

SB 2099



1149 Bethel Street, Suite 801 • Honolulu, HI 96813

January 31, 2008

Before
Honorable David Ige, Chair
Honorable Carol Fukunaga, Vice-Chair
Senate Committee on Health

Public Hearing – 1:15PM Monday, February 23, 2008 - Conference Room 016

RE: Testimony in strong support of SB 2099 – Relating to Anatomical Gifts
Enacts the Revised Uniform Anatomical Gift Act

The Honorable David Ige, Chair
Honorable Carol Fukunaga, Vice-Chair
and members of the committee:

I applaud the introduction of SB 2099 – Relating to Anatomical Gifts and I am submitting testimony in full support of the passage of this measure.

On behalf of the Advisory Board Member of MOTTEP, we fully support the passage of SB 2099 that revises the earlier 1968 and 1987 Uniform Acts, which are the basis for organ donation throughout the United States. UAGA 2006 is an important update to reflect the current system of allocations of organ for transplantation and to help increase available organs and tissue for transplantation to save the lives of patients in need of organ transplants.

My name is Tony L. Sagayadoro, Program Coordinator of the Minority Organ Tissue Transplant Education Program (MOTTEP), a minority outreach program of the Organ Donor Center of Hawaii. MOTTEP is also a founding member of the Hawaii Coalition on Organ Donation.

Minority Organ Tissue Transplant Education Program (MOTTEP) educational efforts are now making a difference. The increase in Filipino donors in the past so many years is a validation that public education works and more lives are saved due to this effort. More Filipino families now have been choosing to donate than those who declined. This is very significant that Filipinos is now one of the population groups having a “positive” consent rate compared to the early stage of the program.

We fully believe in SB 2099 will produce positive results like other states that had enacted the 2006 Uniform Anatomical Gift Act.

We urge that you give SB 2099 your favorable consideration. Thank you.

Sincerely,
Tony L. Sagayadoro
Program Coordinator

*“Thousands of candles can be lighted from a single candle, and the life of the candle will not be shortened.
Happiness never decreases by being shared.”* Buddha, Indian philosopher & religious leader



February 1, 2008

Senator David Y. Ige, Chair
Senator Carol Fukunaga, Vice-Chair
Committee on Health
Hawaii State Capitol
Conference Room 016
Honolulu, Hawaii 96813

RE: S.B. No. 2099 – Enacts the Revised Uniform Anatomical Act

Dear Chairman Ige and Vice-Chair Fukunaga and members of the State Senate Health Committee,

I am Glen Hayashida, CEO, National Kidney Foundation of Hawaii (NKFH) and member of the Hawaii Coalition on Donation. Thank you for the opportunity to give testimony for SB 2099.

The original Uniform Act was adopted in 1968, to provide standard methods to make organ, eye, and tissue donations after death for the purposes of transplantation, therapy, research, or education. In 1987, some 26 states adopted a new version of UAGA; however, because the other states did not adopt the changes, the Act was no longer considered uniform. The National Commissioners on Uniform State Laws developed the proposed UAGA in an effort to resolve any inconsistencies between the states, thereby making the system more effective.

The 2006 Uniform Anatomical Gift Act (2006) attempts to resolve many issue that have been concerns under current law.

- Insures that individual choice regarding organ donation will be respected by barring persons from amending or revoking the anatomical bill;
- Allows for an individual to refuse to make an anatomical gift;
- Facilitates cooperation between coroners and medical examiners;
- Permits emancipated minors and minors eligible to apply for driver's licenses to make an anatomical gift. If an emancipated minor does before the age of 18; the parent or guardian would be permitted to revoke the gift;
- Expands those who are permitted to make an anatomical gift on behalf of others; and
- Expands methods for making an anatomical gift, i.e. donor registries, state identification cards, donor cards, and driver's licenses, and also allows for oral gifts.

However, it must be pointed out that there is tension between a health-care directive requesting the withholding or withdrawal of life-support systems and a donor's wish to make an anatomical gift. UAGA resolves this tension by permitting, prior to the removal of life-support systems, the administration of measures necessary to ensure the medical suitability of the donor's organs. The 2006 UAGA provides that a general direction in a power of attorney or health-care directive that the patient does not wish to have life prolonged by the administration of life-support systems should not be construed as a refusal to donate.

The Revised UAGA (2006) poses challenges to the Patient Self Determination Act (PSDA) embodied in advance health care directives and individual expression about the use of life support systems at the end-of-life. The challenges are predicated on the UAGA revising the default choice to presumption of donation intent and the use of life support systems to ensure medical suitability of organs for transplantation. The default choice is given

preference over the expressed intent in an individual's advance health care directive to withhold and/or withdraw life support systems at the end-of-life.

Overall, we support the SB2099 because this bill will save lives. We ask that Section 327-T be removed until patients, families, and physicians become more familiar with this section prior to it becoming law so that the document of gift and advance health care directives are not in conflict and the decision to donate is clearly expressed.



