
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 examiner of drivers.

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 "Reciprocal beneficiary" means a party to a valid
4 reciprocal beneficiary relationship as defined in chapter 572C.

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

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

11 "Sign" means, with the present intent to authenticate or
12 adopt a record:

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

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

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

20 "Technician" means an individual determined to be qualified
21 to remove or process parts by an appropriate organization that



1 is licensed, accredited, or regulated under federal or state
2 law. The term includes an enucleator.

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

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

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

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

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

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



- 1 (A) An emancipated minor, as deemed pursuant to
2 section 577-25; or
- 3 (B) Authorized under a state law to apply for a
4 driver's license under part VI of chapter 286;
- 5 (2) An agent of the donor, unless the power of attorney
6 for health care or other record prohibits the agent
7 from making an anatomical gift;
- 8 (3) A parent of the donor, if the donor is under eighteen
9 years of age and not emancipated; or
- 10 (4) The donor's guardian.

11 **§327-E Manner of making an anatomical gift before donor's**
12 **death.** (a) A donor may make an anatomical gift:

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



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

10 (1) Be witnessed by at least two other individuals who are
11 at least eighteen years of age, one of whom is a
12 disinterested witness, who have signed at the request
13 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 issued to a donor
18 shall not invalidate an anatomical gift.

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



1 **§327-F Amending or revoking an anatomical gift before**
2 **donor's death.** (a) Subject to section 327-H, a donor or other
3 person authorized to make an anatomical gift under section 327-D
4 may 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;

12 or

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

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

17 shall:

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



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

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

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

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

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

19 (1) A record signed by:

20 (A) The individual; or



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



1 (2) By subsequently making an anatomical gift pursuant to
2 section 327-E that is inconsistent with the refusal;
3 or

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

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

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



1 (b) A donor's revocation of an anatomical gift of the
2 donor's body or a part under section 327-F is not a refusal and
3 shall not bar another person specified in section 327-D or 327-I
4 from making an anatomical gift of the donor's body or a part
5 under section 327-E or 327-J.

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

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

16 (e) In the absence of an express, contrary indication by
17 the donor or other person authorized to make an anatomical gift
18 under section 327-D, an anatomical gift of a part is neither a
19 refusal to give another part nor a limitation on the making of
20 an anatomical gift of another part at a later time by the donor
21 or another person.



1 (f) In the absence of an express, contrary indication by
2 the donor or other person authorized to make an anatomical gift
3 under section 327-D, an anatomical gift of a part for one or
4 more of the purposes set forth in section 327-D is not a
5 limitation on the making of an anatomical gift of the part for
6 any of the other purposes by the donor or any other person under
7 section 327-E or 327-J.

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

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

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



- 1 (1) An agent of the decedent at the time of death who
2 could have made an anatomical gift under section
3 327-D(2) immediately before the decedent's death;
- 4 (2) The spouse or reciprocal beneficiary of the decedent;
- 5 (3) Adult children of the decedent;
- 6 (4) Parents of the decedent;
- 7 (5) Adult siblings of the decedent;
- 8 (6) Adult grandchildren of the decedent;
- 9 (7) Grandparents of the decedent;
- 10 (8) An adult who exhibited special care and concern for
11 the decedent;
- 12 (9) The persons who were acting as the guardian of the
13 person of the decedent at the time of death; and
- 14 (10) Any other person having the authority to dispose of
15 the decedent's body.
- 16 (b) If there is more than one member of a class listed in
17 subsection (a)(1), (3), (4), (5), (6), (7), or (9) entitled to
18 make an anatomical gift, an anatomical gift may be made by a
19 member of the class unless that member or a person to which the
20 gift can pass under section 327-K knows of an objection by
21 another member of the class. If an objection is known, the gift



1 may be made only by a majority of the members of the class who
2 are reasonably available.

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

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

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

17 (b) Subject to subsection (c), an anatomical gift by a
18 person authorized under section 327-I may be amended or revoked
19 orally or in a record by any member of a prior class who is
20 reasonably available. If more than one member of the prior
21 class is reasonably available, the gift made by a person
22 authorized under section 327-I may be amended or revoked only if



1 a majority of the reasonably available members of that class
2 agree to the amending or revoking of the gift or they are
3 equally divided as to whether to amend or revoke an anatomical
4 gift.

