 (9) The persons who were acting as the guardian of the
2 person of the decedent at the time of death; and

3 (10) Any other person having the authority to dispose of
4 the decedent's body.

5 (b) If there is more than one member of a class listed in
6 subsection (a)(1), (3), (4), (5), (6), (7), or (9) entitled to
7 make an anatomical gift, an anatomical gift may be made by a
8 member of the class unless that member or a person to which the
9 gift can pass under section 327-J knows of an objection by
10 another member of the class. If an objection is known, the gift
11 may be made only by a majority of the members of the class who
12 are reasonably available.

13 (c) A person may not make an anatomical gift if, at the
14 time of the decedent's death, a person in a prior class under
15 subsection (a) is reasonably available to make or to object to
16 the making of an anatomical gift.

17 **§327-I Manner of making, amending, or revoking anatomical**
18 **gift of decedent's body or body part.** (a) A person authorized

19 to make an anatomical gift under section 327-H may make an
20 anatomical gift by a document of gift signed by the person
21 making the gift or that person's oral communication that is
22 electronically recorded or is contemporaneously reduced to a



1 record and signed by the individual receiving the oral
2 communication.

3 (b) Subject to subsection (c), an anatomical gift by a
4 person authorized under section 327-H may be amended or revoked
5 orally or in a record by any member of a prior class who is
6 reasonably available. If more than one member of the prior
7 class is reasonably available, the gift made by person
8 authorized under section 327-H may be:

9 (1) Amended only if a majority of the reasonably available
10 members agree to the amending of the gift; or

11 (2) Revoked only if a majority of the reasonably available
12 members agree to the revoking of the gift or if they
13 are equally divided as to whether to revoke the gift.

14 (c) A revocation under subsection (b) is effective only
15 if, before an incision has been made to remove a part from the
16 donor's body or before invasive procedures have begun to prepare
17 the recipient, the procurement organization, transplant
18 hospital, or physician or technician knows of the revocation.

19 **§327-J Persons that may receive anatomical gift; purpose**

20 **of anatomical gift.** (a) An anatomical gift of a body or body
21 part may be made to the following persons named in the document
22 of gift:



1 (1) A hospital, accredited medical school, dental school,
2 college, university, or organ procurement
3 organization, or other appropriate person for research
4 or education;

5 (2) Subject to subsection (b), an individual designated by
6 the person making the anatomical gift if the
7 individual is the recipient of the part;

8 (3) An eye bank or tissue bank.

9 (b) If an anatomical gift to an individual under
10 subsection (a)(2) cannot be transplanted into the individual,
11 the part passes in accordance with subsection (g) in the absence
12 of an express, contrary indication by the person making the
13 anatomical gift.

14 (c) If an anatomical gift of one or more specific parts or
15 of all parts is made in a document of gift that does not name a
16 person described in subsection (a) but identifies the purpose
17 for which an anatomical gift may be used, the following rules
18 apply:

19 (1) If the part is an eye and the gift is for the purpose
20 of transplantation or therapy, the gift passes to the
21 appropriate eye bank.



1 (2) If the part is tissue and the gift is for the purpose
2 of transplantation or therapy, the gift passes to the
3 appropriate tissue bank.

4 (3) If the part is an organ and the gift is for the
5 purpose of transplantation or therapy, the gift passes
6 to the appropriate organ procurement organization as
7 custodian of the organ.

8 (4) If the part is an organ, an eye, or tissue and the
9 gift is for the purpose of research or education, the
10 gift passes to the appropriate procurement
11 organization.

12 (d) For the purpose of subsection (c), if there is more
13 than one purpose of an anatomical gift set forth in the document
14 of gift but the purposes are not set forth in any priority, the
15 gift must be used for transplantation or therapy, if suitable.
16 If the gift cannot be used for transplantation or therapy, the
17 gift may be used for research or education.

18 (e) If an anatomical gift of one or more specific parts is
19 made in a document of gift that does not name a person described
20 in subsection (a) and does not identify the purpose of the gift,
21 the gift may be used only for transplantation or therapy, and
22 the gift passes in accordance with subsection (g).



1 (f) If a document of gift specifies only a general intent
2 to make an anatomical gift by words such as "donor", "organ
3 donor", or "body donor", or by a symbol or statement of similar
4 import, the gift may be used only for transplantation or
5 therapy, and the gift passes in accordance with subsection (g).

6 (g) For purposes of subsections (b), (e), and (f), the
7 following rules apply:

8 (1) If the part is an eye, the gift passes to the
9 appropriate eye bank.

