
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 Short title. This part may be cited as the
6 "Revised Uniform Anatomical Gift Act".

7 §327-B Definitions. As used in this part, unless the
8 context otherwise requires::

9 "Agent" means an individual:

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

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

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



1 "Decedent" means a deceased individual whose body or part
2 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 shall not include a person to which an anatomical gift could
11 pass under section 327-K.

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 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 shall 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 driver's license issued by
17 the state department of motor vehicles.

18 "Know" means to have actual knowledge.

19 "Organ procurement organization" means a person designated
20 by the United States Secretary of Health and Human Services as
21 an organ procurement organization.



1 "Parent" means a parent whose parental rights have not been
2 terminated.

3 "Part" means an eye or other organ, or tissue of a human
4 being. The term shall not include the whole body.

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

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

12 "Procurement organization" means an eye bank, organ
13 procurement organization, or tissue bank.

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

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



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

3 "Record" means information that is inscribed on a tangible
4 medium or that is stored in an electronic or other medium and is
5 retrievable in perceivable form.

6 "Refusal" means a record created under section 327-G that
7 expressly states an intent to bar other persons from making an
8 anatomical gift of an individual's body or part.

9 "Sign" means, with the present intent to authenticate or
10 adopt a record:

11 (1) To execute or adopt a tangible symbol; or

12 (2) To attach or logically associate with the record an
13 electronic symbol, sound, or process.

14 "State" means a state of the United States, the District of
15 Columbia, Puerto Rico, the United States Virgin Islands, or any
16 territory or insular possession subject to the jurisdiction of
17 the United States.

18 "Technician" means an individual determined to be qualified
19 to remove or process parts by an appropriate organization that
20 is licensed, accredited, or regulated under federal or state
21 law. The term includes an enucleator.



1 "Tissue" means a portion of the human body other than an
2 organ or an eye. The term shall not include blood unless the
3 blood is donated for research or education.

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

8 "Transplant hospital" means a hospital that furnishes organ
9 transplants and other medical and surgical specialty services
10 required for the care of transplant patients.

11 **§327-C Applicability.** This part applies to an anatomical
12 gift or amendment to, revocation of, or refusal to make an
13 anatomical gift, whenever made.

14 **§327-D Who may make an anatomical gift before donor's**
15 **death.** Subject to section 327-H, an anatomical gift of a
16 donor's body or part may be made during the life of the donor
17 for transplantation, therapy, research, or education in the
18 manner provided in section 327-E by:

19 (1) The donor, if the donor is at least eighteen years of
20 age or is under eighteen years of age and is:

21 (A) An emancipated minor; or



- 1 (B) Authorized under a state law to apply for a
2 driver's license under part VI of chapter 286;
- 3 (2) An agent of the donor, unless the power of attorney
4 for health care or other record prohibits the agent
5 from making an anatomical gift;
- 6 (3) A parent of the donor, if the donor is under eighteen
7 years of age and not emancipated; or
- 8 (4) The donor's guardian.

9 **§327-E Manner of making an anatomical gift before donor's**
10 **death.** (a) A donor may make an anatomical gift:

- 11 (1) By authorizing a statement or symbol indicating that
12 the donor has made an anatomical gift to be imprinted
13 on the donor's driver's license or identification
14 card;
- 15 (2) In a will; or
- 16 (3) During a terminal illness or injury of the donor, by
17 any form of communication addressed to at least two
18 other individuals who are at least eighteen years of
19 age, one of whom is a disinterested witness.

20 (b) A donor or other person authorized to make an
21 anatomical gift under section 327-D may make a gift by a donor
22 card or other record signed by the donor or other person making



1 the gift, or by authorizing that a statement or symbol
2 indicating that the donor has made an anatomical gift be
3 included on a donor registry. If the donor or other person is
4 physically unable to sign a record, the record may be signed by
5 another individual at the direction of the donor or the other
6 person and shall:

7 (1) Be witnessed by at least two other individuals who are
8 at least eighteen years of age, one of whom is a
9 disinterested witness, who have signed at the request
10 of the donor or the other person; and

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

13 (c) Revocation, suspension, expiration, or cancellation of
14 the driver's license or identification card issued to a donor
15 shall not invalidate an anatomical gift.