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

11 **§327-K Persons that may receive anatomical gift; purpose**
12 **of anatomical gift.** (a) An anatomical gift of a body or part
13 may be made to the following persons:

14 (1) A named hospital, accredited medical school, dental
15 school, college, university, or organ procurement
16 organization, or other appropriate person for research
17 or education;

18 (2) A named individual designated by the person making the
19 anatomical gift if the individual is the recipient of
20 the part; or, if the part for any reason cannot be
21 transplanted into the individual, the part shall pass
22 in accordance with subsection (f) in the absence of an



1 express, contrary indication by the person making the
2 anatomical gift; or

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

4 (b) If an anatomical gift of one or more specific parts or
5 of all parts is made in a document of gift that does not name a
6 person described in subsection (a) but identifies the purpose
7 for which an anatomical gift may be used, the following rules
8 shall apply:

9 (1) If the part is an eye and the gift is for
10 transplantation or therapy, the gift shall pass to the
11 appropriate eye bank;

12 (2) If the part is tissue and the gift is for
13 transplantation or therapy, the gift shall pass to the
14 appropriate tissue bank;

15 (3) If the part is an organ and the gift is for
16 transplantation or therapy, the gift shall pass to the
17 appropriate organ procurement organization as
18 custodian of the organ; and

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



1 (c) For the purpose of subsection (h), if there is more
2 than one purpose of an anatomical gift set forth in the document
3 of gift but the purposes are not set forth in any priority, the
4 gift shall be used for transplantation or therapy if suitable
5 for those purposes and, if the gift cannot be used for
6 transplantation or therapy, the gift may be used for research or
7 education.

8 (d) If an anatomical gift of one or more specific parts is
9 made in a document of gift that does not name a person described
10 in subsection (a) and does not identify the purpose of the gift,
11 the decedent's parts may be used only for transplantation or
12 therapy, and the gift shall pass in accordance with subsection
13 (f).

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

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



1 (1) If the part is an eye, the gift shall pass to the
2 appropriate eye bank;

3 (2) If the part is tissue, the gift shall pass to the
4 appropriate tissue bank; and

5 (3) If the part is an organ, the gift shall pass to the
6 appropriate organ procurement organization as
7 custodian of the organ.

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

12 (h) If an anatomical gift does not pass pursuant to
13 subsections (a) through (g), or the decedent's body or part is
14 not used for transplantation, therapy, research, or education,
15 custody of the body or part shall pass to the person under
16 obligation to dispose of the body or part.

17 (i) A person may not accept an anatomical gift if the
18 person knows that the gift was not effectively made under
19 section 327-E or 327-J or if the person knows that the decedent
20 made a refusal under section 327-G that was not revoked. For
21 purposes of this subsection, if a person knows that an
22 anatomical gift was made on a document of gift, the person is



1 deemed to know of any amendment or revocation of the gift or any
2 refusal to make an anatomical gift on the same document of gift.

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

6 **§327-L Search and notification.** (a) The following
7 persons shall make a reasonable search of an individual who the
8 searcher reasonably believes is dead or near death for a
9 document of gift or other information identifying the individual
10 as a donor or as an individual who made a refusal:

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

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

16 (b) If a document of gift or a refusal to make an
17 anatomical gift is located by the search required by subsection
18 (a)(1) and the individual or deceased individual to whom it
19 relates is taken to a hospital, the person responsible for
20 conducting the search shall send the document of gift or refusal
21 to the hospital.



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

4 **§327-M Delivery of document of gift not required; right to**
5 **examine.** (a) A document of gift need not be delivered during
6 the donor's lifetime to be effective.

7 (b) Upon or after an individual's death, a person in
8 possession of a document of gift or a refusal to make an
9 anatomical gift with respect to the individual shall allow
10 examination and copying of the document of gift or refusal by a
11 person authorized to make or object to the making of an
12 anatomical gift with respect to the individual or by a person to
13 which the gift could pass under section 327-K.