10 (2) If the part is tissue, the gift passes to the
11 appropriate tissue bank.

12 (3) If the part is an organ, the gift passes to the
13 appropriate organ procurement organization as
14 custodian of the organ.

15 (h) An anatomical gift of an organ for transplantation or
16 therapy, other than an anatomical gift under subsection (a)(2),
17 passes to the organ procurement organization as custodian of the
18 organ.

19 (i) If an anatomical gift does not pass pursuant to
20 subsections (a) through (h) or the decedent's body or body part
21 is not used for transplantation, therapy, research, or



1 education, custody of the body or body part passes to the person
2 under obligation to dispose of the body or body part.

3 (j) A person may not accept an anatomical gift if the
4 person knows that the gift was not effectively made under
5 section 327-D or 327-I or if the person knows that the decedent
6 made a refusal under section 327-F that was not revoked. For
7 purposes of this subsection, if a person knows that an
8 anatomical gift was made on a document of gift, the person is
9 deemed to know of any amendment or revocation of the gift or any
10 refusal to make an anatomical gift on the same document of gift.

11 (k) Except as otherwise provided in subsection (a)(2),
12 nothing in this part affects the allocation of organs for
13 transplantation or therapy.

14 **§327-K Search and notification.** (a) The following
15 persons shall make a reasonable search of an individual who the
16 searcher reasonably believes is dead or near death for a
17 document of gift or other information identifying the individual
18 as a donor or as an individual who made a refusal:

19 (1) A law enforcement officer, firefighter, paramedic, or
20 other emergency rescuer finding the individual; and



1 (2) If no other source of the information is immediately
2 available, a hospital, as soon as practical after the
3 individual's arrival at the hospital.

4 (b) If a document of gift or a refusal to make an
5 anatomical gift is located by the search required by subsection
6 (a)(1) and the individual or deceased individual to whom it
7 relates is taken to a hospital, the person responsible for
8 conducting the search shall send the document of gift or refusal
9 to the hospital.

10 (c) A person is not subject to criminal or civil liability
11 for failing to discharge the duties imposed by this section but
12 may be subject to administrative sanctions.

13 **§327-L Delivery of document of gift not required; right to**
14 **examine.** (a) A document of gift need not be delivered during
15 the donor's lifetime to be effective.

16 (b) Upon or after an individual's death, a person in
17 possession of a document of gift or a refusal to make an
18 anatomical gift with respect to the individual shall allow
19 examination and copying of the document of gift or refusal by a
20 person authorized to make or object to the making of an
21 anatomical gift with respect to the individual or by a person to
22 which the gift could pass under section 327-J.



1 **§327-M Rights and duties of procurement organization and**
2 **others.** (a) When a hospital refers an individual at or near
3 death to a procurement organization, the organization shall make
4 a reasonable search of the records of the state or county
5 department of motor vehicles and any donor registry that it
6 knows exists for the geographical area in which the individual
7 resides to ascertain whether the individual has made an
8 anatomical gift.

9 (b) A procurement organization must be allowed reasonable
10 access to information in the records of the state or county
11 department of motor vehicles to ascertain whether an individual
12 at or near death is a donor.

13 (c) When a hospital refers an individual at or near death
14 to a procurement organization, the organization may conduct any
15 reasonable examination necessary to ensure the medical
16 suitability of a part that is or could be the subject of an
17 anatomical gift for transplantation, therapy, research, or
18 education from a donor or a prospective donor. During the
19 examination period, measures necessary to ensure the medical
20 suitability of the part may not be withdrawn unless the hospital
21 or procurement organization knows that the individual expressed
22 a contrary intent.

1 (d) Unless prohibited by law other than this part, at any
2 time after a donor's death, the person to which a part passes
3 under section 327-J may conduct any reasonable examination
4 necessary to ensure the medical suitability of the body or body
5 part for its intended purpose.

6 (e) Unless prohibited by law other than this part, an
7 examination under subsection (c) or (d) may include an
8 examination of all medical records of the donor or prospective
9 donor.

10 (f) Upon the death of a minor who was a donor or had
11 signed a refusal, unless a procurement organization knows the
12 minor is emancipated, the procurement organization shall conduct
13 a reasonable search for the parents of the minor and provide the
14 parents with an opportunity to revoke or amend the anatomical
15 gift or revoke a refusal.

16 (g) Upon referral by a hospital under subsection (a), a
17 procurement organization shall make a reasonable search for any
18 person listed in section 327-H having priority to make an
19 anatomical gift on behalf of a prospective donor.