Case Management Professionals, Inc.

DATE: February 1, 2008

TO: Senate Committee on Health
Honorable Chair Sen. David Ige
Honorable Vice-Chair Sen. Carol Fukunaga
Honorable Members: Sen. Rosalyn Baker
Sen. Ron Menor
Sen. Paul Whalen

FROM: Agnes Reyes, RN – Clinical Administrator
Case Management Professionals, Inc.

SCHEDULED HEARING: Senate Committee on Health
February 4, 2008, Monday at 1:15 pm

RE: Full Support of SB 2104 – “Relating to Organ Donor Registry”
Full Support of SB 2099- “Relating to Anatomical Gifts”

My name is Agnes Reyes, a Filipino registered nurse, a case manager, a businesswoman, a career professional in community-based care, a volunteer for MOTTEP, a strong supporter for Organ Donation, and a friend or healthcare professional who knows individuals who might be in need of tissue and organ donation in the future.

I fully support SB 2104 which will initiate a Statewide Organ Donor Registry.

This bill will not only promote organ donation but also

- Streamline organ donation registration
- Promote centralization, standardization and accuracy of information
- Promote timely accessibility of data for donation process
- Support data collection for accurate reporting and quality improvement indicators
- Facilitate organ donation education
- Support feasibility of health information and updates
- Prevent duplication or over utilization of employee or provider efforts

I also fully support SB 2099, which will facilitate an initiative to conform with the National Uniform Anatomical Gift Act thus promoting standardization and compliance of best practices on organ donation for the State of Hawaii.

Life is precious and there is no better gift to others than the “Gift of Life”.

Please allow full consideration of these bills as they serve as instruments in promoting and saving lives.

Mahalo for the opportunity to testify.

**TESTIMONY OF THE
COMMISSION TO PROMOTE UNIFORM LEGISLATION**

**ON S.B. No. 2099
RELATING TO ANATOMICAL GIFTS.**

BEFORE THE SENATE COMMITTEE ON HEALTH

DATE: Monday, February 4, 2008, at 1:15 p.m.
Conference Room 016, State Capitol

PERSON(S) TESTIFYING: ELIZABETH KENT or
KEN TAKAYAMA
Commission to Promote Uniform Legislation

C:/cpuleg.SB 2099 ANATOMICAL GIFTS.tes.2/4/08

E-MAIL to testimony@capitol.hawaii.gov
or fax to 586-6659

Chair Ige and Members of the Senate Committee on Health:

My name is Elizabeth Kent and I am one of Hawaii's Uniform Law Commissioners. Hawaii's uniform law commissioners support the passage of Senate Bill No. 2099. This is a version of the Uniform Anatomical Gifts Act that includes some modifications that address concerns raised by the Organ Donor Center of Hawaii.

Despite significant technological improvements and numerous publicity campaigns over the past several decades, the substantial shortage for organs, tissues and eyes for life-saving or life-improving transplants continues. This shortage persists despite efforts by the federal government and every state legislature to improve the system. Without changing the basic concept that an individual may execute a document of gift to donate organs, this bill would further improve the system for allocating organs to transplant recipients.

This bill revises and updates the original Uniform Anatomical Gift Act that Hawaii enacted twenty years ago. The scope of the bill is limited to donations from deceased donors as a result of gifts made before or after their deaths.

Similar bills updating the earlier version of the Uniform Anatomical Gift Act have been adopted in approximately 20 states (including California, Utah, and Virginia). This newer version of the Uniform Anatomical Gift Act was endorsed by numerous professional organizations, including the American Academy of Ophthalmology; American Association of Tissue Banks; American Medical Association; and the Association of Organ Procurement Organizations. Attached is a brief summary of the Revised Uniform Anatomical Gift Act for your information.

We urge your support of this bill.



Uniform Law Commissioners

The National Conference of Commissioners on Uniform State Laws

SUMMARY

Uniform Anatomical Gift Act (2006)

Every hour another person dies waiting for an organ transplant. Despite significant technological improvements and numerous publicity campaigns over the past several decades, the substantial shortage for organs, tissues and eyes for life-saving or life-improving transplants continues. This shortage persists despite efforts by the federal government and every state legislature to improve the system. The Uniform Law Commission (ULC) continues to be a leader in developing the law in the organ transplant arena, and it has promulgated the **Uniform Anatomical Gift Act (2006)** (UAGA) to further improve the system for allocating organs to transplant recipients.

The original Uniform Anatomical Gift Act was promulgated in 1968, shortly after Dr. Christian Barnard's successful transplant of a heart in November 1967. It was promptly and uniformly enacted in every jurisdiction. The 1968 UAGA created the power, not yet recognized at common law, to donate organs, eyes and tissue, in an immediate gift to a known donee or to any donee that might need an organ to survive. In 1987, the ULC revised the 1968 UAGA to address changes in circumstances and in practice. Only 26 states enacted the 1987 UAGA, resulting in non-uniformity between those states and the states that retained the 1968 version. Subsequent changes in each state over the years have resulted in even less uniformity. In addition, neither the 1968 nor the 1987 UAGA recognizes the system of organ procurement that has developed partly under federal law. The 2006 UAGA is an effort to resolve any perceived inconsistencies thereby adding to the efficiency of the current system.

