HOUSE OF REPRESENTATIVES TWENTY-FOURTH LEGISLATURE, 2008 STATE OF HAWAII

H.B. NO. ²¹³⁹ H.D. 2 S.D. 1

C.D. 1

1

A BILL FOR AN ACT

RELATING TO ANATOMICAL GIFTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1	SECTION 1. Chapter 327, Hawaii Revised Statutes, is
2	amended by adding a new part to be appropriately designated and
3	to read as follows:
4	"PART . REVISED UNIFORM ANATOMICAL GIFT ACT
5	§327-A Short title. This part may be cited as the
6	"Revised Uniform Anatomical Gift Act."
7	§327-B Definitions. As used in this part, unless the
8	context otherwise requires:
9	"Agent" means an individual:
10	(1) Authorized to make health care decisions on the
11	principal's behalf by a power of attorney for health
12	care; or
13	(2) Expressly authorized to make an anatomical gift on the
14	principal's behalf by any other record signed by the
15	principal.
16	"Anatomical gift" means a donation of all or part of a
17	human body to take effect after the donor's death for the
18	purposes of transplantation, therapy, research, or education.
	HB2139 CD1 HMS 2008-3965

H.B. NO. ²¹³⁹ H.D. 2 S.D. 1 C.D. 1

1	"Body part" means an eye or other organ, or tissue of a
2	human being. The term shall not include the whole body.
3	"Decedent" means a deceased individual whose body or body
4	part is or may be the source of an anatomical gift. The term
5	includes a stillborn infant, and subject to restrictions imposed
6	by law other than this part, a fetus.
7	"Disinterested witness" means a witness other than the
8	spouse, reciprocal beneficiary, child, parent, sibling,
9	grandchild, grandparent, or guardian of the individual who
10	makes, amends, revokes, or refuses to make an anatomical gift,
11	or another adult who exhibited special care and concern for the
12	individual. The term shall not include a person to which an
13	anatomical gift could pass under section 327-K.
14	"Document of gift" means a donor card or other record used
15	to make an anatomical gift. The term includes a statement or
16	symbol on a driver's license, identification card, or donor
17	registry.
18	"Donor" means an individual whose body or body part is the
19	subject of an anatomical gift.
20	"Donor registry" means a database that contains records of
21	anatomical gifts and amendments to or revocations of anatomical
22	gifts.
	HB2139 CD1 HMS 2008-3965

"Driver's license" means a license or permit issued by a
 state or county authority to operate a vehicle whether or not
 conditions are attached to the license or permit.

2139 H.D. 2

H.B. NO.

4 "Eye bank" means a person that is licensed, accredited, or
5 regulated under federal or state law to engage in the recovery,
6 screening, testing, processing, storage, or distribution of
7 human eyes or portions of human eyes.

8 "Guardian" means a person appointed by a court to make
9 decisions regarding the support, care, education, health, and
10 welfare of an individual. The term shall not include a guardian
11 ad litem.

12 "Hospital" means a facility licensed as a hospital under 13 the law of any state or a facility operated as a hospital by the 14 United States, a state, or a subdivision of a state.

15 "Identification card" means an identification card issued 16 by a state or county authority or a driver's license issued by 17 the examiner of drivers.

18 "Know" means to have actual knowledge.

"Organ procurement organization" means a person designated
by the United States Secretary of Health and Human Services as
an organ procurement organization.

HB2139 CD1 HMS 2008-3965

Page 3

H.B. NO. ²¹³⁹ H.D. 2 S.D. 1 C.D. 1

"Parent" means a parent whose parental rights have not been
 terminated.

3 "Person" means an individual, corporation, business trust,
4 estate, trust, partnership, limited liability company,
5 association, joint venture, public corporation, government or
6 governmental subdivision, agency, or instrumentality, or any
7 other legal or commercial entity.

8 "Physician" means an individual authorized to practice9 medicine or osteopathy under the law of any state.

10 "Procurement organization" means an eye bank, organ11 procurement organization, or tissue bank.

"Prospective donor" means an individual who is dead or near death and has been determined by a procurement organization to have a body part that could be medically suitable for transplantation, therapy, research, or education. The term shall not include an individual who has made a refusal.

17 "Reasonably available" means able to be contacted by a 18 procurement organization without undue effort and willing and 19 able to act in a timely manner consistent with existing medical 20 criteria necessary for the making of an anatomical gift.

21 "Recipient" means an individual into whose body a22 decedent's body part has been or is intended to be transplanted.