20 If a procurement organization receives information that an
21 anatomical gift to any other person was made, amended, or



1 revoked, it shall promptly advise the other person of all
2 relevant information.

3 (h) Subject to sections 327-J(i) and 327-V, the rights of
4 the person to which a part passes under section 327-J are
5 superior to rights of all others with respect to the part. The
6 person may accept or reject an anatomical gift in whole or in
7 part. Subject to the terms of the document of gift and this
8 part, a person that accepts an anatomical gift of an entire body
9 may allow embalming, burial, or cremation, and use of remains in
10 a funeral service. If the gift is of a part, the person to
11 which the part passes under section 327-J, upon the death of the
12 donor and before embalming, burial, or cremation, shall cause
13 the part to be removed without unnecessary mutilation.

14 (i) Neither the physician who attends the decedent at
15 death nor the physician who determines the time of the
16 decedent's death may participate in the procedures for removing
17 or transplanting a part from the decedent.

18 (j) A physician or technician may remove a donated part
19 from the body of a donor that the physician or technician is
20 qualified to remove.

21 **§327-N Coordination of procurement and use.** Each hospital
22 in this State, shall enter into agreements or affiliations with



1 procurement organizations for coordination of procurement and
2 use of anatomical gifts.

3 **§327-O Sale or purchase of parts prohibited.** (a) Except
4 as otherwise provided in subsection (b), a person that for
5 valuable consideration, knowingly purchases or sells a part for
6 transplantation or therapy if removal of a part from an
7 individual is intended to occur after the individual's death
8 commits a felony and upon conviction is subject to a fine not
9 exceeding \$50,000 or imprisonment not exceeding five years, or
10 both.

11 (b) A person may charge a reasonable amount for the
12 removal, processing, preservation, quality control, storage,
13 transportation, implantation, or disposal of a part.

14 **§327-P Other prohibited acts.** Any person that, in order
15 to obtain a financial gain, intentionally falsifies, forges,
16 conceals, defaces, or obliterates a document of gift, an
17 amendment or revocation of a document of gift, or a refusal
18 commits a felony and upon conviction is subject to a fine not
19 exceeding \$50,000 or imprisonment not exceeding five years, or
20 both.

21 **§327-Q Immunity.** (a) A person that acts in accordance
22 with this part or with the applicable anatomical gift law of



1 another state or attempts in good faith to do so is not liable
2 for the act in a civil action, criminal prosecution, or
3 administrative proceeding.

4 (b) Neither the person making an anatomical gift nor the
5 donor's estate is liable for any injury or damage that results
6 from the making or use of the gift.

7 (c) A person who documents the making, amending, or
8 revoking of an anatomical gift under this part may rely upon
9 representations of the individuals listed in section 327-
10 H(a)(2), (3), (4), (5), (6), (7), and (8) relating to their
11 relationship to the donor or prospective donor unless the person
12 knows that the representation is untrue.

13 **§327-R Law governing validity; choice of law as to**
14 **execution of document of gift; presumption of validity.** (a) A
15 document of gift is valid if executed in accordance with:

- 16 (1) This part;
- 17 (2) The laws of the state or country where it was
18 executed; or
- 19 (3) The laws of the state or country where the person
20 making the anatomical gift was domiciled, has a place
21 of residence, or was a national at the time the
22 document of gift was executed.



1 (b) If a document of gift is valid under this section, the
2 law of this State governs the interpretation of the document of
3 gift.

4 (c) A person may presume that a document of gift or
5 amendment of an anatomical gift is valid unless that person
6 knows that it was not validly executed or was revoked.

7 **§327-S Donor registry.** (a) The examiner of drivers may
8 establish or contract for the establishment of a donor registry.

9 (b) The examiner of drivers shall cooperate with a person
10 that administers any donor registry that this State establishes,
11 contracts for, or recognizes for the purpose of transferring to
12 the donor registry all relevant information regarding a donor's
13 making, amendment to, or revocation of an anatomical gift.

14 (c) A donor registry must:

15 (1) Allow a donor or other person authorized under section
16 327-C to include on the donor registry a statement or
17 symbol that the donor has made, amended, or revoked an
18 anatomical gift;

19 (2) Be accessible to a procurement organization to allow
20 it to obtain relevant information on the donor
21 registry to determine, at or near death of the donor
22 or a prospective donor, whether the donor or



1 prospective donor has made, amended, or revoked an
2 anatomical gift; and

3 (3) Be accessible for purposes of paragraphs (1) and (2)
4 seven days a week on a twenty-four-hour basis.