The scope of the 2006 UAGA is limited to donations from deceased donors as a result of gifts made before or after their deaths. Organ donation is a purely voluntary decision that must be clearly conveyed before an individual's organs are available for transplant.

The current mechanism for donating organs is a document of gift that an individual executes before death. The 2006 Act further simplifies the document of gift and accommodates the forms commonly found on the backs of driver's licenses in the United States. It also strengthens the power of an individual not to donate his or her parts by permitting the individual to sign a refusal that also bars others from making a gift of the individual's parts after the individual's death. Importantly, the 2006 UAGA strengthens prior language barring others from attempting to override an individual's decision to make or refuse to make an anatomical gift.

If an individual does not prepare a document of gift, organs may still be donated by those close to the individual. Another achievement of the 2006 UAGA is that it allows certain individuals to make an anatomical gift for another individual during that individual's lifetime. Health-care agents under a health-care power of attorney and, under certain circumstances, parents or a guardian, have this power. The donor must be incapacitated and the permission giver has to be the individual in charge of making health-care decisions during the donor's life. Second, the 2006 UAGA adds several new classes of persons to the list of those who may make an anatomical-gift for another individual after that individual's death. The adoption of clear rules and procedures, combined with the definition of "reasonably available," provide clarity to the decision-making process. If more than one member of a class is reasonably available, the donation is made only if a majority of members support the donation. Minors, if eligible under other law to apply for a driver's license, are empowered to be a donor. These seemingly minor changes will provide more opportunities for donation than currently exist today.

The 2006 UAGA encourages and establishes standards for donor registries and better enables procurement organizations to gain access to documents of gift in donor registries, medical records, and records of a state motor vehicle department. This access will make it much easier for procurement organizations to quickly determine whether an individual is a donor. And, under Section 8 of the 2006 UAGA, which strengthens the language regarding the finality of a donor's anatomical gift, there is no reason to seek consent from the donor's family because the family has no legal right to revoke the gift. The practice of procurement organizations seeking affirmation even when the donor has clearly made a gift results in unnecessary delays in procuring organs and the occasional reversal of the donor's wishes. One exception is if the donor is a minor and the parents wish to revoke the gift. The 2006 UAGA acknowledges that the decision to donate organs, tissues and eyes is highly personal and deserves respect from the law.

The tension between a health-care directive requesting the withholding or withdrawal of life-support systems and a donor's wish to make an anatomical gift is resolved by permitting, prior to the removal of life-support systems, the administration of measures necessary to ensure the medical suitability of the donor's organs.

The 2006 UAGA provides that a general direction in a power of attorney or health-care directive that the patient does not wish to have life prolonged by the administration of life-support systems should not be construed as a refusal to donate. The 2006 UAGA provides numerous default rules for interpreting a document of gift if it lacks specificity regarding the persons to receive the gift or the purposes of the gift. One important rule, not present in the prior acts, is the prioritization of transplantation or therapy over research or education, when a document of gift sets forth all four purposes but fails to establish a priority.

Another improvement that the 2006 UAGA achieves is the clarification and expansion of rules relating to cooperation and coordination between procurement organizations on the one hand and coroners and medical examiners on the other. Unlike prior law, the 2006 UAGA prohibits coroners and medical examiners from making anatomical gifts except in the rare instance when the coroner or medical examiner is the person with the authority to dispose of the decedent's body. The 2006 UAGA complies with the policy guidelines articulated by the National Association of Medical Examiners.

The 2006 UAGA also addresses widely reported abuses involving the intentional falsification of a document of gift or refusal, to obtain a financial gain by selling a decedent's parts to a research institution. A person who falsifies a document of gift for such a purpose is guilty of a felony. Alternatively, the 2006 UAGA provides that a person acting in accordance with the act or with the applicable anatomical gift law of another state, or that attempts to do so in good faith, is not liable for his or her actions in a civil action, criminal prosecution or administrative proceeding.

Finally, the last section provides for repeal of the prior UAGA, whether it is the 1968 or 1987 version. Many states, however, have related laws on anatomical gifts that should be retained, such as donor awareness programs, Transplant Councils, and licensing provisions for procurement organizations and health care providers. However, it is highly desirable that the core provisions of the 2006 UAGA be uniform among the states. Little time is available to prepare, transport across state lines, and transplant life-saving organs, let alone to assess and comply with significant variations in state law.

The anatomical gift law of the states is no longer uniform, and diversity of law is an impediment to transplantation. Harmonious law through every state's enactment of the 2006 UAGA will help save and improve lives. It should be enacted in every state as quickly as possible.