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# 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           "Agent" means an individual:

- 7           (1) Authorized to make health-care decisions on the  
8           principal's behalf by a power of attorney for health  
9           care; or
- 10           (2) Expressly authorized to make an anatomical gift on the  
11           principal's behalf by any other record signed by the  
12           principal.

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

16           "Decedent" means a deceased individual whose body or part  
17 is or may be the source of an anatomical gift. The term



1 includes a stillborn infant, and subject to restrictions imposed  
2 by law other than this part, a fetus.

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

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

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

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

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



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

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

9 "Hospital" means a facility licensed as a hospital under  
10 the law of any state or a facility operated as a hospital by the  
11 United States, a state, or a subdivision of a state.

12 "Identification card" means an identification card issued  
13 by a state or county authority or a state department of motor  
14 vehicles.

15 "Know" means to have actual knowledge.

16 "Organ procurement organization" means a person designated  
17 by the United States Secretary of Health and Human Services as  
18 an organ procurement organization.

19 "Parent" means a parent whose parental rights have not been  
20 terminated.

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



1 "Person" means an individual, corporation, business trust,  
2 estate, trust, partnership, limited liability company,  
3 association, joint venture, public corporation, government or  
4 governmental subdivision, agency, or instrumentality, or any  
5 other legal or commercial entity.

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

8 "Procurement organization" means an eye bank, organ  
9 procurement organization, or tissue bank.

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

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

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



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

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

7 "Sign" means, with the present intent to authenticate or  
8 adopt a record:

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

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

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

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

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



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

5 "Transplant hospital" means a hospital that furnishes organ  
6 transplants and other medical and surgical specialty services  
7 required for the care of transplant patients.

8 **§327-B Applicability.** This part applies to an anatomical  
9 gift or amendment to, revocation of, or refusal to make an  
10 anatomical gift, whenever made.

11 **§327-C Who may make anatomical gift before donor's death.**  
12 Subject to section 327-G, an anatomical gift of a donor's body  
13 or part may be made during the life of the donor for the purpose  
14 of transplantation, therapy, research, or education in the  
15 manner provided in section 327-D by:

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

18 (A) An emancipated minor; or

19 (B) Authorized under a state law to apply for a  
20 driver's license under part VI of chapter 286;



1 (2) An agent of the donor, unless the power of attorney  
2 for health care or other record prohibits the agent  
3 from making an anatomical gift;

4 (3) A parent of the donor, if the donor is under eighteen  
5 years of age and not emancipated; or

6 (4) The donor's guardian.

7 **§327-D Manner of making anatomical gift before donor's**

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

9 (1) By authorizing a statement or symbol indicating that  
10 the donor has made an anatomical gift to be imprinted  
11 on the donor's driver's license or identification  
12 card;

13 (2) In a will; or

14 (3) During a terminal illness or injury of the donor, by  
15 any form of communication addressed to at least two  
16 other individuals who are at least eighteen years of  
17 age, one of whom is a disinterested witness.

18 (b) A donor or other person authorized to make an  
19 anatomical gift under section 327-C may make a gift by a donor  
20 card or other record signed by the donor or other person making  
21 the gift or by authorizing that a statement or symbol indicating  
22 that the donor has made an anatomical gift be included on a



1 donor registry. If the donor or other person is physically  
2 unable to sign a record, the record may be signed by another  
3 individual at the direction of the donor or the other person and  
4 must:

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

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

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

14 (d) An anatomical gift made by will takes effect upon the  
15 donor's death whether or not the will is probated. Invalidation  
16 of the will after the donor's death does not invalidate the  
17 gift.