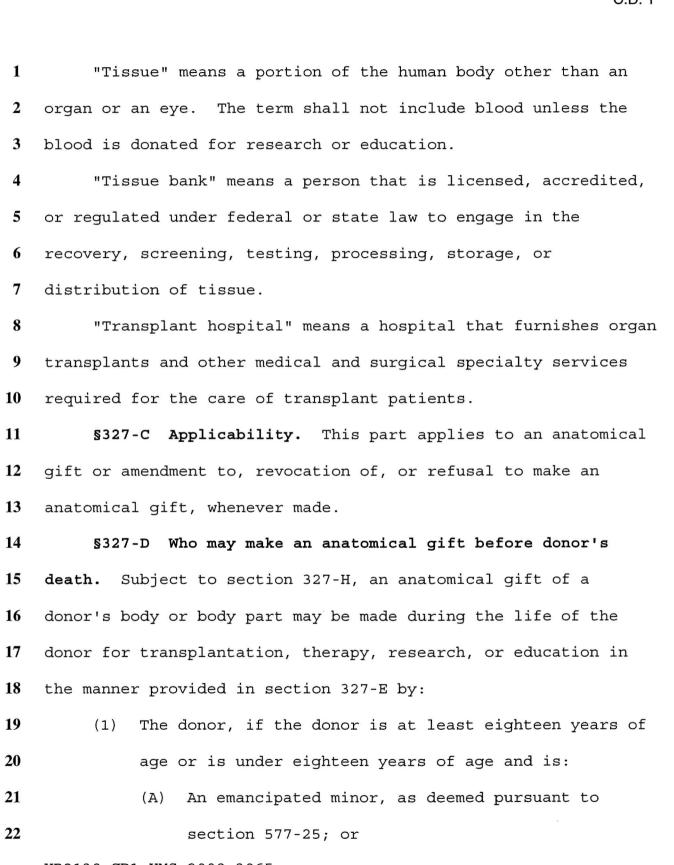
HB2139 CD1 HMS 2008-3965

H.B. NO. ²¹³⁹ H.D. 2 S.D. 1 C.D. 1

5

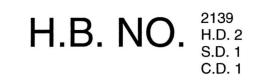
1	"Reciprocal beneficiary" means a party to a valid
2	reciprocal beneficiary relationship as defined in chapter 572C.
3	"Record" means information that is inscribed on a tangible
4	medium or that is stored in an electronic or other medium and is
5	retrievable in perceivable form.
6	"Refusal" means a record created under section 327-G that
7	expressly states an intent to bar other persons from making an
8	anatomical gift of an individual's body or body part.
9	"Sign" means, with the present intent to authenticate or
10	adopt a record:
11	(1) To execute or adopt a tangible symbol; or
12	(2) To attach or logically associate with the record an
13	electronic symbol, sound, or process.
14	"State" means a state of the United States, the District of
15	Columbia, Puerto Rico, the United States Virgin Islands, or any
16	territory or insular possession subject to the jurisdiction of
17	the United States.
18	"Technician" means an individual determined to be qualified
19	to remove or process body parts by an appropriate organization
20	that is licensed, accredited, or regulated under federal or
21	state law. The term includes an enucleator.

HB2139 CD1 HMS 2008-3965



H.B. NO. ²¹³⁹ H.D. 2





1		(B) Authorized under a state law to apply for a
2		driver's license under part VI of chapter 286;
3	(2)	An agent of the donor, unless the power of attorney
4		for health care or other record prohibits the agent
5		from making an anatomical gift;
6	(3)	A parent of the donor, if the donor is under eighteen
7		years of age and not emancipated; or
8	(4)	The donor's guardian.
9	§327	-E Manner of making an anatomical gift before donor's
10	death. (a) A donor may make an anatomical gift:
11	(1)	By authorizing a statement or symbol indicating that
12		the donor has made an anatomical gift to be imprinted
13		on the donor's driver's license or identification
14		card;
15	(2)	In a will; or
16	(3)	During a terminal illness or injury of the donor, by
17		any form of communication addressed to at least two
18		other individuals who are at least eighteen years of
19		age, one of whom is a disinterested witness.
20	(b)	A donor or other person authorized to make an
21	anatomica	l gift under section 327-D may make a gift by a donor
22	card or o	ther record signed by the donor or other person making
	HB2139 CD	1 HMS 2008-3965



8

1	the gift,	or by authorizing that a statement or symbol
2	indicatin	g that the donor has made an anatomical gift be
3	included	on a donor registry. If the donor or other person is
4	physicall	y unable to sign a record, the record may be signed by
5	another i	ndividual at the direction of the donor or the other
6	person an	d shall:
7	(1)	Be witnessed by at least two other individuals who are
8		at least eighteen years of age, one of whom is a
9		disinterested witness, who have signed at the request
10		of the donor or the other person; and
11	(2)	State that it has been signed and witnessed as
12		provided in paragraph (1).
13	(c)	Revocation, suspension, expiration, or cancellation of
14	the drive	r's license or identification card issued to a donor
15	shall not	invalidate an anatomical gift.
16	(d)	An anatomical gift made by a will shall take effect
17	upon the o	donor's death whether or not the will is probated.
18	Invalidat	ion of the will after the donor's death shall not
19	invalidate	e the gift.
20	§327	-F Amending or revoking an anatomical gift before
	-	

21 donor's death. (a) Subject to section 327-H, a donor or other

HB2139 CD1 HMS 2008-3965



1	person au	thori	zed to make an anatomical gift under section 327-D
2	may amend	or r	evoke an anatomical gift by:
3	(1)	A re	cord signed by:
4		(A)	The donor;
5		(B)	The other person; or
6		(C)	Subject to subsection (b), another individual
7			acting at the direction of the donor or the other
8			person if the donor or other person is physically
9			unable to sign;
10		or	
11	(2)	A la	ter-executed document of gift that amends or
12		revo	kes a previous anatomical gift or portion of an
13		anat	omical gift, either expressly or by inconsistency.
14	(b)	A re	cord signed pursuant to subsection (a)(1)(C)
15	shall:		
16	(1)	Be w	itnessed by at least two other individuals who are
17		at l	east eighteen years of age, one of whom is a
18		disi	nterested witness, who have signed at the request
19		of t	he donor or the other person; and
20	(2)	Stat	e that it has been signed and witnessed as
21		prov	ided in paragraph (1).



