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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 legislature finds that donees of anatomical  
2 gifts, such as organ procurement organizations, physicians,  
3 surgeons, and hospitals, frequently disregard the intent of donors  
4 who intended to make those anatomical gifts. Subsection 327-2(h),  
5 Hawaii Revised Statutes, clearly states, "An anatomical gift that  
6 is not revoked by the donor before death is irrevocable and does  
7 not require the consent or concurrence of any person after the  
8 donor's death...". Regardless, donees often require the deceased  
9 donor's next of kin to sign a consent form even though the donor  
10 has made a clear, unrevoked, expression of intent to make an  
11 anatomical gift by signing a document of gift prior to death.

12           This disregard of the law causes many organ donations to be  
13 rejected and causes the needless deaths those who are in need of an  
14 organ transplant. This tragedy is compounded by the fact that  
15 Hawaii has one of the lowest organ transplantation rates in the  
16 country. The low transplantation rate is due, in part, to the  
17 practice of rejecting anatomical gifts in spite of the donor's  
18 clear wishes.



1           The purpose of this Act is to prevent donees from rejecting  
2 anatomical gifts where the donor has expressed a clear, unrevoked,  
3 intent to make the gift.

4           SECTION 2. Chapter 327, Hawaii Revised Statutes, is  
5 amended by adding a new section to be appropriately designated  
6 and to read as follows:

7           "§327-       **Procedures at death.**    The time of death shall be  
8 determined by the physician or surgeon who attends the donor at  
9 death or, if none, the physician or surgeon who certifies the  
10 death. Neither the physician or surgeon who attends the donor at  
11 death nor the physician or surgeon who determines the time of death  
12 may participate in the procedures for removing or transplanting a  
13 part unless the document of gift designates a particular physician  
14 or surgeon pursuant to section 327-2."

15           SECTION 3. Section 327-2, Hawaii Revised Statutes, is  
16 amended by amending subsection (h) to read as follows:

17           "(h) An anatomical gift that is not revoked by the donor  
18 before death is irrevocable and does not require the consent or  
19 concurrence of any person after the donor's death.

20           Any person, hospital, or organization that relies on the  
21 document of gift and acts in good faith in accordance with this  
22 chapter shall not be subject to criminal or civil liability from



1 any action taken under this chapter~~[-]~~, except as provided in  
2 section 327-8. The immunity provided by this subsection shall  
3 not extend to the person, hospital, or organization if damages  
4 result from the gross negligence, recklessness, or intentional  
5 misconduct to the donor."

6 SECTION 4. Section 327-8, Hawaii Revised Statutes, is  
7 amended to read as follows:

8 "**§327-8 Rights and duties at death.** (a) Rights of a  
9 donee created by an anatomical gift are superior to rights of  
10 others except with respect to autopsies under section 327-11.

11 (b) A donee may accept or reject an anatomical gift~~[-]~~,  
12 provided that a donee may not reject an anatomical gift based  
13 upon the objections of others where the donor has indicated a  
14 clear intent to make an anatomical gift with an unrevoked  
15 document of gift.

16 (c) Rejection of an anatomical gift by a donee contrary to  
17 the intent of the donor as evidenced by an unrevoked document of  
18 gift, without a valid documented medical reason, shall subject  
19 the donee to a civil penalty of \$200,000 per incident.

20 (d) Any rejection of an anatomical gift under subsection  
21 (c) shall be reported to the department of health by the  
22 hospital treating the decedent immediately prior to death and



1 the rejecting donee. Any hospital or donee that fails to make a  
2 report shall be subject to a \$200,000 civil penalty. These  
3 reports shall made available to the public upon request,  
4 notwithstanding any law to the contrary. The director of health  
5 may enforce this subsection. If the director fails to enforce  
6 this subsection, any resident of the State who is a registered  
7 transplant candidate at the time shall have standing to enforce  
8 this subsection, and upon prevailing in on such claim, shall be  
9 entitled to recover the amount of the civil penalty, less costs  
10 and fees.

11 (e) If a donee accepts an anatomical gift of an entire  
12 body, the donee, subject to the terms of the gift, may allow  
13 embalming and use of the body in funeral services. If the gift  
14 is of a part of a body, the donee, upon the death of the donor  
15 and before embalming, shall cause the part to be removed without  
16 unnecessary mutilation. After removal of the part, custody of  
17 the remainder of the body vests in the person under obligation  
18 to dispose of the body.

19 ~~[(b) The time of death shall be determined by the~~  
20 ~~physician or surgeon who attends the donor at death or, if none,~~  
21 ~~the physician or surgeon who certifies the death. Neither the~~  
22 ~~physician or surgeon who attends the donor at death nor the~~



1 ~~physician or surgeon who determines the time of death may~~  
 2 ~~participate in the procedures for removing or transplanting a~~  
 3 ~~part unless the document of gift designates a particular~~  
 4 ~~physician or surgeon pursuant to section 327-2.]~~

5 [~~e~~] (f) If there has been an anatomical gift, a  
 6 technician may remove any donated parts and an enucleator may  
 7 remove any donated eyes or parts of eyes, after determination of  
 8 death by a physician or surgeon."

9 SECTION 5. This Act does not affect rights and duties that  
 10 matured, penalties that were incurred, and proceedings that were  
 11 begun, before its effective date.

12 SECTION 6. Statutory material to be repealed is bracketed  
 13 and stricken. New statutory material is underscored.

14 SECTION 7. This Act shall take effect upon its approval.  
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INTRODUCED BY: Kirk Caldwell

*John M. Higgins*  
*J. M. Hagan*  
*King*  
*[Signature]*

*Josh Green*  
*[Signature]*  
*Tom Brown*  
*Calvin [Signature]*  
*[Signature]*



**Report Title:**

Anatomical Gifts

**Description:**

Prevents donees from rejecting anatomical gifts where the donor has expressed a clear, unrevoked, intent to make the gift.