18 **§327-E Amending or revoking anatomical gift before donor's**  
19 **death.** (a) Subject to section 327-G, a donor or other person  
20 authorized to make an anatomical gift under section 327-C may  
21 amend or revoke an anatomical gift by:

22 (1) A record signed by:





- 1           (A) The donor;
- 2           (B) The other person; or
- 3           (C) Subject to subsection (b), another individual
- 4                 acting at the direction of the donor or the other
- 5                 person if the donor or other person is physically
- 6                 unable to sign; or
- 7       (2) A later-executed document of gift that amends or
- 8                 revokes a previous anatomical gift or portion of an
- 9                 anatomical gift, either expressly or by inconsistency.
- 10       (b) A record signed pursuant to subsection (a)(1)(C) must:
- 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 donor or the other person; and
- 15       (2) State that it has been signed and witnessed as
- 16                 provided in paragraph (1).
- 17       (c) Subject to section 327-G, a donor or other person
- 18         authorized to make an anatomical gift under section 327-C may
- 19         revoke the gift by the destruction or cancellation of the
- 20         document of gift, or a portion of the document of gift used to
- 21         make the gift, with the intent to revoke the gift.



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

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

9 **§327-F Refusal to make anatomical gift and effect of**

10 **refusal.** (a) An individual may refuse to make an anatomical  
11 gift of the individual's body or part by:

12 (1) A record signed by:

13 (A) The individual; or

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

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

20 (3) Any form of communication made by the individual  
21 during the individual's terminal illness or injury  
22 addressed to at least two other individuals who are at



1 least eighteen years of age, one of whom is a  
2 disinterested witness.

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

4 (1) Be witnessed by at least two other individuals who are  
5 at least eighteen years of age, one of whom is a  
6 disinterested witness who have signed at the request  
7 of the individual; and

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

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

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

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

16 (3) By the destruction or cancellation of the record  
17 evidencing the refusal, or the portion of the record  
18 used to make the refusal, with the intent to revoke  
19 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), in the absence of an express, contrary indication by the  
7 donor, a person other than the donor is barred from making,  
8 amending, or revoking an anatomical gift of a donor's body or a  
9 part if the donor made an anatomical gift of the donor's body or  
10 the part under section 327-D or an amendment to an anatomical  
11 gift of the donor's body or the part under section 327-E.

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

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



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

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

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

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



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

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

- 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) No person may make an anatomical gift if, at the time  
14 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 (d) An anatomical gift may not be made if doing so is  
18 barred by section 327-F or 327-G.

19 **§327-I Manner of making, amending, or revoking anatomical**  
20 **gift of decedent's body or part.** (a) A person authorized to  
21 make an anatomical gift under section 327-H may make an  
22 anatomical gift by a document of gift signed by the person



1 making the gift or that person's oral communication that is  
2 electronically recorded or is contemporaneously reduced to a  
3 record and signed by the individual receiving the oral  
4 communication.

5 (b) Subject to subsection (c), an anatomical gift by a  
6 person authorized under section 327-H may be amended or revoked  
7 orally or in a record by any member of a prior class who is  
8 reasonably available. If more than one member of the prior  
9 class is reasonably available, the gift made by person  
10 authorized under section 327-H may be amended or revoked only if  
11 a majority of the reasonably available members agree to the  
12 amending or revoking of the gift or they are equally divided as  
13 to whether to amend or revoke an anatomical gift.

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

19 **§327-J Persons that may receive anatomical gift; purpose**  
20 **of anatomical gift.** (a) An anatomical gift of a body or part  
21 may be made to the following persons:





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

5 (2) A named individual designated by the person making the  
6 anatomical gift if the individual is the recipient of  
7 the part; or, if the part for any reason cannot be  
8 transplanted into the individual, the part passes in  
9 accordance with subsection (f) in the absence of an  
10 express, contrary indication by the person making the  
11 anatomical gift;

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

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

18 (1) If the part is an eye and the gift is for the purpose  
19 of transplantation or therapy, the gift passes to the  
20 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          (c) For the purpose of subsection (h), 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 for  
16          those purposes and, if the gift cannot be used for  
17          transplantation or therapy, the gift may be used for research or  
18          education.

19          (d) If an anatomical gift of one or more specific parts is  
20          made in a document of gift that does not name a person described  
21          in subsection (a) and does not identify the purpose of the gift,



1 the decedent's parts may be used only for transplantation or  
2 therapy, and the gift passes in accordance with subsection (f).

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

9 (f) For purposes of subsections (a)(2), (c), and (d), the  
10 following rules apply:

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

13 (2) If the part is tissue, the gift passes to the  
14 appropriate tissue bank.