H.B. NO. ²¹³⁹ H.D. 2 S.D. 1 C.D. 1

(c) Subject to section 327-H, a donor or other person
 authorized to make an anatomical gift under section 327-D may
 revoke the gift by the destruction or cancellation of the
 document of gift, or a portion of the document of gift used to
 make the gift, with the intent to revoke the gift.

6 (d) A donor may amend or revoke an anatomical gift that
7 was not made in a will by any form of communication during a
8 terminal illness or injury addressed to at least two other
9 individuals who are at least eighteen years of age, one of whom
10 is a disinterested witness.

(e) A donor who makes an anatomical gift in a will may amend or revoke the gift in the manner provided for amendment or revocation of wills or as provided in subsection (a).

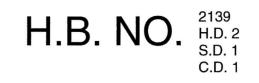
14 §327-G Refusal to make an anatomical gift and effect of 15 refusal. (a) An individual may refuse to make an anatomical 16 gift of the individual's body or body part by:

17 (1) A record signed by:

18 (A) The individual; or

19 (B) Subject to subsection (b), another individual
20 acting at the direction of the individual if the
21 individual is physically unable to sign;

HB2139 CD1 HMS 2008-3965



(2)	The individual's will whether or not the will is
	admitted to probate or invalidated after the
	individual's death; or
(3)	Any form of communication made by the individual
	during the individual's terminal illness or injury
	addressed to at least two other individuals who are at
	least eighteen years of age, one of whom is a
	disinterested witness.
(b)	A record signed pursuant to subsection (a)(1)(B)
shall:	
(1)	Be witnessed by at least two other individuals who are
	at least eighteen years of age, one of whom is a
	disinterested witness, who have signed at the request
	of the individual; and
(2)	State that it has been signed and witnessed as
	provided in paragraph (1).
(c)	An individual may amend or revoke a refusal:
(1)	In the manner provided in subsection (a) for making a
	refusal;
(2)	By subsequently making an anatomical gift pursuant to
	section 327-E that is inconsistent with the refusal;
	or
	<pre>(3) (b) shall: (1) (2) (c) (1)</pre>



H.B. NO. ²¹³⁹ H.D. 2 S.D. 1 C.D. 1

12

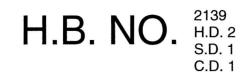
(3) By the destruction or cancellation of the record
 evidencing the refusal, or the portion of the record
 used to make the refusal, with the intent to revoke
 the refusal.

(d) Except as otherwise provided in section 327-H(h), in
the absence of an express, contrary indication by the individual
set forth in the refusal, an individual's unrevoked refusal to
make an anatomical gift of the individual's body or a body part
bars all other persons from making an anatomical gift of the
individual's body or the body part.

11 §327-H Preclusive effect of an anatomical gift, amendment, 12 or revocation. (a) Except as otherwise provided in subsection 13 (g), in the absence of an express, contrary indication by the 14 donor, a person other than the donor is barred from making, amending, or revoking an anatomical gift of a donor's body or 15 16 body part if the donor made an anatomical gift of the donor's 17 body or body part under section 327-E, or an amendment to an 18 anatomical gift of the donor's body or the body part under 19 section 327-F.

(b) A donor's revocation of an anatomical gift of the
donor's body or a body part under section 327-F is not a refusal
and shall not bar another person specified in section 327-D or

HB2139 CD1 HMS 2008-3965



13

327-I from making an anatomical gift of the donor's body or a
 body part under section 327-E or 327-J.

3 (c) If a person other than the donor makes an unrevoked
4 anatomical gift of the donor's body or a body part under section
5 327-E, or an amendment to an anatomical gift of the donor's body
6 or a body part under section 327-F, another person may not make,
7 amend, or revoke the gift of the donor's body or body part under
8 section 327-J.

9 (d) A revocation of an anatomical gift of the donor's body
10 or a body part under section 327-F by a person other than the
11 donor shall not bar another person from making an anatomical
12 gift of the body or a body part under section 327-E or 327-J.

(e) In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under section 327-D, an anatomical gift of a body part is neither a refusal to give another body part nor a limitation on the making of an anatomical gift of another body part at a later time by the donor or another person.

(f) In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under section 327-D, an anatomical gift of a body part for one or more of the purposes set forth in section 327-D is not a



D11 limitation on the making of an anatomical gift of the body part 2 for any of the other purposes by the donor or any other person 3 under section 327-E or 327-J. 4 (q) If a donor who is an unemancipated minor dies under 5 eighteen years of age, a parent of the donor who is reasonably 6 available may revoke or amend an anatomical gift of the donor's 7 body or body part. 8 If an unemancipated minor who signed a refusal dies (h) 9 under eighteen years of age, a parent of the individual who is 10 reasonably available may revoke the individual's refusal. 11 §327-I Who may make an anatomical gift of decedent's body 12 or body part. (a) Subject to subsections (b) and (c) and 13 unless barred by subsection (d), an anatomical gift of a 14 decedent's body or body part for purposes of transplantation, 15 therapy, research, or education may be made, in the order of 16 priority listed, by any member of the following classes of 17 persons who is reasonably available: 18 (1) An agent of the decedent at the time of death who 19 could have made an anatomical gift under section

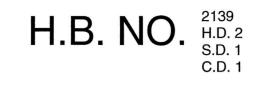
20 327-D(2) immediately before the decedent's death;

21 (2) The spouse or reciprocal beneficiary of the decedent;
22 (3) Adult children of the decedent;



