

HB 2661

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Letterhead Created & Printed In-house

March 11, 2010

**Testimony in Favor of HB 2661, HD 2
(Relating to Anatomical Gifts)**

SENATE HEALTH COMMITTEE

To: Chair: Sen. David Ige

Vice-Chair: Sen. Josh Green

Members: Senate Committee on Health

From: Charles K.Y. Khim, Esq. – Attorney at Law, Diabetic,
Former Kidney Dialysis Patient, Kidney Transplant
Recipient and Member of American Diabetes Assn.
Legislative committee



My name is Charles K.Y. Khim, Esq. and I am an attorney who is, and has been licensed to practice law in Hawaii for the last thirty years. However, I come before you today not as an attorney but as a Type II diabetic who suffered total kidney failure as a complication of diabetes, and who had a second chance at life due to a kidney transplant. I also come before you as a member of the legislative committee of the American Diabetes Association.

Thank you for this opportunity to present testimony in favor of HB 2661, HD 2. This bill provides for the enforcement of the organ donor gifts procedure set forth in HRS, Chapter 327. It is unfortunate that currently the organ donor provisions in HRS, Chapter 327 are being disregarded, especially as it applies to the good

persons of our State who designate on their driver's license that they are organ donors.

As it stands now, it is meaningless for an individual to designate on his or her driver's license that he or she is an organ donor because that last will and testament to be an organ donor is being totally ignored by the organ transplant procurement organizations.

This failure to follow the law by failing to follow the donor's last will and testament concerning his or her transplantable organs, as most often expressed on his or her driver's license, results in many individuals' last wishes being ignored and many deaths of individuals who die because their internal organs fail due to diseases such as diabetes, while waiting for a transplant of an organ.

The newspaper article attached hereto indicates that in Hawaii about **twenty three people had recently died while waiting for a transplant on August 9, 2009.**

This newspaper article also confirms that organ donor officials violate chapter 327, HRS by disavowing the legally binding authorization stated on the decedent's driver's license, and nevertheless require that the next of kin, sign the organ donor forms before they will retrieve the organs.

This bill remediates that problem of organ transplant procurement organizations failing to follow the law by placing provisions in HRS, Chapter 327 which require organ transplant anatomical gift recipient organizations to actually retrieve the gift, in accord with the law.

This bill contains no penalties for the failure to retrieve donated organs. Rather, this merely bill clarifies that there is such a duty to retrieve the organs which are willed to those who need transplants via a driver's license form, without first having to obtain consent from the next of kin.

Moreover, chapter 327, HRS already has a clause in it which provides immunity from lawsuits for participating the

anatomical gift retrieval process to everyone involved in that process and a clause immunizing everyone involved in the anatomical gift process from criminal prosecution.

Therefore, the concept and intent of this bill do no harm to those in the medical community who are involved in organ transplant sector thereof.

Thus, there is no good reason for anyone in the anatomical gift process to oppose this bill. However, there are several bad faith motives, such as financial gain, that can be reasonably inferred from those in the anatomical gift retrieval process to oppose this legislation.

In addition to the existence of financial incentives, the anatomical gift retrieval community may simply be afraid to inform the next of kin that their loved ones were so kind and were such humanitarians that they donated their organs at death to another person so that goodness can result from tragedy.

This bill will save lives inasmuch as currently one out of seven people will become diabetic and one of the most common medical complications which result from diabetes is kidney disease which ultimately results in Kidney failure, and the need of that person to be placed on dialysis. Many such patients who are on dialysis die while waiting for an organ transplant.

Due to the failure of organ donor donation receiver organizations in Hawaii to obey the law concerning organ donations and retrieve all of the organ donations which are made, I had to resort to going to San Francisco, California in order to obtain an organ donation in order to receive a life saving kidney transplant.

Fortunately, I was of the financial wherewithal to be able to afford to stay in a hotel in San Francisco for one month to undergo the kidney transplant operation, the subsequent medical procedures which were necessary because of complications which resulted from the transplant (because of the serious nature of kidney transplant operations, often complications arise from the transplant operation)

and the recuperation period which was necessary to recover from this serious operation.

