

ACT 81

H. B. NO. 59

A Bill for an Act Relating to the Uniform Anatomical Gift Act, to Authorize the Gift of All or Part of a Human Body After Death for Specified Purposes.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 50F, Revised Laws of Hawaii 1955, is amended to read as follows:

“CHAPTER 50F

UNIFORM ANATOMICAL GIFT ACT

Sec. 50F-1. Definitions. (1) “Bank or storage facility” means a facility licensed, accredited, or approved under the laws of any state for storage of human bodies or parts thereof.

(2) “Decedent” means a deceased individual and includes a stillborn infant or fetus.

(3) “Donor” means an individual who makes a gift of all or part of his body.

(4) “Hospital” means a hospital licensed, accredited, or approved under

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the laws of any state; includes a hospital operated by the United States government, a state, or a subdivision thereof, although not required to be licensed under state laws.

(5) "Part" means organs, tissues, eyes, bones, arteries, blood, other fluids, and any other portions of a human body.

(6) "Person" has the meaning prescribed in section 1-24.

(7) "Physician" or "surgeon" means a physician or surgeon licensed or authorized to practice under the laws of any state.

(8) "State" includes any state, district, commonwealth, territory, insular possession, and any other area subject to the legislative authority of the United States of America.

Sec. 50F-2. Persons who may execute an anatomical gift. (a) Any individual of sound mind and eighteen years of age or more may give all or any part of his body for any purpose specified in section 50F-3, the gift to take effect upon death.

(b) Any of the following persons, in order of priority stated, when persons in prior classes are not available at the time of death, and in the absence of actual notice of contrary indications by the decedent or actual notice of opposition by a member of the same or a prior class, may give all or any part of the decedent's body for any purpose specified in section 50F-3:

- (1) the spouse,
- (2) an adult son or daughter,
- (3) either parent,
- (4) an adult brother or sister,
- (5) a guardian of the person of the decedent at the time of his death,
- (6) any other person authorized or under obligation to dispose of the

body.

(c) If the donee has actual notice of contrary indications by the decedent or that a gift by a member of a class is opposed by a member of the same or a prior class, the donee shall not accept the gift. The persons authorized by subsection (b) may make the gift after or immediately before death.

(d) A gift of all or part of a body authorizes any examination necessary to assure medical acceptability of the gift for the purposes intended.

(e) The rights of the donee created by the gift are paramount to the rights of others except as provided by subsection 50F-7(d).

Sec. 50F-3. Persons who may become donees; purposes for which anatomical gifts may be made. The following persons may become donees of gifts of bodies or parts thereof for the purposes stated:

(1) Any hospital, surgeon, or physician, for medical or dental education, research, advancement of medical or dental science, therapy, or transplantation; or

(2) Any accredited medical or dental school, college, or university for education, research, advancement of medical or dental science, or therapy; or

(3) Any bank or storage facility, for medical or dental education, research, advancement of medical or dental science, therapy, or transplantation; or

(4) Any specified individual for therapy or transplantation needed by him.

Sec. 50F-4. Manner of executing anatomical gifts. (a) A gift of all or part of the body under subsection 50F-2(a) may be made by will. The gift becomes effective upon the death of the testator without waiting for probate. If the will is not probated, or if it is declared invalid for testamentary purposes, the gift, to the extent that it has been acted upon in good faith, is nevertheless valid and effective.

(b) A gift of all or part of the body under subsection 50F-2(a) may also be made by document other than a will. The gift becomes effective upon the death of the donor. The document, which may be a card designed to be carried on the person, must be signed by the donor in the presence of two witnesses who must sign the document in his presence. If the donor cannot sign, the document may be signed for him at his direction and in his presence in the presence of two witnesses who must sign the document in his presence. Delivery of the document of gift during the donor's lifetime is not necessary to make the gift valid.

(c) The gift may be made to a specified donee or without specifying a donee. If the latter, the gift may be accepted by the attending physician as donee upon or following death. If the gift is made to a specified donee who is not available at the time and place of death, the attending physician upon or following death, in the absence of any expressed indication that the donor desired otherwise, may accept the gift as donee. The physician who becomes a donee under this subsection shall not participate in the procedures for removing or transplanting a part.

