

ACT 267

S.B. NO. 1541

A Bill for an Act Relating to Health.

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

SECTION 1. Chapter 327, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

“PART I. UNIFORM ANATOMICAL GIFT ACT

§327-1 Definitions. As used in this chapter:

“Anatomical gift” means a donation of all or part of a human body to take effect upon or after death.

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

“Document of gift” means a card, a statement attached to or imprinted on a motor vehicle operator’s or chauffeur’s license, a will, or other writing used to make an anatomical gift.

“Donor” means an individual who makes an anatomical gift of all or part of the individual’s body.

“Enucleator” means an individual who has successfully completed a course of training acceptable to the board of medical examiners to remove or process eyes or parts of eyes.

“Hospital” means a facility licensed, accredited, or approved as a hospital under a state law.

“Part” means an organ, tissue, eye, bone, artery, blood, fluid, or other portion of a human body.

“Person” means an individual, corporation, business trust, estate, trust, partnership, joint venture, association, government, governmental subdivision or agency, or any other legal or commercial entity.

“Physician” or “surgeon” means an individual licensed or otherwise authorized to practice medicine and surgery under chapter 453 or osteopathy and surgery under chapter 460.

“Procurement organization” means a person licensed, accredited, or approved under the laws of any state for procurement, distribution, or storage of human bodies or parts.

“State” means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

“Technician” means an individual who, under the supervision of a licensed physician, removes or processes a part.

§327-2 Making, amending, revoking, and refusing to make anatomical gifts by individual. (a) An individual who is at least eighteen years of age may:

- (1) Make an anatomical gift for any of the purposes stated in section 327-6;

- (2) Limit an anatomical gift to one of those purposes; or
- (3) Refuse to make an anatomical gift.

(b) An anatomical gift may be made only by a document of gift signed by the donor. If the donor cannot sign, the document of gift shall be signed by another individual and by two witnesses, all of whom have signed at the direction and in the presence of the donor and of each other, and state that it has been so signed.

(c) If a document of gift is attached to or imprinted on a donor's motor vehicle operator's or chauffeur's license, the document of gift shall comply with subsection (b). Revocation, suspension, expiration, or cancellation of the license shall not invalidate the anatomical gift.

(d) A document of gift may designate a particular physician or surgeon 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 anatomical gift may employ or authorize any physician, surgeon, technician, or enucleator to carry out the appropriate procedures.

(e) An anatomical gift by will shall take effect upon death of the testator, whether or not the will is probated. If, after death, the will is declared invalid for testamentary purposes, the validity of the anatomical gift is unaffected.

(f) A donor may amend or revoke an anatomical gift, not made by will, only by:

- (1) A signed statement;
- (2) An oral statement made in the presence of two individuals;
- (3) Any form of communication during a terminal illness or injury addressed to a physician or surgeon; or
- (4) The delivery of a signed statement to a specified donee to whom a document of gift had been delivered.

(g) The donor of an anatomical gift made by will may amend or revoke the gift in the manner provided for amendment or revocation of wills, or as provided in subsection (f).

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

(i) An individual may refuse to make an anatomical gift of the individual's body or part by:

- (1) A writing signed in the same manner as a document of gift;
- (2) A statement attached to or imprinted on a donor's motor vehicle operator's or chauffeur's license; or
- (3) Any other writing used to identify the individual as refusing to make an anatomical gift. During a terminal illness or injury, the refusal may be an oral statement or other form of communication.

(j) In the absence of contrary indications by the donor, an anatomical gift of a part is neither a refusal to give other parts nor a limitation on an anatomical gift under section 327-3 or on a removal or release of other parts under section 327-4.

(k) In the absence of contrary indications by the donor, a revocation or amendment of an anatomical gift is not a refusal to make another anatomical gift. If the donor intends a revocation to be a refusal to make an anatomical gift, the donor shall make the refusal pursuant to subsection (i).

§327-3 Making, revoking, and objecting to anatomical gifts, by others.