14 **§327-N Rights and duties of procurement organization and**
15 **others.** (a) When a hospital refers an individual at or near
16 death to a procurement organization, the organization shall make
17 a reasonable search of any donor registry and records of the
18 state or county department of motor vehicles that it knows exist
19 for the geographical area in which the individual resides to
20 ascertain whether the individual has made an anatomical gift.

21 (b) A procurement organization shall be allowed reasonable
22 access to information in the records of the state or county



1 department of motor vehicles to ascertain whether an individual
2 at or near death is a donor.

3 (c) When a hospital refers an individual at or near death
4 to a procurement organization, the organization may conduct any
5 reasonable examination necessary to ensure the medical
6 suitability of a part that is or could be the subject of an
7 anatomical gift for transplantation, therapy, research, or
8 education from a donor or a prospective donor. During the
9 examination period, measures necessary to ensure the medical
10 suitability of the part may not be withdrawn unless the hospital
11 or procurement organization knows that the individual expressed
12 a contrary intent.

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

18 (e) Unless prohibited by law other than this part, an
19 examination under subsection (c) or (d) may include an
20 examination of all medical records of the donor or prospective
21 donor.



1 (f) If a donor, at the time of death, is under eighteen
2 years of age, a procurement organization shall conduct a
3 reasonable search for the parents of the donor and, unless the
4 procurement organization knows the donor is an emancipated minor
5 as deemed by section 577-25, provide the parents with an
6 opportunity to revoke or amend the anatomical gift or revoke a
7 refusal.

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

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

15 (i) Subject to sections 327-K(h) and 327-W, the rights of
16 the person to which a part passes under section 327-K are
17 superior to rights of all others with respect to the part. The
18 person may accept or reject an anatomical gift in whole or in
19 part. Subject to the terms of the document of gift and this
20 part, a person that accepts an anatomical gift of an entire body
21 may allow embalming or cremation and use of remains in a funeral
22 service. If the gift is of a part, the person to which the part



1 passes under section 327-K, upon the death of the donor and
2 before embalming or cremation, shall cause the part to be
3 removed without unnecessary mutilation.

4 (j) Neither the physician who attends the decedent at
5 death nor the physician who determines the time of the
6 decedent's death may participate in the procedures for removing
7 or transplanting a part from the decedent.

8 (k) A physician or technician may remove a donated part
9 from the body of a donor that the physician or technician is
10 qualified to remove.

11 **§327-O Coordination of procurement and use.** Each hospital
12 in this state, after consultation with procurement
13 organizations, shall establish agreements or affiliations for
14 coordination of procurement and use of human bodies and parts.

15 **§327-P Sale or purchase of parts prohibited.** (a) Except
16 as otherwise provided in subsection (b), a person that
17 knowingly, for valuable consideration, purchases or sells a part
18 for transplantation or therapy if removal of a part from an
19 individual is intended to occur after the individual's death
20 commits a class C felony and upon conviction is subject to a
21 fine not exceeding \$50,000, imprisonment not exceeding five
22 years, or both.



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

4 **§327-Q Penalty.** Any person that, to obtain a financial
5 gain, intentionally falsifies, forges, conceals, defaces, or
6 obliterates a document of gift, an amendment or revocation of a
7 document of gift, or a refusal to make an anatomical gift
8 commits a class C felony and upon conviction is subject to a
9 fine not exceeding \$50,000 or imprisonment not exceeding five
10 years, or both.

11 **§327-R Immunity.** (a) A person that acts in accordance
12 with this part or with the applicable anatomical gift law of
13 another state or attempts in good faith to do so is not liable
14 for the act in a civil action, criminal prosecution, or
15 administrative proceeding.

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

19 (c) A person who documents the making, amending, or
20 revoking of an anatomical gift under this part may rely upon
21 representations of the individuals listed in section
22 327-I(a)(2), (3), (4), (5), (6), (7), and (8) relating to their



1 relationship to the donor or prospective donor unless the person
2 knows that the representation is untrue.

3 **§327-S Law governing validity; choice of law as to**
4 **execution of document of gift; presumption of validity.** (a) A

5 document of gift shall be valid if executed in accordance with:

6 (1) This part;

7 (2) The laws of the state or country where it was
8 executed; or

9 (3) The laws of the state or country where the person
10 making the anatomical gift was domiciled, has a place
11 of residence, or was a national at the time the
12 document of gift was executed.