(d) Notwithstanding subsection 50F-7(b), the donor may designate in his will, card, or other document of gift the surgeon or physician to carry out the appropriate procedures. In the absence of a designation or if the designee is not available, the donee or other person authorized to accept the gift may employ or authorize any surgeon or physician for the purpose.

(e) Any gift by a person designated in subsection 50F-2(b) shall be made by a document signed by him or made by his telegraphic, recorded telephonic, or other recorded message.

Sec. 50F-5. Delivery of document of gift. If the gift is made by the donor to a specified donee, the will, card, or other document, or an executed copy thereof, may be delivered to the donee to expedite the appropriate procedures immediately after death. Delivery is not necessary to the validity of the gift. The will, card, or other document, or an executed copy thereof, may be deposited in any hospital, bank or storage facility or office of the department of health that accepts it for safekeeping or for facilitation of procedures after death. On request of any interested party upon or after the donor's death, the person in possession shall produce the document for examination.

Sec. 50F-6. Amendment or revocation of the gift. (a) If the will, card, or other document, or executed copy thereof, has been delivered to a specified donee, the donor may amend or revoke the gift by:

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- (1) The execution and delivery to the donee of a signed statement, or
 - (2) An oral statement made in the presence of two persons and communicated to the donee, or
 - (3) A statement during a terminal illness or injury addressed to an attending physician and communicated to the donee, or
 - (4) A signed card or document found on his person or in his effects.
- (b) Any document of gift which has not been delivered to the donee may be revoked by the donor in the manner set out in subsection (a) or by destruction, cancellation, or mutilation of the document and all executed copies thereof.
- (c) Any gift made by a will may also be amended or revoked in the manner provided for amendment or revocation of wills, or as provided in subsection (a).

Sec. 50F-7. Rights and duties at death. (a) The donee may accept or reject the gift. If the donee accepts a gift of the entire body, he may, subject to the terms of the gift, authorize embalming and the use of the body in funeral services. If the gift is of a part of the body, the donee, upon the death of the donor and prior to embalming, shall cause the part to be removed without unnecessary mutilation. After removal of the part, custody of the remainder of the body vests in the surviving spouse, next of kin, or other persons under obligation to dispose of the body.

(b) The time of death shall be determined by a physician who tends the donor at his death, or, if none, the physician who certifies the death. The physician shall not participate in the procedures for removing or transplanting a part.

(c) A person who acts in good faith in accord with the terms of this chapter or with the anatomical gift laws of another state or a foreign country is not liable for damages in any civil action or subject to prosecution in any criminal proceeding for his act.

(d) The provisions of this chapter are subject to the laws of this State prescribing powers and duties with respect to autopsies.

Sec. 50F-8. Uniformity of interpretation. This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

Sec. 50F-9. Short title. This chapter may be cited as the Uniform Anatomical Gift Act."

SECTION 2. Chapter 50E, Revised Laws of Hawaii 1955, is repealed.

SECTION 3. Section 322-1, Revised Laws of Hawaii 1955, is amended to read as follows:

"Sec. 322-1. Age; sound mind; disposal of testator's body. Every person of the age of twenty years and of sound mind may dispose of his estate both real and personal by will. In addition, every person of the age of eighteen and of sound mind may by will make a gift of the whole or any part of his body as provided in chapter 50F."

SECTION 4. Notwithstanding the adoption of Act 16, Session Laws of Hawaii 1968, this Act shall have full force according to its intent. Upon the taking effect of this Act or the Hawaii Revised Statutes, whichever occurs later, this Act shall be construed to be in amendment of or in addition to the Hawaii Revised Statutes, all references in this Act being construed to refer to the applicable or corresponding provisions of the Hawaii Revised Statutes.

The Revisor of Statutes may reword and renumber the references in this Act and make such other formal or verbal changes as may be necessary to conform with the Hawaii Revised Statutes.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 23, 1969.)