(a) Any member of the following classes of persons, in the order of priority listed, may make an anatomical gift of all or a part of the decedent's body for an authorized purpose, unless the decedent, at the time of death, has made an unrevoked refusal to make that anatomical gift:

- (1) The spouse of the decedent;
 - (2) An adult son or daughter of the decedent;
 - (3) Either parent of the decedent;
 - (4) An adult brother or sister of the decedent;
 - (5) A grandparent of the decedent; and
 - (6) A guardian of the person of the decedent at the time of death.
- (b) An anatomical gift may not be made by a person listed in subsection (a) if:
- (1) A person in a prior class is available at the time of death to make an anatomical gift;
 - (2) The person proposing to make an anatomical gift knows of a refusal or contrary indications by the decedent; or
 - (3) The person proposing to make an anatomical gift knows of an objection to making an anatomical gift by a member of the person's class or a prior class.
- (c) An anatomical gift by a person authorized under subsection (a) shall be made by:
- (1) A document of gift signed by the person; or
 - (2) The person's telegraphic, recorded telephonic, or other recorded message, or other form of communication from the person that is contemporaneously reduced to writing and signed by the recipient.
- (d) An anatomical gift by a person authorized under subsection (a) may be revoked by any member of the same or a prior class if, before procedures have begun for the removal of a part from the body of the decedent, the physician, surgeon, technician, or enucleator removing the part knows of the revocation.
- (e) A failure to make an anatomical gift under subsection (a) is not an objection to the making of an anatomical gift.

§327-4 Authorization by medical examiner, coroner, coroner's physician, or director of health. (a) A medical examiner, coroner, or coroner's physician, as applicable, may release and permit the removal of a part from a body within that official's custody, for transplantation or therapy, if:

- (1) The official has received a request for the part from a hospital, physician, surgeon, or procurement organization;
- (2) The hospital, physician, surgeon, or procurement organization certifies that the entity or person making the request has made a reasonable effort, taking into account the useful life of the part, to locate and examine the decedent's medical records and inform persons listed in section 327-3 of their option to make, or object to making, an anatomical gift;
- (3) The official does not know of a refusal or contrary indication by the decedent or objection by a person having priority to act as listed in section 327-3;
- (4) The removal will be by a physician, surgeon, or technician; but in the case of eyes, by one of them or by an enucleator;
- (5) The removal will not interfere with any autopsy or investigation;
- (6) The removal will be in accordance with accepted medical standards; and
- (7) Cosmetic restoration will be done, if appropriate.

(b) If the body is not within the jurisdiction of a medical examiner, coroner, or coroner's physician, the director of health may release and permit the removal of any part from the body in the director's jurisdiction for transplantation or therapy if the requirements of subsection (a) are met.

(c) An official releasing and permitting the removal of a part shall maintain a permanent record of the name of the decedent, the person making the request, the date and purpose of the request, the part requested, and the person to whom it was released.

§327-5 Routine inquiry and required request; search and notification.

(a) On or before admission to a hospital, or as soon as possible thereafter, a person designated by the hospital shall ask each patient who is at least eighteen years of age: "Are you an organ or tissue donor?" If the answer is affirmative the person shall request a copy of the document of gift. The person designated shall make available basic information regarding the option to make or refuse to make an anatomical gift. The answer to the question, an available copy of any document of gift or refusal, if any, to make an anatomical gift, and any other relevant information, shall be placed in the patient's medical record.

(b) If, at or near the time of death of a patient, there is no medical record that the patient has made or refused to make an anatomical gift, the hospital administrator or a representative designated by the administrator shall discuss the option to make or refuse to make an anatomical gift and request the making of an anatomical gift pursuant to section 327-3. The request shall be made with reasonable discretion and sensitivity to the circumstances of the family. A request is not required if the gift is not suitable, based upon accepted medical standards, for a purpose specified in section 327-6. An entry shall be made in the medical record of the patient, stating the name and affiliation of the individual making the request, and of the name, response, and relationship to the patient of the person to whom the request was made. The director of health may adopt rules to implement this subsection.

(c) The following persons shall, at the person's discretion and if time and resources permit, and if doing so would be inoffensive to anyone in the vicinity of the body, make a reasonable search of the person and the person's immediate personal effects for a document of gift or other information identifying the bearer as a donor or as an individual who has refused to make an anatomical gift:

- (1) A law enforcement officer, firefighter, paramedic, or other emergency rescuer attending an individual who the searcher believes to be dead or near death; and
- (2) A hospital, upon the admission of an individual at or near the time of death, if there is not immediately available any other source of that information.

(d) If a document of gift or evidence of refusal to make an anatomical gift is located by the search required by subsection (c)(1), and the individual or body to whom it relates is taken to a hospital, the hospital shall be notified of the contents and the document or other evidence shall be sent to the hospital.

(e) If, at or near the time of death of a patient, a hospital knows that an anatomical gift has been made pursuant to section 327-3 or a release and removal of a part has been permitted pursuant to section 327-4, or that a patient or an individual identified as in transit to the hospital is a donor, the hospital shall notify the donee if one is named and known to the hospital; if not, it shall notify an appropriate procurement organization. The hospital shall cooperate in the implementation of the anatomical gift or release and removal of a part.