15 (3) If the part is an organ, the gift passes to the  
16 appropriate organ procurement organization as  
17 custodian of the organ.

18 (g) An anatomical gift of an organ for transplantation or  
19 therapy, other than an anatomical gift under subsection (a)(2),  
20 passes to the organ procurement organization as custodian of the  
21 organ.



1           (h) If an anatomical gift does not pass pursuant to  
2 subsections (a) through (g) or the decedent's body or part is  
3 not used for transplantation, therapy, research, or education,  
4 custody of the body or part passes to the person under  
5 obligation to dispose of the body or part.

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

14           (j) Except as otherwise provided in subsection (a)(2),  
15 nothing in this part affects the allocation of organs for  
16 transplantation or therapy.

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



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

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

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

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

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

18 (b) Upon or after an individual's death, a person in  
19 possession of a document of gift or a refusal to make an  
20 anatomical gift with respect to the individual shall allow  
21 examination and copying of the document of gift or refusal by a  
22 person authorized to make or object to the making of an



1 anatomical gift with respect to the individual or by a person to  
2 which the gift could pass under section 327-J.

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

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

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



1 or procurement organization knows that the individual expressed  
2 a contrary intent.

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

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

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

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

21 (h) If a procurement organization receives information  
22 that an anatomical gift to any other person was made, amended,



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

3 (i) Subject to sections 327-J(h) 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 or cremation and use of remains in a funeral  
10 service. If the gift is of a part, the person to which the part  
11 passes under section 327-J, upon the death of the donor and  
12 before embalming or cremation, shall cause the part to be  
13 removed without unnecessary mutilation.

14 (j) 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 (k) 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, after consultation with procurement





1 organizations, shall establish agreements or affiliations for  
2 coordination of procurement and use of human bodies and parts.

3       **§327-O Sale or purchase of parts prohibited.** (a) Except  
4 as otherwise provided in subsection (b), a person that  
5 knowingly, for valuable consideration, purchases or sells a part  
6 for 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 Penalty.** Any person that intentionally falsifies,  
15 forges, conceals, defaces, or obliterates a document of gift, an  
16 amendment or revocation of a document of gift, or a refusal in  
17 order to obtain a financial gain commits a felony and upon  
18 conviction is subject to a fine not exceeding \$50,000 or  
19 imprisonment not exceeding five years, or both.

20       **§327-Q Immunity.** (a) A person that acts in accordance  
21 with this part or with the applicable anatomical gift law of  
22 another state or attempts in good faith to do so is not liable



1 for the act in a civil action, criminal prosecution, or  
2 administrative proceeding.

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

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

12 **§327-R Law governing validity; choice of law as to**  
13 **execution of document of gift; presumption of validity.** (a) A  
14 document of gift is valid if executed in accordance with:

15 (1) This part;

16 (2) The laws of the state or country where it was  
17 executed; or

18 (3) The laws of the state or country where the person  
19 making the anatomical gift was domiciled, has a place  
20 of residence, or was a national at the time the  
21 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 shall  
8 adopt rules pursuant to chapter 91 to allow an organ procurement  
9 organization twenty-four-hour telephone access to the driver's  
10 license database information, solely for the purpose of  
11 determining whether a driver has indicated a willingness to be  
12 an organ donor pursuant to section 286-109.5.

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

18 (c) A donor registry must:

19 (1) Provide a database that allows a donor or other person  
20 authorized under section 327-C to include on the donor  
21 registry a statement or symbol that the donor has  
22 made, amended, or revoked an anatomical gift;



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

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

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

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

20           **§327-T Effect of anatomical gift on advance health-care**  
21 **directive.** (a) As used in this section:



1 "Advance health-care directive" means a record signed by a  
2 prospective donor containing the prospective donor's direction  
3 concerning a health-care decision for the prospective donor or a  
4 power of attorney for health care.

5 "Declaration" means a record signed by a prospective donor  
6 specifying the circumstances under which a life support system  
7 may be withheld or withdrawn.

8 "Health-care decision" means any decision made regarding  
9 the health care of the prospective donor.

