

ACT 88

H.B. NO. 547

A Bill for an Act Relating to Anatomical Gifts.

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

SECTION 1. The legislature finds that there exists in the State a shortage of organ and tissue donors to provide the organs and tissues that could save lives or enhance the quality of life for many persons. There are many more patients on the

waiting list for a kidney, liver, heart, lung, or other solid organs than there are donated organs. As a result, many patients die before they can be given a second chance at life.

The legislature further finds that particular difficulties exist in making members of various minority groups aware of the need for anatomical gifts. For various reasons minorities appear to be at increased risk to suffer illnesses, such as diabetes, which destroy healthy organs and require replacement. The chances of finding a good organ match is increased if the donor is of the same ethnic group as the transplant recipient. Minority ethnic groups must be educated in the great need among their own people for anatomical gifts. The legislature finds that more education and discussion among families are necessary to encourage organ donation.

The legislature finds and declares that public support of education on organ, tissue, and eye donation is in the public's interest and for the public health, safety, and general welfare.

The legislature finds that the Hawaii Organ Procurement Organization d.b.a. Organ Donor Center of Hawaii is a nonprofit and tax exempt organization under Section 501(c)(3) of the Internal Revenue Code. It was incorporated on July 16, 1987, to "perform or coordinate the performance of retrieving, preserving and locating prospective recipients for available organs." This work includes evaluating potential donors, presenting the option of donation to families, providing medical management to donors, and placing organs according to nationally established criteria. The Health Care Financing Administration (HCFA) has designated it as the "organ procurement organization" under Section 1138 of the Social Security Act for the State of Hawaii. Further, the legislature finds that the Organ Donor Center of Hawaii meets the requirements of a grant recipient under section 42F-103, Hawaii Revised Statutes, and that a grant to the Organ Donor Center of Hawaii to conduct public education programs and activities on organ, tissue, and eye donation is in the public interest and for the public health, safety, and general welfare.

The purpose of this Act is to increase the number of individuals being asked to donate organs, to expand educational efforts across all ethnic, religious, and age groups, to increase the supply of organs for waiting transplant recipients, and to create a special fund which will be used to promote public education programs on organ, tissue, and eye donation.

SECTION 2. Chapter 286, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

"§286-A Organ and tissue education fee. Notwithstanding any other law to the contrary, beginning July 1, 2000, a donation of \$1, in addition to any other fees under this chapter, may be collected upon designation by an individual or entity from each certificate of registration by the director of finance of each county to be deposited on a quarterly basis into the Hawaii organ and tissue education special fund pursuant to section 327-B. The counties may retain a portion of the \$1 donation as an administrative fee to cover the cost of collecting, accounting for, and depositing the balance into the organ and tissue education special fund. The retention shall not exceed \$0.20 for each \$1 collected.

§286-B Limited access to driver's license anatomical gift data. The examiner of drivers shall adopt rules pursuant to chapter 91 to allow an organ procurement organization twenty-four-hour telephone access to the driver's license database information, solely for the purpose of determining whether a driver has indicated a willingness to be an organ donor pursuant to section 286-109.5.

As used in this section, "organ procurement organization" shall have the same meaning as procurement organization in section 327-1."

SECTION 3. Chapter 327, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

“§327-A Required referral. (a) On or before the occurrence of each death in an acute care hospital, the hospital shall report to the local organ procurement organization to determine the suitability of the individual for organ, tissue, and eye donation. This contact shall be noted on the patient’s medical record.

(b) Each acute care hospital shall develop no later than July 1, 2000, with the concurrence of the hospital medical staff, a protocol for identifying potential organ and tissue donors. The protocol shall require that at or near the time of every individual death, the acute care hospital shall contact by telephone the local organ procurement organization to determine suitability for organ, tissue, and eye donation of the individual. Each hospital shall designate a person to contact the local organ procurement organization to provide the appropriate data about the individual necessary to begin assessment for suitability for recovery of anatomical gifts. The acute care hospital’s protocol shall specify the kind of information that shall be available prior to making the contact, including the patient’s age and cause of death.

The local organ procurement organization, in consultation with the patient’s attending physician or designee, shall determine the suitability for donation. If the local organ procurement organization in consultation with the patient’s attending physician or designee determines that donation is not appropriate based on established medical criteria, this shall be noted by the hospital personnel on the patient’s record, and no further action shall be necessary. If the local organ procurement organization in consultation with the patient’s attending physician or designee determines that the patient is a suitable candidate for anatomical donation, the acute care hospital and the local organ procurement organization, separately or together, shall initiate a request by a designated requester, who shall be a person trained by the local organ procurement organization. The protocol shall encourage discretion and sensitivity to family circumstances in all discussions regarding donations of tissue or organs. The protocol shall take into account the deceased individual’s religious beliefs or nonsuitability for organ and tissue donation.

(c) The local organ procurement organization shall conduct annual death record reviews at each acute care hospital to determine compliance with required referral. There shall be no cost assessed against a hospital for a review of death records pursuant to this subsection.

(d) As used in this section:

“Acute care hospital” means a hospital, as defined in section 327-1, other than a nursing facility or other long-term care facility.

“Designated requester” means a person who has completed a course offered by an organ procurement organization on how to approach families and request organ or tissue donation.

“Organ procurement organization” shall have the same meaning as procurement organization in section 327-1.

§327-B Hawaii organ and tissue education special fund. There is established in the state treasury the Hawaii organ and tissue education special fund. Moneys collected under section 286-A shall be deposited into the fund. The fund shall be administered and distributed by the department of health and shall be used exclusively for public education programs and activities on organ, tissue, and eye donation.”

SECTION 4. Chapter 327, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (h) of section 327-2 to read:

“(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.

Any person, hospital, or organization that relies on the document of gift and acts in good faith in accordance with this chapter shall not be subject to criminal or civil liability from any action taken under this chapter. The immunity provided by this subsection shall not extend to the person, hospital, or organization if damages result from the gross negligence, recklessness, or intentional misconduct to the donor.”

2. By repealing section 327-5.

“SECTION 5. The department of health, with the assistance of the Organ Donor Center of Hawaii, shall report to the legislature no later than twenty days prior to the convening of the regular session of 2003, on the deposits and disbursements of the Hawaii organ and tissue education special fund and on the effectiveness of that fund in achieving its purposes.”

SECTION 6. There is appropriated out of the organ and tissue education special fund for fiscal year 2000-2001 the sum of \$250,000. The sum appropriated shall be expended by the department of health as a grant to the Organ Donor Center of Hawaii for the purposes set forth in section 327-B, Hawaii Revised Statutes.

SECTION 7. In codifying the new sections added to chapters 286 and 327, Hawaii Revised Statutes, by sections 2 and 3 of this Act, and referred to in this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in the new sections’ designations in this Act.

SECTION 8. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 9. This Act shall take effect upon its approval; provided that the new sections designated as 286-A and 327-B, Hawaii Revised Statutes, in this Act shall take effect on July 1, 2000, and shall be repealed on June 30, 2003.

(Approved June 23, 1999.)

Note

1. Edited pursuant to HRS §23G-16.5.