16 (d) An anatomical gift made by a will shall take effect
17 upon the donor's death whether or not the will is probated.
18 Invalidation of the will after the donor's death shall not
19 invalidate the gift.

20 **§327-F Amending or revoking an anatomical gift before**
21 **donor's death.** (a) Subject to section 327-H, a donor or other



1 person authorized to make an anatomical gift under section 327-D
2 may amend or revoke an anatomical gift by:

3 (1) A record signed by:

4 (A) The donor;

5 (B) The other person; or

6 (C) Subject to subsection (b), another individual
7 acting at the direction of the donor or the other
8 person if the donor or other person is physically
9 unable to sign;

10 or

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

14 (b) A record signed pursuant to subsection (a) (1) (C)

15 shall:

16 (1) Be witnessed by at least two other individuals who are
17 at least eighteen years of age, one of whom is a
18 disinterested witness who have signed at the request
19 of the donor or the other person; and

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



1 (c) Subject to section 327-H, a donor or other person
2 authorized to make an anatomical gift under section 327-D may
3 revoke the gift by the destruction or cancellation of the
4 document of gift, or a portion of the document of gift used to
5 make the gift, with the intent to revoke the gift.

6 (d) A donor may amend or revoke an anatomical gift that
7 was not made in a will by any form of communication during a
8 terminal illness or injury addressed to at least two other
9 individuals who are at least eighteen years of age, one of whom
10 is a disinterested witness.

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

14 **§327-G Refusal to make an anatomical gift and effect of**
15 **refusal.** (a) An individual may refuse to make an anatomical
16 gift of the individual's body or part by:

17 (1) A record signed by:

18 (A) The individual; or

19 (B) Subject to subsection (b), another individual
20 acting at the direction of the individual if the
21 individual is physically unable to sign;



- 1 (2) The individual's will whether or not the will is
2 admitted to probate or invalidated after the
3 individual's death; or
- 4 (3) Any form of communication made by the individual
5 during the individual's terminal illness or injury
6 addressed to at least two other individuals who are at
7 least eighteen years of age, one of whom is a
8 disinterested witness.
- 9 (b) A record signed pursuant to subsection (a) (1) (B)
10 shall:
- 11 (1) Be witnessed by at least two other individuals who are
12 at least eighteen years of age, one of whom is a
13 disinterested witness who have signed at the request
14 of the individual; and
- 15 (2) State that it has been signed and witnessed as
16 provided in paragraph (1).
- 17 (c) An individual may amend or revoke a refusal:
- 18 (1) In the manner provided in subsection (a) for making a
19 refusal;
- 20 (2) By subsequently making an anatomical gift pursuant to
21 section 327-E that is inconsistent with the refusal;
22 or



1 (3) By the destruction or cancellation of the record
2 evidencing the refusal, or the portion of the record
3 used to make the refusal, with the intent to revoke
4 the refusal.

5 (d) Except as otherwise provided in section 327-H(h), in
6 the absence of an express, contrary indication by the individual
7 set forth in the refusal, an individual's unrevoked refusal to
8 make an anatomical gift of the individual's body or a part bars
9 all other persons from making an anatomical gift of the
10 individual's body or the part.

11 **§327-H Preclusive effect of an anatomical gift, amendment,**
12 **or revocation.** (a) Except as otherwise provided in subsection
13 (g), in the absence of an express, contrary indication by the
14 donor, a person other than the donor is barred from making,
15 amending, or revoking an anatomical gift of a donor's body or a
16 part if the donor made an anatomical gift of the donor's body or
17 the part under section 327-E, or an amendment to an anatomical
18 gift of the donor's body or the part under section 327-F.

19 (b) A donor's revocation of an anatomical gift of the
20 donor's body or a part under section 327-F is not a refusal and
21 shall not bar another person specified in section 327-D or 327-I



1 from making an anatomical gift of the donor's body or a part
2 under section 327-E or 327-J.

3 (c) If a person other than the donor makes an unrevoked
4 anatomical gift of the donor's body or a part under section
5 327-E, or an amendment to an anatomical gift of the donor's body
6 or a part under section 327-F, another person may not make,
7 amend, or revoke the gift of the donor's body or part under
8 section 327-J.

9 (d) A revocation of an anatomical gift of the donor's body
10 or a part under section 327-F by a person other than the donor
11 shall not bar another person from making an anatomical gift of
12 the body or a part under section 327-E or 327-J.