10 (b) If a prospective donor has a declaration or advance  
11 health-care directive, unless it expressly provides to the  
12 contrary, measures necessary to insure the medical suitability  
13 of an organ for transplantation or therapy may not be withheld  
14 or withdrawn from the prospective donor.

15 **§327-U Cooperation between medical examiner or coroner and**  
16 **procurement organization.** (a) A medical examiner or coroner  
17 shall cooperate with procurement organizations to maximize the  
18 opportunity to recover anatomical gifts for the purpose of  
19 transplantation, therapy, research, or education.

20 (b) If a medical examiner or coroner receives notice from  
21 a procurement organization that an anatomical gift might be  
22 available or was made with respect to a decedent whose body is



1 under the jurisdiction of the medical examiner or coroner and a  
2 post-mortem examination is going to be performed, unless the  
3 medical examiner or coroner denies recovery in accordance with  
4 section 327-V, the medical examiner or coroner or designee shall  
5 make every effort to conduct a post-mortem examination of the  
6 body or the part in a manner and within a period compatible with  
7 its preservation for the purposes of the gift.

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

19 **§327-V Facilitation of anatomical gift from decedent whose**  
20 **body is under jurisdiction of medical examiner or coroner. (a)**  
21 Upon request of a procurement organization, a medical examiner  
22 or coroner shall release to the procurement organization the



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

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

18 (c) A person that has any information requested by a  
19 medical examiner or coroner pursuant to subsection (b) shall  
20 provide that information as expeditiously as possible to allow  
21 the medical examiner or coroner to conduct the medicolegal  
22 investigation within a period compatible with the preservation



1 of parts for the purpose of transplantation, therapy, research,  
2 or education.

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

13 (e) If an anatomical gift of a part from the decedent  
14 under the jurisdiction of the medical examiner or coroner has  
15 been or might be made, but the medical examiner or coroner  
16 initially believes that the recovery of the part could interfere  
17 with the post-mortem investigation into the decedent's cause or  
18 manner of death, the medical examiner or coroner shall consult  
19 with the procurement organization or physician or technician  
20 designated by the procurement organization about the proposed  
21 recovery. The procurement organization shall provide the  
22 medical examiner or coroner with all information it has which





1 could relate to the cause or manner of the decedent's death.  
2 After consultation, the medical examiner or coroner may allow  
3 the recovery.

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

19 (g) If the medical examiner or coroner or designee denies  
20 recovery under subsection (f), the medical examiner or coroner  
21 or designee shall include the reasons in the records of the



1 medical examiner or coroner; and make those reasons available to  
2 the procurement organization upon request.

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

13 **§327-W Hawaii organ and tissue education special fund.**

14 There is established in the state treasury the Hawaii organ and  
15 tissue education special fund. Moneys collected under section  
16 286-109.7 shall be deposited into the fund. The fund shall be  
17 administered and distributed by the department of health and  
18 shall be used exclusively for public education programs and  
19 activities on organ, tissue, and eye donation.

20 **§327-X Uniformity of application and construction.** In

21 applying and construing this uniform act, consideration must be



1 given to the need to promote uniformity of the law with respect  
2 to its subject matter among states that enact it.

3       **§327-Y Relation to electronic signatures in global and**  
4 **national commerce act.** This part modifies, limits, and  
5 supersedes the Electronic Signatures in Global and National  
6 Commerce Act, 15 U.S.C. Section 7001 et. seq., but does not  
7 modify, limit, or supersede Section 101(a) of that act, 15  
8 U.S.C. Section 7001, or authorize electronic delivery of any of  
9 the notices described in Section 103(b) of that act, 15 U.S.C.  
10 Section 7003(b).

11       **§327-Z Short title.** This part may be cited as the  
12 "Revised Uniform Anatomical Gift Act".

13       SECTION 2. Part I, Chapter 327, Hawaii Revised Statutes,  
14 is repealed.

15       SECTION 3. In codifying the new sections added by section  
16 1 of this Act, the revisor of statutes shall substitute  
17 appropriate section numbers for the letters used in designating  
18 the new sections in this Act.

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

20

INTRODUCED BY: *Franne Chun Caliland*



**Report Title:**

Anatomical Gifts

**Description:**

Enacts the Revised Uniform Anatomical Gift Act.

