

JAN 25 2010

S.B. NO. 2776

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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. The purpose of this Act is to save lives and  
2 better the quality of life of Hawaii's people who need  
3 transplants of organs and better the quality of medical  
4 education in, Hawaii by ensuring that the proper individuals and  
5 entities fulfill their obligation to effectuate anatomical  
6 gifts.

7           SECTION 2. Section 327-11, Hawaii Revised Statutes, is  
8 amended to read as follows:

9           " [†] §327-11 [†]   Persons that may receive anatomical gift;  
10 purpose of anatomical gift. (a) An anatomical gift of a body  
11 or body part may be made to the following persons:

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

16           (2) A named individual designated by the person making the  
17 anatomical gift if the individual is the recipient of  
18 the body part; or, if the body part for any reason



1 cannot be transplanted into the individual, the body  
2 part shall pass in accordance with subsection (f) in  
3 the absence of an express, contrary indication by the  
4 person making the anatomical gift; or

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

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

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

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

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



1           (4) If the body part is an organ, an eye, or tissue and  
2           the gift is for research or education, the gift shall  
3           pass to the appropriate procurement organization.

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

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

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



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

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

5 (2) If the body part is tissue, the gift shall pass to the  
6 appropriate tissue bank; and

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

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

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

19 (i) A person may not accept an anatomical gift if the  
20 person knows that the gift was not effectively made under  
21 section 327-5 or 327-10 or if the person knows that the decedent  
22 made a refusal under section 327-7 that was not revoked. For



1 purposes of this subsection, if a person knows that an  
2 anatomical gift was made on a document of gift, the person is  
3 deemed to know of any amendment or revocation of the gift or any  
4 refusal to make an anatomical gift on the same document of gift.

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

8 (k) Notwithstanding any provision in the Hawaii Revised  
9 Statutes; the charters or ordinances of any county government;  
10 the Hawaii administrative rules; the administrative rules of  
11 any county; or the provisions, memoranda, documents, or  
12 writings of any part of the state government, or any county  
13 government, if an anatomical gift provided for in this section  
14 passes to any entity or organization set forth in subsection  
15 (a)(1) or (3), or individual who is an employee, agent, or  
16 affiliate in any manner of that entity or organization, and that  
17 entity, organization, employee, or affiliate fails in any manner  
18 to retrieve that anatomical gift through medical means,  
19 including surgical means, or any other means, then each entity,  
20 organization, employee, agent, or affiliate shall each be  
21 individually liable to pay a statutory damages amount of  
22 \$500,000 for each incident in which a failure to retrieve



1 occurs, and shall also have their licenses to perform in the  
 2 medical field revoked, after being afforded due process of law.  
 3 Any individual or entity who is on a wait list to receive an  
 4 anatomical gift shall be entitled to bring suit in any state  
 5 circuit court that has venue over the offending entity,  
 6 organization, employee, agent, or affiliate, to enforce the  
 7 foregoing sanctions, and shall be entitled to the payment of  
 8 reasonable attorney's fees and legal costs whether they prevail  
 9 or not in the suit, with the attorney's fees and legal costs to  
 10 be paid by the defendant; provided that attorney's fees and  
 11 legal costs shall not be awarded if the court makes a specific  
 12 finding that the lawsuit was brought in bad faith."

13 SECTION 3. New statutory material is underscored.

14 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY:

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**Report Title:**

Anatomical Gifts

**Description:**

Requires organ procurement organizations and transplant hospitals to procure and transplant medically suitable organs. Imposes administrative fines and loss of accreditation for failure to comply.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