13 (e) 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-D, an anatomical gift of a part is neither a
16 refusal to give another part nor a limitation on the making of
17 an anatomical gift of another part at a later time by the donor
18 or another person.

19 (f) In the absence of an express, contrary indication by
20 the donor or other person authorized to make an anatomical gift
21 under section 327-D, an anatomical gift of a part for one or
22 more of the purposes set forth in section 327-D is not a



1 limitation on the making of an anatomical gift of the part for
2 any of the other purposes by the donor or any other person under
3 section 327-E or 327-J.

4 (g) If a donor who is an unemancipated minor dies under
5 eighteen years of age, a parent of the donor who is reasonably
6 available may revoke or amend an anatomical gift of the donor's
7 body or part.

8 (h) If an unemancipated minor who signed a refusal dies
9 under eighteen years of age, a parent of the individual who is
10 reasonably available may revoke the individual's refusal.

11 **§327-I Who may make an anatomical gift of decedent's body**
12 **or part.** (a) Subject to subsections (b) and (c) and unless
13 barred by subsection (d), an anatomical gift of a decedent's
14 body or part for purposes of transplantation, therapy, research,
15 or education may be made, in the order of priority listed, by
16 any member of the following classes of persons who is reasonably
17 available:

- 18 (1) An agent of the decedent at the time of death who
19 could have made an anatomical gift under section
20 327-D(2) immediately before the decedent's death;
- 21 (2) The spouse of the decedent;
- 22 (3) Adult children of the decedent;



- 1 (4) Parents of the decedent;
- 2 (5) Adult siblings of the decedent;
- 3 (6) Adult grandchildren of the decedent;
- 4 (7) Grandparents of the decedent;
- 5 (8) An adult who exhibited special care and concern for
- 6 the decedent;
- 7 (9) The persons who were acting as the guardian of the
- 8 person of the decedent at the time of death; and
- 9 (10) Any other person having the authority to dispose of
- 10 the decedent's body.

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

19 (c) No person may make an anatomical gift if, at the time
20 of the decedent's death, a person in a prior class under
21 subsection (a) is reasonably available to make or to object to
22 the making of an anatomical gift.



1 (d) An anatomical gift may not be made if doing so is
2 barred by section 327-G or 327-H.

3 **§327-J Manner of making, amending, or revoking an**
4 **anatomical gift of decedent's body or part.** (a) A person
5 authorized to make an anatomical gift under section 327-I may
6 make an anatomical gift by a document of gift signed by the
7 person making the gift or that person's oral communication that
8 is electronically recorded or is contemporaneously reduced to a
9 record and signed by the individual receiving the oral
10 communication.

11 (b) Subject to subsection (c), an anatomical gift by a
12 person authorized under section 327-I may be amended or revoked
13 orally or in a record by any member of a prior class who is
14 reasonably available. If more than one member of the prior
15 class is reasonably available, the gift made by a person
16 authorized under section 327-I may be amended or revoked only if
17 a majority of the reasonably available members of that class
18 agree to the amending or revoking of the gift or they are
19 equally divided as to whether to amend or revoke an anatomical
20 gift.

21 (c) A revocation under subsection (b) is effective only if
22 the procurement organization or transplant hospital or the



1 physician or technician knows of the revocation before an
2 incision has been made to remove a part from the donor's body,
3 or before invasive procedures have begun to prepare the
4 recipient.

5 §327-K Persons that may receive anatomical gift; purpose
6 of anatomical gift. (a) An anatomical gift of a body or part
7 may be made to the following persons:

8 (1) A named hospital, accredited medical school, dental
9 school, college, university, or organ procurement
10 organization, or other appropriate person for research
11 or education;

12 (2) A named individual designated by the person making the
13 anatomical gift if the individual is the recipient of
14 the part; or, if the part for any reason cannot be
15 transplanted into the individual, the part shall pass
16 in accordance with subsection (f) in the absence of an
17 express, contrary indication by the person making the
18 anatomical gift; or

19 (3) A named eye bank or tissue bank.