13 (b) If a document of gift is valid under this section, the
14 laws of this State govern the interpretation of the document of
15 gift.

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

19 **§327-T Donor registry.** (a) The examiner of drivers shall
20 adopt rules pursuant to chapter 91 to allow an organ procurement
21 organization twenty-four-hour telephone access to the driver's
22 license database information, solely for determining whether a



1 driver has indicated a willingness to be an organ donor pursuant
2 to section 286-109.5.

3 (b) The examiner of drivers shall cooperate with any donor
4 registry that this State establishes, contracts for, or
5 recognizes for transferring to the donor registry all relevant
6 information regarding a donor's making, amendment to, or
7 revocation of an anatomical gift.

8 (c) A donor registry shall:

9 (1) Provide a database that allows a donor or other person
10 authorized under section 327-D to include on the donor
11 registry a statement or symbol that the donor has
12 made, amended, or revoked an anatomical gift;

13 (2) Be accessible to a procurement organization to allow
14 it to obtain relevant information on the donor
15 registry to determine, at or near death of the donor
16 or a prospective donor, whether the donor or
17 prospective donor has made, amended, or revoked an
18 anatomical gift; and

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

21 (d) Personally identifiable information on a donor
22 registry about a donor or prospective donor may not be used or



1 disclosed without the express consent of the donor, prospective
2 donor, or the person that made the anatomical gift for any
3 purpose other than to determine, at or near death of the donor
4 or a prospective donor, whether the donor or prospective donor
5 has made, amended, or revoked an anatomical gift.

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

10 **§327-U Effect of anatomical gift on advance health care**
11 **directive.** (a) As used in this section:

12 "Advance health-care directive" means a record signed or
13 authorized by a prospective donor containing the prospective
14 donor's direction concerning a health-care decision for the
15 prospective donor or a power of attorney for health care.

16 "Declaration" means a record signed by a prospective donor
17 specifying the circumstances under which a life support system
18 may be withheld or withdrawn.

19 "Health-care decision" means any decision regarding the
20 health care of the prospective donor.

21 (b) If a prospective donor has a declaration or advance
22 health-care directive, and the terms of the declaration or



1 directive and the express or implied terms of a potential
2 anatomical gift are in conflict with regard to the
3 administration of measures necessary to insure the medical
4 suitability of a part for transplantation or therapy, the
5 prospective donor's attending physician and prospective donor
6 shall confer to resolve the conflict. If the prospective donor
7 is incapable of resolving the conflict, an agent acting under
8 the prospective donor's declaration or directive, or, if none or
9 if the agent is not reasonably available, another person
10 authorized by law other than this chapter to make health-care
11 decisions on behalf of the prospective donor, shall act for the
12 donor to resolve the conflict. The conflict shall be resolved
13 as expeditiously as possible. Information relevant to the
14 resolution of the conflict may be obtained from the appropriate
15 procurement organization and any other person authorized to make
16 an anatomical gift for the prospective donor under section 327-
17 I. Before resolution of the conflict, measures necessary to
18 ensure the medical suitability of the part may not be withheld
19 or withdrawn from the prospective donor if withholding or
20 withdrawing the measures is not contraindicated by appropriate
21 end-of-life care.



1 **§327-V Cooperation between medical examiner or coroner and**

2 **procurement organization.** (a) A medical examiner or coroner

3 shall cooperate with procurement organizations to maximize the

4 opportunity to recover anatomical gifts for transplantation,

5 therapy, research, or education.

6 (b) If a medical examiner or coroner receives notice from

7 a procurement organization that an anatomical gift might be

8 available or was made with respect to a decedent whose body is

9 under the jurisdiction of the medical examiner or coroner and a

10 post-mortem examination is going to be performed, unless the

11 medical examiner or coroner denies recovery in accordance with

12 section 327-W, the medical examiner or coroner or designee shall

13 make a reasonable attempt to conduct a post-mortem examination

14 of the body or the part in a manner and within a period

15 compatible with its preservation for the purposes of the gift.