However, I am aware that most persons, through no fault of their own, are unable to financially afford to take off a whole month from work to go through the organ transplant procedure, and the cost of staying in a hotel in a mainland city. This is why I am volunteering to pursue this bill – for the average person, the “little guy” who has the bad luck to suffer from a debilitating disease which requires an organ transplant.

In order to make the intent and purpose of this bill clear, I suggest the bill be amended in the manner set forth in the attachment hereto.

Thank you for this opportunity to present testimony before this honorable committee. If any committee member has any questions, I will be more than glad to answer them at the appropriate time.

CKYK:rwd

PROPOSED HB 2661, HD 2, SD 1

A BILL FOR AN ACT

RELATING TO ANATOMICAL GIFTS

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII

* * *

SECTION 3. Hawaii Revised Statutes, section 327-14 is amended by amending subsection (i) to read as follows:

"(i) Subject to sections 327-11 (h) and 327-23, the rights of the person to which a body part passes under section 327-11 are superior to rights of all others with respect to the body part. The person to which the anatomical gift passes under this chapter shall ~~may~~ accept ~~an~~ the anatomical gift ~~[in whole or in part]~~ unless the anatomical gift is medically unsuitable for transplantation, therapy, research or education. This acceptance shall occur once such an unrevoked anatomical gift comes to fruition under this chapter, irrespective of whether the donor's relatives have separately made such an anatomical gift. Subject to the terms of the document of gift and this part, a person that accepts an anatomical gift of an entire body may allow embalming or cremation and use of the remains in a funeral service. If the gift is of a body part, the person to

which the body part passes under section 327-11, upon the death of the donor and before embalming or cremation, shall cause the body part to be removed without unnecessary mutilation.”

SECTION 3. The statutory material to be repealed is bracketed and stricken. New statutory is underscored.

SECTION 4. This Act shall take effect on December 21, 2058.

From: Lynn Murakami-Akatsuka [lkakatsu@hawaii.rr.com]
Sent: Tuesday, March 09, 2010 9:03 PM
To: HTHTestimony
Subject: Testimony for HB 2661, HD 2 on 3/12/2010 at 3:15 PM

Testimony for Committee on Health, 3/12/2010 at 3:15 PM

Conference room: 016
Testifier position: Strongly support
Testifier will be present: NO
Submitted by: Lynn Murakami-Akatsuka
Organization: Individual
Address: 45-606 Keole Street; Kaneohe, HI 96744
E-mail: lkakatsu@hawaii.rr.com
Submitted on: 3/9/2010

Comments: The purpose of this bill is to improve the availability of organ donations by establishing that only an express refusal by a person or person authorized to amend or revoke a decision to make an anatomical gift will amend or revoke that decision. When an individual chooses to have their organs donated and has it stated on their driver's license or state identification as well as in their will; their wishes should be followed. An emotionally distraught relative who has not conferred with the individual about their organ donation wishes as stated on their identification cards or in their will does not have the right to stop the individual's pre-selected decision.

Much thought goes into making a life giving decision and that is what should be followed. Only if the individual changes their mind and has expressed this to their family member(s) who they authorize to speak on their behalf if they are incapacitated; then the bill states this clearly. This bill provides clear direction and legal support to the organ donation organizations that have this responsibility to carry out the wishes of the individual as stated on their identification cards, their will, and discussion with their family members and doctor(s).

I strongly support this bill. Thank you for the opportunity to testify.



Mission
to prevent and cure diabetes
and to improve the lives of all
people affected by diabetes.

March 11, 2010

The Honorable, Senator David Ige, Chair-Senate Committee on Health
Members of the Senate Committee on Health
Senate Conference Room 016
Honolulu, HI 96813

Dear Senator Ige and Members of the Health Committee,

The American Diabetes Association support's the Legislatures efforts to protect and encourage organ donation and transplants through HB 2661, HD 2. In some cases, diabetes can lead to damage that makes an organ transplant necessary. Diabetes sometimes damages kidneys so badly that they no longer work. Unfortunately, there are too few kidneys for all the people who need them. Not enough people sign up to be organ donors.