14

H.B. NO. ²¹³⁹ H.D. 2



15

1	(4)	Parents of the decedent;
2	(5)	Adult siblings of the decedent;
3	(6)	Adult grandchildren of the decedent;
4	(7)	Grandparents of the decedent;
5	(8)	An adult who exhibited special care and concern for
6		the decedent;
7	(9)	The persons who were acting as the guardian of the
8		person of the decedent at the time of death; and
9	(10)	Any other person having the authority to dispose of
10		the decedent's body.
11	(b)	If there is more than one member of a class listed in
12	subsection	n (a)(l), (3), (4), (5), (6), (7), or (9) entitled to
13	make an a	natomical gift, an anatomical gift may be made by a
14	member of	the class unless that member or a person to which the
15	gift can j	pass under section 327-K knows of an objection by
16	another m	ember of the class. If an objection is known, the gift
17	may be ma	de only by a majority of the members of the class who
18	are reaso	nably available.
19	(c)	No person may make an anatomical gift if, at the time

19 (c) No person may make an anatomical gift if, at the time
20 of the decedent's death, a person in a prior class under
21 subsection (a) is reasonably available to make or to object to
22 the making of an anatomical gift.

HB2139 CD1 HMS 2008-3965

H.B. NO. ²¹³⁹ H.D. 2 S.D. 1 C.D. 1

16

(d) An anatomical gift may not be made if doing so is
 barred by section 327-G or 327-H.

3 §327-J Manner of making, amending, or revoking an 4 anatomical gift of decedent's body or body part. (a) A person 5 authorized to make an anatomical gift under section 327-I may 6 make an anatomical gift by a document of gift signed by the 7 person making the gift or that person's oral communication that 8 is electronically recorded or is contemporaneously reduced to a 9 record and signed by the individual receiving the oral 10 communication.

11 Subject to subsection (c), an anatomical gift by a (b) 12 person authorized under section 327-I may be amended or revoked 13 orally or in a record by any member of a prior class who is 14 reasonably available. If more than one member of the prior 15 class is reasonably available, the gift made by a person 16 authorized under section 327-I may be amended or revoked only if 17 a majority of the reasonably available members of that class 18 agree to the amending or revoking of the gift or they are 19 equally divided as to whether to amend or revoke an anatomical 20 gift.

(c) A revocation under subsection (b) is effective only ifthe procurement organization or transplant hospital or the

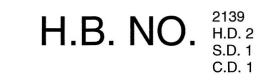


Page 17

H.B. NO. ²¹³⁹ H.D. 2 S.D. 1 C.D. 1

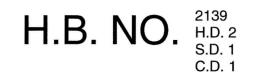
1	physician	or technician knows of the revocation before an				
2	incision h	incision has been made to remove a body part from the donor, or				
3	before inv	asive procedures have begun to prepare the recipient.				
4	§327-	K Persons that may receive anatomical gift; purpose				
5	of anatomi	cal gift. (a) An anatomical gift of a body or body				
6	part may b	e made to the following persons:				
7	(1)	A named hospital, accredited medical school, dental				
8		school, college, university, or organ procurement				
9		organization, or other appropriate person for research				
10		or education;				
11	(2)	A named individual designated by the person making the				
12		anatomical gift if the individual is the recipient of				
13		the body part; or, if the body part for any reason				
14		cannot be transplanted into the individual, the body				
15		part shall pass in accordance with subsection (f) in				
16		the absence of an express, contrary indication by the				
17		person making the anatomical gift; or				
18	(3)	A named eye bank or tissue bank.				
19	(b)	If an anatomical gift of one or more specific body				
20	parts or o	f all body parts is made in a document of gift that				
21	does not n	ame a person described in subsection (a) but				

HB2139 CD1 HMS 2008-3965



1	identifie	s the purpose for which an anatomical gift may be used,
2	the follo	wing rules shall apply:
3	(1)	If the body part is an eye and the gift is for
4		transplantation or therapy, the gift shall pass to the
5		appropriate eye bank;
6	(2)	If the body part is tissue and the gift is for
7		transplantation or therapy, the gift shall pass to the
8		appropriate tissue bank;
9	(3)	If the body part is an organ and the gift is for
10		transplantation or therapy, the gift shall pass to the
11		appropriate organ procurement organization as
12		custodian of the organ; and
13	(4)	If the body part is an organ, an eye, or tissue and
14		the gift is for research or education, the gift shall
15		pass to the appropriate procurement organization.
16	(c)	For the purpose of subsection (h), if there is more
17	than one g	purpose of an anatomical gift set forth in the document
18	of gift b	ut the purposes are not set forth in any priority, the
19	gift shal	l be used for transplantation or therapy if suitable
20	for those	purposes and, if the gift cannot be used for
21	transplan	tation or therapy, the gift may be used for research or
22	education	





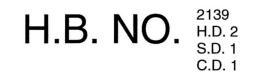
(d) If an anatomical gift of one or more specific body
 parts is made in a document of gift that does not name a person
 described in subsection (a) and does not identify the purpose of
 the gift, the decedent's body parts may be used only for
 transplantation or therapy, and the gift shall pass in
 accordance with subsection (f).

7 (e) If a document of gift specifies only a general intent 8 to make an anatomical gift by words such as "donor," "organ 9 donor," or "body donor," or by a symbol or statement of similar 10 import, the decedent's body parts may be used only for 11 transplantation or therapy, and the gift shall pass in 12 accordance with subsection (f).