16 (c) A part may not be removed from the body of a decedent

17 under the jurisdiction of a medical examiner or coroner for

18 transplantation, therapy, research, or education unless the part

19 is the subject of an anatomical gift. The body of a decedent

20 under the jurisdiction of the medical examiner or coroner may

21 not be delivered to a person for research or education unless

22 the body is the subject of an anatomical gift. This subsection



1 shall not preclude a medical examiner or coroner from performing
2 the medicolegal investigation upon the body or parts of a
3 decedent under the jurisdiction of the medical examiner or
4 coroner.

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

20 (b) The medical examiner or coroner may conduct a
21 medicolegal examination by reviewing all medical records,
22 laboratory test results, x-rays, other diagnostic results, and



1 other information that any person possesses about a donor or
2 prospective donor whose body is under the jurisdiction of the
3 medical examiner or coroner, which the medical examiner or
4 coroner determines may be relevant to the investigation.

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

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

21 (e) If an anatomical gift of a part from the decedent
22 under the jurisdiction of the medical examiner or coroner has



1 been or might be made, but the medical examiner or coroner
2 initially believes that the recovery of the part could interfere
3 with the post-mortem investigation into the decedent's cause or
4 manner of death, the medical examiner or coroner shall consult
5 with the procurement organization or physician or technician
6 designated by the procurement organization about the proposed
7 recovery. The procurement organization shall provide the
8 medical examiner or coroner with all information it has which
9 could relate to the cause or manner of the decedent's death.
10 After consultation, the medical examiner or coroner may allow
11 the recovery.

12 (f) Following the consultation under subsection (e), in
13 the absence of mutually agreed-upon protocols to resolve
14 conflict between the medical examiner or coroner and the
15 procurement organization, if the medical examiner or coroner
16 intends to deny recovery of the part, the medical examiner or
17 coroner or designee, at the request of the procurement
18 organization, shall make reasonable efforts to attend the
19 removal procedure for the part before making a final
20 determination not to allow the procurement organization to
21 recover the part. During the removal procedure, the medical
22 examiner or coroner or designee may allow recovery by the



1 procurement organization to proceed, or, if the medical examiner
2 or coroner or designee reasonably believes that the part may be
3 involved in determining the decedent's cause or manner of death,
4 deny recovery by the procurement organization.

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

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

20 **§327-X Hawaii organ and tissue education special fund.**

21 There is established in the state treasury the Hawaii Organ and
22 Tissue Education Special fund. Moneys collected under section



1 286-109.7 shall be deposited into the fund. The fund shall be
2 administered and distributed by the department of health and
3 shall be used exclusively for public education programs and
4 activities on organ, tissue, and eye donation.

5 **§327-Y Uniformity of application and construction.** In
6 applying and construing this uniform act, consideration shall be
7 given to the need to promote uniformity of the law with respect
8 to its subject matter among states that enact it.

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

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

19 "[+]§286-109.6[+] **Limited access to driver's license**
20 **anatomical gift data.** The examiner of drivers shall adopt rules
21 pursuant to chapter 91 to allow an organ procurement
22 organization twenty-four-hour telephone access to the driver's



1 license database information, solely for the purpose of
2 determining whether a driver has indicated a willingness to be
3 an organ donor pursuant to section 286-109.5.

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

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

9 "~~[+]§286-109.7[+]~~ **Organ and tissue education fee.**

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

21 SECTION 4. Part I, Chapter 327, Hawaii Revised Statutes,
22 is repealed.



1 SECTION 5. On the effective date of this Act, the director
2 of finance shall transfer all of the funds in the organ and
3 tissue education special fund established by section 327-5.6,
4 Hawaii Revised Statutes, to the Hawaii organ and tissue
5 education special fund created by section 327-X in section 1 of
6 this Act.

7 SECTION 6. In codifying the new sections added by section
8 1 of this Act, the revisor of statutes shall substitute
9 appropriate section numbers for the letters used in designating
10 the new sections in this Act.

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



Report Title:

Anatomical Gifts

Description:

Enacts the Revised Uniform Anatomical Gift Act. (HB2139 HD2)

HB2139 HD2 HMS 2008-2779