5 (d) Personally identifiable information on a donor
6 registry about a donor or prospective donor may not be used or
7 disclosed without the express consent of the donor, prospective
8 donor, or the person that made the anatomical gift for any
9 purpose other than to determine, at or near death of the donor
10 or a prospective donor, whether the donor or prospective donor
11 has made, amended, or revoked an anatomical gift.

12 (e) This section does not prohibit any person from
13 creating or maintaining a donor registry that is not established
14 by or under contract with the State. However, the registry must
15 comply with subsections (c) and (d).

16 **§327-T Effect of anatomical gift on advance health-care**
17 **directive.** (a) As used in this section:

18 "Advance health-care directive" means a power of attorney
19 for health care or a record signed or authorized by a
20 prospective donor containing the prospective donor's direction
21 concerning a health-care decision for the prospective donor.



1 "Declaration" means a record signed by a prospective donor
2 specifying the circumstances under which a life support system
3 may be withheld or withdrawn from the prospective donor.

4 "Health-care decision" means any decision regarding the
5 health care of the prospective donor.

6 (b) If a prospective donor has a declaration or advance
7 health-care directive and the terms of the declaration or
8 directive and the express or implied terms of a potential
9 anatomical gift are in conflict with regard to the
10 administration of measures necessary to ensure the medical
11 suitability of a part for transplantation or therapy, the
12 prospective donor's attending physician and prospective donor
13 shall confer to resolve the conflict. If the prospective donor
14 is incapable of resolving the conflict, an agent acting under
15 the prospective donor's declaration or directive, or, if none or
16 the agent is not reasonably available, another person authorized
17 by law other than this part to make health-care decisions on
18 behalf of the prospective donor, shall act for the donor to
19 resolve the conflict. The conflict must be resolved as
20 expeditiously as possible. Information relevant to the
21 resolution of the conflict may be obtained from the appropriate
22 procurement organization and any other person authorized to make



1 an anatomical gift for the prospective donor under section 327-
2 H. Before resolution of the conflict, measures necessary to
3 ensure the medical suitability of the part may not be withheld
4 or withdrawn from the prospective donor if withholding or
5 withdrawing the measures is not contraindicated by appropriate
6 end-of-life care.

7 **§327-U Cooperation between medical examiner or coroner and**
8 **procurement organization.** (a) A medical examiner or coroner
9 shall cooperate with procurement organizations to maximize the
10 opportunity to recover anatomical gifts for the purpose of
11 transplantation, therapy, research, or education.

12 (b) If a medical examiner or coroner receives notice from
13 a procurement organization that an anatomical gift might be
14 available or was made with respect to a decedent whose body is
15 under the jurisdiction of the medical examiner or coroner and a
16 post-mortem examination is going to be performed, unless the
17 medical examiner or coroner denies recovery in accordance with
18 section 327-V, the medical examiner or coroner or designee shall
19 conduct a post-mortem examination of the body or the part in a
20 manner and within a period compatible with its preservation for
21 the purposes of the gift.



1 (c) A part may not be removed from the body of a decedent
2 under the jurisdiction of a medical examiner or coroner for
3 transplantation, therapy, research, or education unless the part
4 is the subject of an anatomical gift. The body of a decedent
5 under the jurisdiction of the medical examiner or coroner may
6 not be delivered to a person for research or education unless
7 the body is the subject of an anatomical gift. This subsection
8 does not preclude a medical examiner or coroner from performing
9 the medicolegal investigation upon the body or body parts of a
10 decedent under the jurisdiction of the medical examiner or
11 coroner.

12 **§327-V Facilitation of anatomical gift from decedent whose**
13 **body is under jurisdiction of medical examiner or coroner. (a)**

14 Upon request of a procurement organization, a medical examiner
15 or coroner shall release to the procurement organization the
16 name, contact information, and available medical and social
17 history of a decedent whose body is under the jurisdiction of
18 the medical examiner or coroner. If the decedent's body or body
19 part is medically suitable for transplantation, therapy,
20 research, or education, the medical examiner or coroner shall
21 release post-mortem examination results to the procurement
22 organization. The procurement organization may make a



1 subsequent disclosure of the post-mortem examination results or
2 other information received from the medical examiner or coroner
3 only if relevant to transplantation or therapy.

4 (b) The medical examiner or coroner may conduct a
5 medicolegal examination by reviewing all medical records,
6 laboratory test results, x-rays, other diagnostic results, and
7 other information that any person possesses about a donor or
8 prospective donor whose body is under the jurisdiction of the
9 medical examiner or coroner which the medical examiner or
10 coroner determines may be relevant to the investigation.