20 (b) If an anatomical gift of one or more specific parts or
21 of all parts is made in a document of gift that does not name a
22 person described in subsection (a) but identifies the purpose



1 for which an anatomical gift may be used, the following rules
2 shall apply:

3 (1) If the part is an eye and the gift is for
4 transplantation or therapy, the gift shall pass to the
5 appropriate eye bank;

6 (2) If the part is tissue and the gift is for
7 transplantation or therapy, the gift shall pass to the
8 appropriate tissue bank;

9 (3) If the part is an organ and the gift is for
10 transplantation or therapy, the gift shall pass to the
11 appropriate organ procurement organization as
12 custodian of the organ; and

13 (4) If the part is an organ, an eye, or tissue and the
14 gift is for research or education, the gift shall pass
15 to the appropriate procurement organization.

16 (c) For the purpose of subsection (h), if there is more
17 than one purpose of an anatomical gift set forth in the document
18 of gift but the purposes are not set forth in any priority, the
19 gift shall be used for transplantation or therapy if suitable
20 for those purposes and, if the gift cannot be used for
21 transplantation or therapy, the gift may be used for research or
22 education.



1 (d) If an anatomical gift of one or more specific parts is
2 made in a document of gift that does not name a person described
3 in subsection (a) and does not identify the purpose of the gift,
4 the decedent's parts may be used only for transplantation or
5 therapy, and the gift shall pass in accordance with subsection
6 (f).

7 (e) If a document of gift specifies only a general intent
8 to make an anatomical gift by words such as "donor", "organ
9 donor", or "body donor", or by a symbol or statement of similar
10 import, the decedent's parts may be used only for
11 transplantation or therapy, and the gift shall pass in
12 accordance with subsection (f).

13 (f) For purposes of subsections (a)(2), (c), and (d), the
14 following rules shall apply:

- 15 (1) If the part is an eye, the gift shall pass to the
16 appropriate eye bank;
- 17 (2) If the part is tissue, the gift shall pass to the
18 appropriate tissue bank; and
- 19 (3) If the part is an organ, the gift shall pass to the
20 appropriate organ procurement organization as
21 custodian of the organ.



1 (g) An anatomical gift of an organ for transplantation or
2 therapy, other than an anatomical gift under subsection (a)(2),
3 shall pass to the organ procurement organization as custodian of
4 the organ.

5 (h) If an anatomical gift does not pass pursuant to
6 subsections (a) through (g), or the decedent's body or part is
7 not used for transplantation, therapy, research, or education,
8 custody of the body or part shall pass to the person under
9 obligation to dispose of the body or part.

10 (i) A person may not accept an anatomical gift if the
11 person knows that the gift was not effectively made under
12 section 327-E or 327-J or if the person knows that the decedent
13 made a refusal under section 327-G that was not revoked. For
14 purposes of this subsection, if a person knows that an
15 anatomical gift was made on a document of gift, the person is
16 deemed to know of any amendment or revocation of the gift or any
17 refusal to make an anatomical gift on the same document of gift.

18 (j) Except as otherwise provided in subsection (a)(2),
19 nothing in this part shall affect the allocation of organs for
20 transplantation or therapy.

21 **§327-L Search and notification.** (a) The following
22 persons shall make a reasonable search of an individual who the



1 searcher reasonably believes is dead or near death for a
2 document of gift or other information identifying the individual
3 as a donor or as an individual who made a refusal:

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

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

9 (b) If a document of gift or a refusal to make an
10 anatomical gift is located by the search required by subsection
11 (a) (1) and the individual or deceased individual to whom it
12 relates is taken to a hospital, the person responsible for
13 conducting the search shall send the document of gift or refusal
14 to the hospital.

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

18 **§327-M Delivery of document of gift not required; right to**
19 **examine.** (a) A document of gift need not be delivered during
20 the donor's lifetime to be effective.

21 (b) Upon or after an individual's death, a person in
22 possession of a document of gift or a refusal to make an



1 anatomical gift with respect to the individual shall allow
2 examination and copying of the document of gift or refusal by a
3 person authorized to make or object to the making of an
4 anatomical gift with respect to the individual or by a person to
5 which the gift could pass under section 327-K.

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

13 (b) A procurement organization shall be allowed reasonable
14 access to information in the records of the state or county
15 department of motor vehicles to ascertain whether an individual
16 at or near death is a donor.