Native Hawaiians and other Pacific Islanders are more than twice as likely to have diabetes as whites of similar age. Diabetes is the single leading cause of kidney failure in the U.S. accounting for about 44% of the people who state treatment for kidney failure each year and about 38% of all Americans being treated for kidney failure. **In Hawaii, Native Hawaiians are more than 5.7 times as likely as Whites living in Hawaii to die from diabetes and its complications such as kidney failure. Filipinos living in Hawaii are more than three times as likely to die from diabetes as Whites.**

- The number of organ transplants performed on Pacific Islanders in 2008 was about one sixth, or 16.7%, of the number of Pacific Islanders currently waiting for a transplant.
- While 0.5% of the total candidates currently waiting for transplants are Pacific Islander, they comprised 0.2% of organ donors in 2008.
- Native Hawaiian/Pacific Islanders are also seven times more likely to be diagnosed with chronic liver disease, as compared to non-Hispanic Whites. These conditions are known to put the patient at risk for organ failures.
- Every 12 minutes another name is added to the national transplant waiting list.
- An average of 18 people die each day from the lack of available organs for transplant.
- Some diseases of the kidney, heart, lung, pancreas, and liver that can lead to organ failure are found more frequently in minority women.
- Minority women may have to wait longer for matched organs and therefore may be sicker at the time of transplant or die waiting.

We ask you support HB 2661, HD 2 help those people in Hawaii who are waiting for needed transplants. With more donated organs in Hawaii especially from Native Hawaiian and Pacific Islanders finding a match will be quicker and the waiting time will be cut, and **more lives will be saved.**

Sincerely,

Laura Keller
Advocacy Director

Laurie K.S. Tom, M.D., President
Hawaii Community Leadership Board

Advocacy Director

Alaska, Colorado, Hawaii, Idaho, Montana, N. Dakota, S. Dakota Oregon, Utah, Washington, Wyoming
1730 Minor Ave Suite 920, Seattle, WA 98101 Fax 206-903-8107
For Diabetes Information Call 1-800-Diabetes - <http://www.diabetes.org>

Dr Jane K Kadohiro, DrPH, APRN, CDE

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To: Honorable David Ige, Chair,

Senate Committee on Health

From: Dr Jane K Kadohiro

Re: Testimony in Support of HB 2661, HD 2 (Relating to Anatomical Gifts)

My name is Jane Kadohiro and I am in support of HB 2661, HD 2, which relates to anatomical gifts. Enactment of this bill will save the lives of a substantial number of people with diabetes as well as others who are needlessly awaiting organs for transplant.

It has been projected that one out of every seven Hawaii residents will suffer from kidney disease during their lifetimes. Diabetes is one of the major causes of kidney disease and renal failure requiring dialysis while awaiting a donor kidney. Dialysis is ... should be... only a temporary life-saving measure. A long term cure for renal failure is only through transplantation of a donor kidney. If not available, and if one remains on dialysis, eventually the strain on the heart and other organs leads to premature death. This is totally unnecessary.

As an Advanced Practice RN and Certified Diabetes Educator for many years, I have cared for many patients who have needlessly died awaiting a donor kidney. I have witnessed a great many people who have become so tired and weak... and eventually very frail and disabled as they have waited, enduring a number of years on dialysis.

HB 2661 HD 2 ensures that the wishes of individuals who have taken the time to prepare clear documentation of their wishes to donate an organ (such as within a last will and testament, indication on a drivers license, etc) are upheld by legally informing those agencies and organizations who are by law, responsible to carry out the duty of retrieving organs from the deceased, is actually carried through to fruition. This bill contains no penalties.

I urge you to enact HB 2661, HD 2 into law. Thank you very much for your serious and thoughtful consideration of the above written testimony..