13 (f) For purposes of subsections (a)(2), (c), and (d), the14 following rules shall apply:

- 15 (1) If the body part is an eye, the gift shall pass to the16 appropriate eye bank;
- 17 (2) If the body part is tissue, the gift shall pass to the18 appropriate tissue bank; and
- 19 (3) If the body part is an organ, the gift shall pass to
 20 the appropriate organ procurement organization as
 21 custodian of the organ.





20

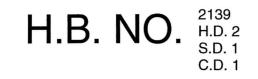
(g) An anatomical gift of an organ for transplantation or
 therapy, other than an anatomical gift under subsection (a)(2),
 shall pass to the organ procurement organization as custodian of
 the organ.

5 (h) If an anatomical gift does not pass pursuant to
6 subsections (a) through (g), or the decedent's body or body part
7 is not used for transplantation, therapy, research, or
8 education, custody of the body or body part shall pass to the
9 person under obligation to dispose of the body or body part.

10 (i) A person may not accept an anatomical gift if the 11 person knows that the gift was not effectively made under 12 section 327-E or 327-J or if the person knows that the decedent 13 made a refusal under section 327-G that was not revoked. For 14 purposes of this subsection, if a person knows that an 15 anatomical gift was made on a document of gift, the person is 16 deemed to know of any amendment or revocation of the gift or any 17 refusal to make an anatomical gift on the same document of gift.

18 (j) Except as otherwise provided in subsection (a)(2),
19 nothing in this part shall affect the allocation of organs for
20 transplantation or therapy.

21 §327-L Search and notification. (a) The following
 22 persons shall make a reasonable search of an individual who the HB2139 CD1 HMS 2008-3965



21

1	searcher reasonably believes is dead or near death for a
	-
2	document of gift or other information identifying the individual
3	as a donor or as an individual who made a refusal:
4	(1) A law enforcement officer, firefighter, paramedic, or
5	other emergency rescuer finding the individual; and
6	(2) If no other source of the information is immediately
7	available, a hospital, as soon as practical after the
8	individual's arrival at the hospital.
9	(b) If a document of gift or a refusal to make an
10	anatomical gift is located by the search required by subsection
11	(a)(1) and the individual or deceased individual to whom it
12	relates is taken to a hospital, the person responsible for
13	conducting the search shall send the document of gift or refusal
14	to the hospital.
15	(c) A person is not subject to criminal or civil liability
16	for failing to discharge the duties imposed by this section but
17	may be subject to administrative sanctions.
18	§327-M Delivery of document of gift not required; right to

19 examine. (a) A document of gift need not be delivered during
20 the donor's lifetime to be effective.

(b) Upon or after an individual's death, a person inpossession of a document of gift or a refusal to make an



anatomical gift with respect to the individual shall allow
 examination and copying of the document of gift or refusal by a
 person authorized to make or object to the making of an
 anatomical gift with respect to the individual or by a person to
 which the gift could pass under section 327-K.

H.B. NO. ²¹³⁹ H.D. 2

D 1

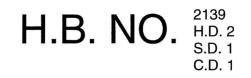
22

6 §327-N Rights and duties of procurement organization and 7 others. (a) When a hospital refers an individual at or near 8 death to a procurement organization, the organization shall make 9 a reasonable search of any donor registry and records of the 10 state or county department of motor vehicles that it knows exist 11 for the geographical area in which the individual resides to 12 ascertain whether the individual has made an anatomical gift.

(b) A procurement organization shall be allowed reasonable
access to information in the records of the state or county
department of motor vehicles to ascertain whether an individual
at or near death is a donor.

(c) When a hospital refers an individual at or near death to a procurement organization, the organization may conduct any reasonable examination necessary to ensure the medical suitability of a body part that is or could be the subject of an anatomical gift for transplantation, therapy, research, or education from a donor or a prospective donor. During the





23

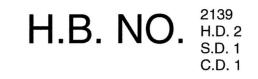
examination period, measures necessary to ensure the medical suitability of the body part may not be withdrawn unless the hospital or procurement organization knows that the individual expressed a contrary intent or the attending physician has determined that continuing these measures would not be consistent with generally accepted standards of care for terminally ill patients.

8 (d) Unless prohibited by law other than this part, at any
9 time after a donor's death, the person to which a body part
10 passes under section 327-K may conduct any reasonable
11 examination necessary to ensure the medical suitability of the
12 body or body part for its intended purpose.

(e) Unless prohibited by law other than this part, an
examination under subsection (c) or (d) may include an
examination of all medical records of the donor or prospective
donor.

(f) If a donor, at the time of death, is under eighteen years of age, a procurement organization shall conduct a reasonable search for the parents of the donor and, unless the procurement organization knows the donor is an emancipated minor as deemed by section 577-25, provide the parents with an

HB2139 CD1 HMS 2008-3965



opportunity to revoke or amend the anatomical gift or revoke a
 refusal.

3 (g) A procurement organization shall make a reasonable
4 search for any person listed in section 327-I having priority to
5 make an anatomical gift on behalf of a prospective donor.

6 (h) If a procurement organization receives information
7 that an anatomical gift to any other person was made, amended,
8 or revoked, it shall promptly advise the other person of all
9 relevant information.

10 Subject to sections 327-K(h) and 327-W, the rights of (i) 11 the person to which a body part passes under section 327-K are 12 superior to rights of all others with respect to the body part. 13 The person may accept or reject an anatomical gift in whole or 14 in part. Subject to the terms of the document of gift and this 15 part, a person that accepts an anatomical gift of an entire body 16 may allow embalming or cremation and use of remains in a funeral 17 service. If the gift is of a body part, the person to which the 18 body part passes under section 327-K, upon the death of the 19 donor and before embalming or cremation, shall cause the body 20 part to be removed without unnecessary mutilation.