17 (c) When a hospital refers an individual at or near death
18 to a procurement organization, the organization may conduct any
19 reasonable examination necessary to ensure the medical
20 suitability of a part that is or could be the subject of an
21 anatomical gift for transplantation, therapy, research, or
22 education from a donor or a prospective donor. During the



1 examination period, measures necessary to ensure the medical
2 suitability of the part may not be withdrawn unless the hospital
3 or procurement organization knows that the individual expressed
4 a contrary intent.

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

10 (e) Unless prohibited by law other than this part, an
11 examination under subsection (c) or (d) may include an
12 examination of all medical records of the donor or prospective
13 donor.

14 (f) If a donor, at the time of death, is under eighteen
15 years of age, a procurement organization shall conduct a
16 reasonable search for the parents of the donor and, unless the
17 procurement organization knows the donor is an emancipated
18 minor, provide the parents with an opportunity to revoke or
19 amend the anatomical gift or revoke a refusal.

20 (g) A procurement organization shall make a reasonable
21 search for any person listed in section 327-I having priority to
22 make an anatomical gift on behalf of a prospective donor.



1 (h) If a procurement organization receives information
2 that an anatomical gift to any other person was made, amended,
3 or revoked, it shall promptly advise the other person of all
4 relevant information.

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

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

20 (k) A physician or technician may remove a donated part
21 from the body of a donor that the physician or technician is
22 qualified to remove.



1 **§327-O Coordination of procurement and use.** Each hospital
2 in this state, after consultation with procurement
3 organizations, shall establish agreements or affiliations for
4 coordination of procurement and use of human bodies and parts.

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

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

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



1 **§327-R Immunity.** (a) A person that acts in accordance
2 with this part or with the applicable anatomical gift law of
3 another state or attempts in good faith to do so is not liable
4 for the act in a civil action, criminal prosecution, or
5 administrative proceeding.

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

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

15 **§327-S Law governing validity; choice of law as to**
16 **execution of document of gift; presumption of validity.** (a) A
17 document of gift shall be valid if executed in accordance with:

18 (1) This part;

19 (2) The laws of the state or country where it was
20 executed; or

21 (3) The laws of the state or country where the person
22 making the anatomical gift was domiciled, has a place



1 of residence, or was a national at the time the
2 document of gift was executed.

3 (b) If a document of gift is valid under this section, the
4 laws of this State govern the interpretation of the document of
5 gift.

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

9 **§327-T Donor registry.** (a) The examiner of drivers shall
10 adopt rules pursuant to chapter 91 to allow an organ procurement
11 organization twenty-four-hour telephone access to the driver's
12 license database information, solely for determining whether a
13 driver has indicated a willingness to be an organ donor pursuant
14 to section 286-109.5.

15 (b) The examiner of drivers shall cooperate with any donor
16 registry that this State establishes, contracts for, or
17 recognizes for transferring to the donor registry all relevant
18 information regarding a donor's making, amendment to, or
19 revocation of an anatomical gift.

20 (c) A donor registry shall:

21 (1) Provide a database that allows a donor or other person
22 authorized under section 327-D to include on the donor



1 registry a statement or symbol that the donor has
2 made, amended, or revoked an anatomical gift;

3 (2) Be accessible to a procurement organization to allow
4 it to obtain relevant information on the donor
5 registry to determine, at or near death of the donor
6 or a prospective donor, whether the donor or
7 prospective donor has made, amended, or revoked an
8 anatomical gift; and

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

11 (d) Personally identifiable information on a donor
12 registry about a donor or prospective donor may not be used or
13 disclosed without the express consent of the donor, prospective
14 donor, or the person that made the anatomical gift for any
15 purpose other than to determine, at or near death of the donor
16 or a prospective donor, whether the donor or prospective donor
17 has made, amended, or revoked an anatomical gift.

18 (e) This section shall not prohibit any person from
19 creating or maintaining a donor registry that is not established
20 by or under contract with the State. However, the registry
21 shall comply with subsections (c) and (d).



1 **§327-U Effect of anatomical gift on advance health care**
2 **directive.** (a) If a prospective donor has a declaration or
3 advance health care directive, unless the directive expressly
4 provides to the contrary, measures necessary to ensure the
5 medical suitability of an organ for transplantation or therapy
6 may not be withheld or withdrawn from the prospective donor.

7 (b) As used in this section:

8 "Advance health care directive" means a record signed by a
9 prospective donor containing the prospective donor's direction
10 concerning a health care decision for the prospective donor or a
11 power of attorney for health care.