(f) A person who fails to discharge the duties imposed by this section is not subject to criminal or civil liability but is subject to appropriate administrative sanctions.

§327-6 Persons who may become donees; purposes for which anatomical gifts may be made. (a) The following persons may become donees of anatomical gifts for the purposes stated:

- (1) A hospital, physician, surgeon, or procurement organization, for transplantation, therapy, medical or dental education, research, or advancement of medical or dental science;
- (2) An accredited medical or dental school, college, or university for education, research, advancement of medical or dental science; or
- (3) A designated individual for transplantation or therapy needed by that individual.

(b) An anatomical gift may be made to a designated donee or without designating a donee. If a donee is not designated or if the donee is not available or rejects the anatomical gift, the anatomical gift may be accepted by any hospital.

(c) If the donee knows of the decedent's refusal or contrary indications to make an anatomical gift or that an anatomical gift by a member of a class having priority to act is opposed by a member of the same class or a prior class under section 327-3, the donee may not accept the anatomical gift.

§327-7 Delivery of document of gift. (a) Delivery of a document of gift during the donor's lifetime is not required for the validity of an anatomical gift.

(b) If an anatomical gift is made to a designated donee, the document of gift, or a copy, may be delivered to the donee to expedite the appropriate procedures after death. The document of gift, or a copy, may be deposited in any hospital, procurement organization, or registry office that accepts it for safekeeping or for facilitation of procedures after death. On request of an interested person, upon or after the donor's death, the person in possession shall allow the interested person to examine or copy the document of gift.

§327-8 Rights and duties at death. (a) Rights of a donee created by an anatomical gift are superior to rights of others except with respect to autopsies under section 327-11. A donee may accept or reject an anatomical gift. If a donee accepts an anatomical gift of an entire body, the donee, subject to the terms of the gift, may allow embalming and use of the body in funeral services. If the gift is of a part of a body, the donee, upon the death of the donor and before 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 person under obligation to dispose of the body.

(b) The time of death shall be determined by the physician or surgeon who attends the donor at death or, if none, the physician or surgeon who certifies the death. Neither the physician or surgeon who attends the donor at death nor the physician or surgeon who determines the time of death may participate in the procedures for removing or transplanting a part unless the document of gift designates a particular physician or surgeon pursuant to section 327-2.

(c) If there has been an anatomical gift, a technician may remove any donated parts and an enucleator may remove any donated eyes or parts of eyes, after determination of death by a physician or surgeon.

§327-9 Coordination of procurement and use. Each hospital in this State, after consultation with other hospitals and procurement organizations, shall establish agreements or affiliations for coordination of procurement and use of human bodies and parts.

§327-10 Sale or purchase of parts prohibited. (a) A person may not knowingly, for valuable consideration, purchase or sell a part for transplantation or therapy, if removal of the part is intended to occur after the death of the decedent.

(b) Valuable consideration does not include reasonable payment for the removal, processing, disposal, preservation, quality control, storage, transportation, or implantation of a part.

(c) A person who violates this section shall be guilty of a felony and upon conviction is subject to a fine not exceeding \$50,000 or imprisonment not exceeding five years, or both.

§327-11 Examination, autopsy, liability. (a) An anatomical gift authorizes any reasonable examination necessary to assure medical acceptability of the gift for the purposes intended.

(b) The provisions of this chapter are subject to the laws of this State governing autopsies.

(c) A hospital, physician, surgeon, medical examiner, the director of health, an enucleator, a technician, or other person, who acts in accordance with this chapter or with the applicable anatomical gift law of another state or attempts in good faith to do so shall not be liable for that act in a civil action or criminal proceeding.

(d) An individual who makes an anatomical gift pursuant to section 327-2 or 327-3 and the individual's estate shall not be liable for any injury or damage that may result from the making or the use of the anatomical gift.

§327-12 Transitional provisions. This chapter shall apply to a document of gift, revocation, or refusal to make an anatomical gift signed by the donor or a person authorized to make or object to making an anatomical gift before, on, or after the effective date of this chapter.

§327-13 Uniformity of application and construction. This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

§327-14 Short title. This part may be cited as the "Uniform Anatomical Gift Act".

SECTION 2. Chapter 327, part I, Hawaii Revised Statutes, is repealed.

SECTION 3. If any provision of this Act or its application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

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

(Approved June 13, 1988.)