(j) Neither the physician who attends the decedent atdeath nor the physician who determines the time of the



H.B. NO. ²¹³⁹ H.D. 2 S.D. 1 C.D. 1

decedent's death may participate in the procedures for removing
 or transplanting a body part from the decedent.

3 (k) A physician or technician may remove a donated body
4 part from the body of a donor that the physician or technician
5 is qualified to remove.

§327-0 Coordination of procurement and use. Each hospital
in this state, after consultation with procurement
organizations, shall establish agreements or affiliations for
coordination of procurement and use of human bodies and body
parts.

11 §327-P Sale or purchase of body parts prohibited. (a) 12 Except as otherwise provided in subsection (b), a person that knowingly, for valuable consideration, purchases or sells a body 13 part for transplantation or therapy if removal of a body part 14 15 from an individual is intended to occur after the individual's death commits a class C felony and upon conviction is subject to 16 a fine not exceeding \$50,000, imprisonment not exceeding five 17 18 years, or both.

(b) A person may charge a reasonable amount for the
removal, processing, preservation, quality control, storage,
transportation, implantation, or disposal of a body part.

HB2139 CD1 HMS 2008-3965

1 §327-Q Penalty. Any person that, to obtain a financial 2 gain, intentionally falsifies, forges, conceals, defaces, or 3 obliterates a document of gift, an amendment or revocation of a 4 document of gift, or a refusal to make an anatomical gift 5 commits a class C felony and upon conviction is subject to a 6 fine not exceeding \$50,000, imprisonment not exceeding five 7 years, or both.

H.B. NO. ²¹³⁹ H.D. 2

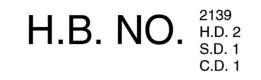
26

8 §327-R Immunity. (a) A person that acts in accordance
9 with this part or with the applicable anatomical gift law of
10 another state or attempts in good faith to do so is not liable
11 for the act in a civil action, criminal prosecution, or
12 administrative proceeding.

13 (b) Neither the person making an anatomical gift nor the 14 donor's estate is liable for any injury or damage that results 15 from the making or use of the gift.

(c) A person who documents the making, amending, or
revoking of an anatomical gift under this part may rely upon
representations of the individuals listed in section
327-I(a)(2),(3), (4), (5), (6), (7), and (8) relating to their
relationship to the donor or prospective donor unless the person
knows that the representation is untrue.

HB2139 CD1 HMS 2008-3965



1	§327-S Law governing validity; choice of law as to
2	execution of document of gift; presumption of validity. (a) A
3	document of gift shall be valid if executed in accordance with:
4	(1) This part;
5	(2) The laws of the state or country where it was
6	executed; or
7	(3) The laws of the state or country where the person
8	making the anatomical gift was domiciled, has a place
9	of residence, or was a national at the time the
10	document of gift was executed.
11	(b) If a document of gift is valid under this section, the
12	laws of this State govern the interpretation of the document of
13	gift.
14	(c) A person may presume that a document of gift or
15	amendment of an anatomical gift is valid unless that person
16	knows that it was not validly executed or was revoked.
17	§327-T Donor registry. (a) The examiner of drivers shall
18	adopt rules pursuant to chapter 91 to allow an organ procurement
19	organization twenty-four-hour telephone access to the driver's
20	license database information, solely for determining whether a
21	driver has indicated a willingness to be an organ donor pursuant
22	to section 286-109.5.



H.B. NO. ²¹³⁹ H.D. 2 S.D. 1 C.D. 1

1	(b)	The examiner of drivers shall cooperate with any donor
2	registry	that this State establishes, contracts for, or
3	recognize	s for transferring to the donor registry all relevant
4	informati	on regarding a donor's making, amendment to, or
5	revocatio	n of an anatomical gift.
6	(c)	A donor registry shall:
7	(1)	Provide a database that allows a donor or other person
8		authorized under section 327-D to include on the donor
9		registry a statement or symbol that the donor has
10		made, amended, or revoked an anatomical gift;
11	(2)	Be accessible to a procurement organization to allow
12		it to obtain relevant information on the donor
13		registry to determine, at or near death of the donor
14		or a prospective donor, whether the donor or
15		prospective donor has made, amended, or revoked an
16		anatomical gift; and
17	(3)	Be accessible for purposes of paragraphs (1) and (2)
18		seven-days-a-week on a twenty-four-hour basis.
19	(d)	Personally identifiable information on a donor
20	registry	about a donor or prospective donor may not be used or
21	disclosed	without the express consent of the donor, prospective
22	donor, or	the person that made the anatomical gift for any

HB2139 CD1 HMS 2008-3965

H.B. NO. ²¹³⁹ H.D. 2 S.D. 1 C.D. 1

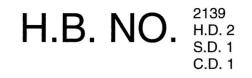
29

purpose other than to determine, at or near death of the donor
 or a prospective donor, whether the donor or prospective donor
 has made, amended, or revoked an anatomical gift.

4 (e) This section shall not prohibit any person from
5 creating or maintaining a donor registry that is not established
6 by or under contract with the State. However, the registry
7 shall comply with subsections (c) and (d).