12 "Declaration" means a record signed by a prospective donor
13 specifying the circumstances under which a life support system
14 may be withheld or withdrawn.

15 "Health care decision" means any decision made regarding
16 the health care of the prospective donor.

17 **§327-V Cooperation between medical examiner or coroner and**
18 **procurement organization.** (a) A medical examiner or coroner
19 shall cooperate with procurement organizations to maximize the
20 opportunity to recover anatomical gifts for transplantation,
21 therapy, research, or education.



1 (b) If a medical examiner or coroner receives notice from
2 a procurement organization that an anatomical gift might be
3 available or was made with respect to a decedent whose body is
4 under the jurisdiction of the medical examiner or coroner and a
5 post-mortem examination is going to be performed, unless the
6 medical examiner or coroner denies recovery in accordance with
7 section 327-W, the medical examiner or coroner or designee shall
8 make a reasonable attempt to conduct a post-mortem examination
9 of the body or the part in a manner and within a period
10 compatible with its preservation for the purposes of the gift.

11 (c) A part may not be removed from the body of a decedent
12 under the jurisdiction of a medical examiner or coroner for
13 transplantation, therapy, research, or education unless the part
14 is the subject of an anatomical gift. The body of a decedent
15 under the jurisdiction of the medical examiner or coroner may
16 not be delivered to a person for research or education unless
17 the body is the subject of an anatomical gift. This subsection
18 shall not preclude a medical examiner or coroner from performing
19 the medicolegal investigation upon the body or parts of a
20 decedent under the jurisdiction of the medical examiner or
21 coroner.



1 §327-W Facilitation of an anatomical gift from a decedent
2 whose body is under the jurisdiction of the medical examiner or
3 coroner. (a) Upon request of a procurement organization, a
4 medical examiner or coroner shall release to the procurement
5 organization the name, contact information, and available
6 medical and social history of a decedent whose body is under the
7 jurisdiction of the medical examiner or coroner. If the
8 decedent's body or part is medically suitable for
9 transplantation, therapy, research, or education, the medical
10 examiner or coroner shall release post-mortem examination
11 results to the procurement organization. The procurement
12 organization may make a subsequent disclosure of the post-mortem
13 examination results or other information received from the
14 medical examiner or coroner only if relevant to transplantation
15 or therapy.

16 (b) The medical examiner or coroner may conduct a
17 medicolegal examination by reviewing all medical records,
18 laboratory test results, x-rays, other diagnostic results, and
19 other information that any person possesses about a donor or
20 prospective donor whose body is under the jurisdiction of the
21 medical examiner or coroner, which the medical examiner or
22 coroner determines may be relevant to the investigation.



1 (c) A person that has any information requested by a
2 medical examiner or coroner pursuant to subsection (b) shall
3 provide that information as expeditiously as possible to allow
4 the medical examiner or coroner to conduct the medicolegal
5 investigation within a period compatible with the preservation
6 of parts for transplantation, therapy, research, or education.

7 (d) If an anatomical gift has been or might be made of a
8 part of a decedent whose body is under the jurisdiction of the
9 medical examiner or coroner and a post-mortem examination is not
10 required, or the medical examiner or coroner determines that a
11 post-mortem examination is required but that the recovery of the
12 part that is the subject of an anatomical gift will not
13 interfere with the examination, the medical examiner or coroner
14 and procurement organization shall cooperate in the timely
15 removal of the part from the decedent for transplantation,
16 therapy, research, or education.

17 (e) If an anatomical gift of a part from the decedent
18 under the jurisdiction of the medical examiner or coroner has
19 been or might be made, but the medical examiner or coroner
20 initially believes that the recovery of the part could interfere
21 with the post-mortem investigation into the decedent's cause or
22 manner of death, the medical examiner or coroner shall consult



1 with the procurement organization or physician or technician
2 designated by the procurement organization about the proposed
3 recovery. The procurement organization shall provide the
4 medical examiner or coroner with all information it has which
5 could relate to the cause or manner of the decedent's death.
6 After consultation, the medical examiner or coroner may allow
7 the recovery.