11 (c) A person that has any information requested by a
12 medical examiner or coroner pursuant to subsection (b) shall
13 provide that information as expeditiously as possible to allow
14 the medical examiner or coroner to conduct the medicolegal
15 investigation within a period compatible with the preservation
16 of parts for the purpose of transplantation, therapy, research,
17 or education.

18 (d) If an anatomical gift has been or might be made of a
19 part of a decedent whose body is under the jurisdiction of the
20 medical examiner or coroner and a post-mortem examination is not
21 required, or the medical examiner or coroner determines that a
22 post-mortem examination is required but that the recovery of the



1 part that is the subject of an anatomical gift will not
2 interfere with the examination, the medical examiner or coroner
3 and procurement organization shall cooperate in the timely
4 removal of the part from the decedent for the purpose of
5 transplantation, therapy, research, or education.

6 (e) If an anatomical gift of a part from the decedent
7 under the jurisdiction of the medical examiner or coroner has
8 been or might be made, but the medical examiner or coroner
9 initially believes that the recovery of the part could interfere
10 with the post-mortem investigation into the decedent's cause or
11 manner of death, the medical examiner or coroner shall consult
12 with the procurement organization or physician or technician
13 designated by the procurement organization about the proposed
14 recovery. After consultation, the medical examiner or coroner
15 may allow the recovery.

16 (f) Following the consultation under subsection (e), in
17 the absence of mutually agreed-upon protocols to resolve
18 conflict between the medical examiner or coroner and the
19 procurement organization, if the medical examiner or coroner
20 intends to deny recovery, the medical examiner or coroner or
21 designee, at the request of the procurement organization, shall
22 attend the removal procedure for the part before making a final



1 determination not to allow the procurement organization to
2 recover the part. During the removal procedure, the medical
3 examiner or coroner or designee may allow recovery by the
4 procurement organization to proceed, or, if the medical examiner
5 or coroner or designee reasonably believes that the part may be
6 involved in determining the decedent's cause or manner of death,
7 deny recovery by the procurement organization.

8 (g) If the medical examiner or coroner or designee denies
9 recovery under subsection (f), the medical examiner or coroner
10 or designee shall:

- 11 (1) Explain in a record the specific reasons for not
12 allowing recovery of the part;
- 13 (2) Include the specific reasons in the records of the
14 medical examiner or coroner; and
- 15 (3) Provide a record with the specific reasons to the
16 procurement organization.

17 (h) If the medical examiner or coroner or designee allows
18 recovery of a part under subsection (d), (e), or (f), the
19 procurement organization, upon request, shall cause the
20 physician or technician who removes the part to provide the
21 medical examiner or coroner with a record describing the
22 condition of the part, a biopsy, a photograph, and any other



1 information and observations that would assist in the post-
2 mortem examination.

3 (i) If a medical examiner or coroner or designee is
4 required to be present at a removal procedure under subsection
5 (f), upon request the procurement organization requesting the
6 recovery of the part shall reimburse the medical examiner or
7 coroner or designee for the additional costs incurred in
8 complying with subsection (f).

9 **§327-W Uniformity of application and construction.** In
10 applying and construing this uniform act, consideration must be
11 given to the need to promote uniformity of the law with respect
12 to its subject matter among states that enact it.

13 **§327-X Relation to electronic signatures in global and**
14 **national commerce act.** This part modifies, limits, and
15 supersedes the Electronic Signatures in Global and National
16 Commerce Act, 15 United States Code Section 7001 et. seq., but
17 does not modify, limit, or supersede Section 101(a) of that act,
18 15 United States Code Section 7001, or authorize electronic
19 delivery of any of the notices described in Section 103(b) of
20 that act, 15 United States Code Section 7003(b).

21 **§327-Y Short title.** This part may be cited as the
22 "Revised Uniform Anatomical Gift Act".



1 SECTION 2. Part I, chapter 327, Hawaii Revised Statutes,
2 is repealed.

3 SECTION 3. In codifying the new sections added by section
4 2 of this Act, the revisor of statutes shall substitute
5 appropriate section numbers for the letters used in designating
6 the new sections in this Act.

7 SECTION 4. This Act shall take effect on July 1, 2008.
8

INTRODUCED BY: *Barbara Maramba*

JAN 11 2008



Report Title:

Anatomical Gifts

Description:

Enacts the Revised Uniform Anatomical Gift Act.