8 §327-U Effect of anatomical gift on advance health-care 9 If a prospective donor has a declaration or directive. (a) 10 advance health-care directive, and the terms of the declaration 11 or directive and the express or implied terms of a potential 12 anatomical gift are in conflict with regard to the 13 administration of measures necessary to ensure the medical 14 suitability of a body part for transplantation or therapy, the 15 prospective donor's attending physician and prospective donor 16 shall confer to resolve the conflict. If the prospective donor 17 is incapable of resolving the conflict, an agent acting under 18 the prospective donor's declaration or directive, or, if none or 19 if the agent is not reasonably available, another person 20 authorized by law other than this chapter to make health-care 21 decisions on behalf of the prospective donor, shall act for the 22 donor to resolve the conflict. The conflict shall be resolved

HB2139 CD1 HMS 2008-3965



as expeditiously as possible. Information relevant to the 1 resolution of the conflict may be obtained from the appropriate 2 3 procurement organization and any other person authorized to make an anatomical gift for the prospective donor under section 4 5 327-I. Before resolution of the conflict, measures necessary to ensure the medical suitability of the body part may not be 6 7 withheld or withdrawn from the prospective donor if withholding 8 or withdrawing the measures is not contraindicated by 9 appropriate end-of-life care.

10 (b) As used in this section:

II "Advance health-care directive" means a record signed or I2 authorized by a prospective donor containing the prospective I3 donor's direction concerning a health-care decision for the I4 prospective donor or a power of attorney for health care.

15 "Declaration" means a record signed by a prospective donor 16 specifying the circumstances under which a life support system 17 may be withheld or withdrawn.

18 "Health-care decision" means any decision regarding the19 health care of the prospective donor.

20 §327-V Cooperation between medical examiner or coroner and
 21 procurement organization. (a) A medical examiner or coroner
 22 shall cooperate with procurement organizations to maximize the
 HB2139 CD1 HMS 2008-3965

H.B. NO. ²¹³⁹ H.D. 2 S.D. 1 C.D. 1

opportunity to recover anatomical gifts for transplantation,
 therapy, research, or education.

3 If a medical examiner or coroner receives notice from (b) 4 a procurement organization that an anatomical gift might be 5 available or was made with respect to a decedent whose body is 6 under the jurisdiction of the medical examiner or coroner and a 7 post-mortem examination is going to be performed, unless the 8 medical examiner or coroner denies recovery in accordance with 9 section 327-W, the medical examiner or coroner or designee shall 10 make a reasonable attempt to conduct a post-mortem examination 11 of the body or the body part in a manner and within a period 12 compatible with its preservation for the purposes of the gift. 13 (c) A body part may not be removed from the body of a

14 decedent under the jurisdiction of a medical examiner or coroner 15 for transplantation, therapy, research, or education unless the 16 body part is the subject of an anatomical gift. The body of a 17 decedent under the jurisdiction of the medical examiner or 18 coroner may not be delivered to a person for research or 19 education unless the body is the subject of an anatomical gift. 20 This subsection shall not preclude a medical examiner or coroner 21 from performing the medicolegal investigation upon the body or

HB2139 CD1 HMS 2008-3965

H.B. NO. ²¹³⁹ H.D. 2 S.D. 1 C.D. 1

32

body parts of a decedent under the jurisdiction of the medical
 examiner or coroner.

3 §327-W Facilitation of an anatomical gift from a decedent 4 whose body is under the jurisdiction of the medical examiner or 5 coroner. (a) Upon request of a procurement organization, a 6 medical examiner or coroner shall release to the procurement 7 organization the name, contact information, and available 8 medical and social history of a decedent whose body is under the 9 jurisdiction of the medical examiner or coroner. If the decedent's body or body part is medically suitable for 10 11 transplantation, therapy, research, or education, the medical 12 examiner or coroner shall release post-mortem examination 13 results to the procurement organization. The procurement 14 organization may make a subsequent disclosure of the post-mortem 15 examination results or other information received from the 16 medical examiner or coroner only if relevant to transplantation 17 or therapy.

(b) The medical examiner or coroner may conduct a
medicolegal examination by reviewing all medical records,
laboratory test results, x-rays, other diagnostic results, and
other information that any person possesses about a donor or
prospective donor whose body is under the jurisdiction of the

HB2139 CD1 HMS 2008-3965

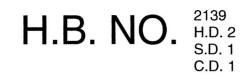
H.B. NO. ²¹³⁹ H.D. 2 S.D. 1 C.D. 1

1 medical examiner or coroner, which the medical examiner or 2 coroner determines may be relevant to the investigation. 3 A person that has any information requested by a (c) 4 medical examiner or coroner pursuant to subsection (b) shall 5 provide that information as expeditiously as possible to allow 6 the medical examiner or coroner to conduct the medicolegal 7 investigation within a period compatible with the preservation 8 of body parts for transplantation, therapy, research, or 9 education.

10 (d) If an anatomical gift has been or might be made of a 11 body part of a decedent whose body is under the jurisdiction of 12 the medical examiner or coroner and a post-mortem examination is 13 not required, or the medical examiner or coroner determines that 14 a post-mortem examination is required but that the recovery of 15 the body part that is the subject of an anatomical gift will not 16 interfere with the examination, the medical examiner or coroner 17 and procurement organization shall cooperate in the timely removal of the body part from the decedent for transplantation, 18 therapy, research, or education. 19

(e) If an anatomical gift of a body part from the decedent
under the jurisdiction of the medical examiner or coroner has
been or might be made, but the medical examiner or coroner



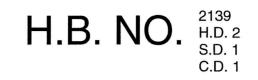


34

1 initially believes that the recovery of the body part could 2 interfere with the post-mortem investigation into the decedent's 3 cause or manner of death, the medical examiner or coroner shall 4 consult with the procurement organization or physician or 5 technician designated by the procurement organization about the 6 proposed recovery. The procurement organization shall provide 7 the medical examiner or coroner with all information it has 8 which could relate to the cause or manner of the decedent's 9 death. After consultation, the medical examiner or coroner may 10 allow the recovery.