8 (f) Following the consultation under subsection (e), in
9 the absence of mutually agreed-upon protocols to resolve
10 conflict between the medical examiner or coroner and the
11 procurement organization, if the medical examiner or coroner
12 intends to deny recovery of the part, the medical examiner or
13 coroner or designee, at the request of the procurement
14 organization, shall make every effort to attend the removal
15 procedure for the part before making a final determination not
16 to allow the procurement organization to recover the part.
17 During the removal procedure, the medical examiner or coroner or
18 designee may allow recovery by the procurement organization to
19 proceed, or, if the medical examiner or coroner or designee
20 reasonably believes that the part may be involved in determining
21 the decedent's cause or manner of death, deny recovery by the
22 procurement organization.



1 (g) If the medical examiner or coroner or designee denies
2 recovery under subsection (f), the medical examiner or coroner
3 or designee shall include the reasons in the records of the
4 medical examiner or coroner; and make those reasons available to
5 the procurement organization upon request.

6 (h) If the medical examiner or coroner or designee allows
7 recovery of a part, the procurement organization shall cooperate
8 with the medical examiner or coroner in any documentation of
9 injuries and the preservation and collection of evidence prior
10 to and during the recovery of the part and, upon request, shall
11 cause the physician or technician who removes the part to
12 provide the medical examiner or coroner with a record describing
13 the condition of the part, a biopsy, a photograph, and any other
14 information and observations that would assist in the post-
15 mortem examination.

16 **§327-X Hawaii organ and tissue education special fund.**

17 There is established in the state treasury the Hawaii Organ and
18 Tissue Education Special fund. Moneys collected under section
19 286-109.7 shall be deposited into the fund. The fund shall be
20 administered and distributed by the department of health and
21 shall be used exclusively for public education programs and
22 activities on organ, tissue, and eye donation.



1 §327-Y Uniformity of application and construction. In
2 applying and construing this uniform act, consideration shall be
3 given to the need to promote uniformity of the law with respect
4 to its subject matter among states that enact it.

5 §327-Z Relation to electronic signatures in Global and
6 National Commerce Act. This part modifies, limits, and
7 supersedes the Electronic Signatures in Global and National
8 Commerce Act, 15 United States Code Section 7001 et. seq., but
9 shall not modify, limit, or supersede Section 101(a) of that
10 Act, 15 United States Code Section 7001, or authorize electronic
11 delivery of any of the notices described in Section 103(b) of
12 that Act, 15 United States Code Section 7003(b)."

13 SECTION 2. Section 286-109.6, Hawaii Revised Statutes, is
14 amended to read as follows:

15 " [†] §286-109.6 [†] Limited access to driver's license
16 anatomical gift data. The examiner of drivers shall adopt rules
17 pursuant to chapter 91 to allow an organ procurement
18 organization twenty-four-hour telephone access to the driver's
19 license database information, solely for the purpose of
20 determining whether a driver has indicated a willingness to be
21 an organ donor pursuant to section 286-109.5.



1 As used in this section, "organ procurement organization"
2 shall have the same meaning as procurement organization in
3 section [~~327-1.~~] 327-B."

4 SECTION 3. Section 286-109.7, Hawaii Revised Statutes, is
5 amended to read as follows:

6 " ~~[+]§286-109.7~~ ~~[+]~~ **Organ and tissue education fee.**

7 Notwithstanding any other law to the contrary, beginning July 1,
8 2000, a donation of \$1, in addition to any other fees under this
9 chapter, may be collected upon designation by an individual or
10 entity from each certificate of registration by the director of
11 finance of each county to be deposited on a quarterly basis into
12 the ~~[+]~~organ and tissue education special fund~~[+]~~ pursuant to
13 section [~~327-5.6.~~] 327-X. The counties may retain a portion of
14 the \$1 donation as an administrative fee to cover the cost of
15 collecting, accounting for, and depositing the balance into the
16 organ and tissue education special fund. The retention shall
17 not exceed \$0.20 for each \$1 collected."

18 SECTION 4. Part I, Chapter 327, Hawaii Revised Statutes,
19 is repealed.

20 SECTION 5. In codifying the new sections added by section
21 1 of this Act, the revisor of statutes shall substitute



1 appropriate section numbers for the letters used in designating
2 the new sections in this Act.

3 SECTION 6. This Act shall take effect on July 1, 2008.



Report Title:
Anatomical Gifts

Description:
Enacts the Revised Uniform Anatomical Gift Act. (HB2139 HD1)