11 Following the consultation under subsection (e), in (f)12 the absence of mutually agreed-upon protocols to resolve 13 conflict between the medical examiner or coroner and the procurement organization, if the medical examiner or coroner 14 15 intends to deny recovery of the body part, the medical examiner 16 or coroner or designee, at the request of the procurement 17 organization, shall make reasonable efforts to attend the 18 removal procedure for the body part before making a final 19 determination not to allow the procurement organization to 20 recover the body part. During the removal procedure, the 21 medical examiner or coroner or designee may allow recovery by 22 the procurement organization to proceed, or, if the medical





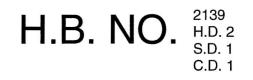
35

1 examiner or coroner or designee reasonably believes that the 2 body part may be involved in determining the decedent's cause or 3 manner of death, deny recovery by the procurement organization. 4 If the medical examiner or coroner or designee denies (q) 5 recovery under subsection (f), the medical examiner or coroner 6 or designee shall include the reasons in the records of the 7 medical examiner or coroner; and make those reasons available to 8 the procurement organization upon request.

9 (h) If the medical examiner or coroner or designee allows 10 recovery of a body part, the procurement organization shall 11 cooperate with the medical examiner or coroner in any 12 documentation of injuries and the preservation and collection of 13 evidence prior to and during the recovery of the body part and, 14 upon request, shall cause the physician or technician who 15 removes the body part to provide the medical examiner or coroner 16 with a record describing the condition of the body part, a 17 biopsy, a photograph, and any other information and observations 18 that would assist in the post-mortem examination.

19 §327-X Hawaii organ and tissue education special fund.
20 There is established in the state treasury the Hawaii Organ and
21 Tissue Education Special fund. Moneys collected under section
22 286-109.7 shall be deposited into the fund. The fund shall be





36

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.

§327-Y Uniformity of application and construction. In
applying and construing this uniform act, consideration shall be
given to the need to promote uniformity of the law with respect
to its subject matter among states that enact it.

8 §327-Z Relation to electronic signatures in Global and 9 National Commerce Act. This part modifies, limits, and 10 supersedes the Electronic Signatures in Global and National 11 Commerce Act, 15 United States Code Section 7001 et. seq., but 12 shall not modify, limit, or supersede Section 101(a) of that 13 Act, 15 United States Code Section 7001, or authorize electronic 14 delivery of any of the notices described in Section 103(b) of 15 that Act, 15 United States Code Section 7003(b)."

16 SECTION 2. Section 286-109.6, Hawaii Revised Statutes, is 17 amended to read as follows:

18 "[+]§286-109.6[+] Limited access to driver's license
19 anatomical gift data. The examiner of drivers shall adopt rules
20 pursuant to chapter 91 to allow an organ procurement

21 organization twenty-four-hour telephone access to the driver's

22 license database information, solely for the purpose of



1 determining whether a driver has indicated a willingness to be 2 an organ donor pursuant to section 286-109.5. 3 As used in this section, "organ procurement organization" shall have the same meaning as procurement organization in 4 5 section [327-1.] 327-B." 6 SECTION 3. Section 286-109.7, Hawaii Revised Statutes, is 7 amended to read as follows: 8 "[+] §286-109.7[+] Organ and tissue education fee. 9 Notwithstanding any other law to the contrary, beginning July 1, 10 2000, a donation of \$1, in addition to any other fees under this 11 chapter, may be collected upon designation by an individual or 12 entity from each certificate of registration by the director of 13 finance of each county to be deposited on a quarterly basis into 14 the [+] organ and tissue education special fund [+] pursuant to section [327-5.6.] 327-X. The counties may retain a portion of 15 16 the \$1 donation as an administrative fee to cover the cost of 17 collecting, accounting for, and depositing the balance into the 18 organ and tissue education special fund. The retention shall 19 not exceed \$0.20 for each \$1 collected."

20 SECTION 4. Chapter 327, part I, Hawaii Revised Statutes,
21 is repealed.



37

H.B. NO. ²¹³⁹ H.D. 2



1	SECTION 5. On the effective date of this Act, the director		
2	of finance shall transfer all of the funds in the organ and		
3	tissue education special fund established by section 327-5.6,		
4	Hawaii Revised Statutes, to the Hawaii organ and tissue		
5	education special fund created by section 327-X in section 1 of		
6	this Act.		
7	SECTION 6. In codifying the new sections added by section		
8	1 of this Act, the revisor of statutes shall substitute		
9	appropriate section numbers for the letters used in designating		
10	the new sections in this Act.		
11	SECTION 7. Statutory material to be repealed is bracketed		
12	and stricken. New statutory material is underscored.		
13	SECTION 8. This Act shall take effect on July 1, 2008.		



H.B. NO. 2139 H.D.2 S.D.1 C.D.1

Report Title: Anatomical Gifts

Description: Enacts the Revised Uniform Anatomical Gift Act. (HB2139 CD1)

