



GOV. MSG. NO. 764

EXECUTIVE CHAMBERS  
HONOLULU

LINDA LINGLE  
GOVERNOR

May 29, 2008

The Honorable Colleen Hanabusa, President  
and Members of the Senate  
Twenty-Fourth State Legislature  
State Capitol, Room 409  
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

This is to inform you that on May 29, 2008, the following bill was signed into law:

HB2139 HD2 SD1 CD1

A BILL FOR AN ACT RELATING TO ANATOMICAL  
GIFTS.  
(ACT 122)

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Lingle".

LINDA LINGLE

# 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.



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.



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

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.

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



1 "Parent" means a parent whose parental rights have not been  
2 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 practice  
9 medicine or osteopathy under the law of any state.

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

12 "Prospective donor" means an individual who is dead or near  
13 death and has been determined by a procurement organization to  
14 have a body part that could be medically suitable for  
15 transplantation, therapy, research, or education. The term  
16 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 a  
22 decedent's body part has been or is intended to be transplanted.



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.



1 "Tissue" means a portion of the human body other than an  
2 organ or an eye. The term shall not include blood unless the  
3 blood is donated for research or education.

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

8 "Transplant hospital" means a hospital that furnishes organ  
9 transplants and other medical and surgical specialty services  
10 required for the care of transplant patients.

11 §327-C Applicability. This part applies to an anatomical  
12 gift or amendment to, revocation of, or refusal to make an  
13 anatomical gift, whenever made.

14 §327-D Who may make an anatomical gift before donor's  
15 death. Subject to section 327-H, an anatomical gift of a  
16 donor's body or body part may be made during the life of the  
17 donor for transplantation, therapy, research, or education in  
18 the manner provided in section 327-E by:

19 (1) The donor, if the donor is at least eighteen years of  
20 age or is under eighteen years of age and is:

21 (A) An emancipated minor, as deemed pursuant to  
22 section 577-25; or



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 anatomical gift under section 327-D may make a gift by a donor  
22 card or other record signed by the donor or other person making





1 the gift, or by authorizing that a statement or symbol  
2 indicating that the donor has made an anatomical gift be  
3 included on a donor registry. If the donor or other person is  
4 physically unable to sign a record, the record may be signed by  
5 another individual at the direction of the donor or the other  
6 person and 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 driver'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 donor's death whether or not the will is probated.  
18 Invalidation of the will after the donor's death shall not  
19 invalidate 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



1 person authorized to make an anatomical gift under section 327-D  
2 may amend or revoke an anatomical gift by:

3 (1) A record 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 later-executed document of gift that amends or  
12 revokes a previous anatomical gift or portion of an  
13 anatomical gift, either expressly or by inconsistency.

14 (b) A record signed pursuant to subsection (a) (1) (C)

15 shall:

16 (1) Be witnessed by at least two other individuals who are  
17 at least eighteen years of age, one of whom is a  
18 disinterested witness, who have signed at the request  
19 of the donor or the other person; and

20 (2) State that it has been signed and witnessed as  
21 provided in paragraph (1).



1 (c) Subject to section 327-H, a donor or other person  
2 authorized to make an anatomical gift under section 327-D may  
3 revoke the gift by the destruction or cancellation of the  
4 document of gift, or a portion of the document of gift used to  
5 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.

11 (e) A donor who makes an anatomical gift in a will may  
12 amend or revoke the gift in the manner provided for amendment or  
13 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;



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



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

5           (d) Except as otherwise provided in section 327-H(h), in  
6           the absence of an express, contrary indication by the individual  
7           set forth in the refusal, an individual's unrevoked refusal to  
8           make an anatomical gift of the individual's body or a body part  
9           bars all other persons from making an anatomical gift of the  
10          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,  
15          amending, or revoking an anatomical gift of a donor's body or  
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.

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



1 327-I from making an anatomical gift of the donor's body or a  
2 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.

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

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



1 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 (g) 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 (h) If an unemancipated minor who signed a refusal dies  
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;



- 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 (a)(1), (3), (4), (5), (6), (7), or (9) entitled to  
13 make an anatomical 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 pass under section 327-K knows of an objection by  
16 another member of the class. If an objection is known, the gift  
17 may be made only by a majority of the members of the class who  
18 are reasonably available.
- 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.





1 (d) An anatomical gift may not be made if doing so is  
2 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 (b) Subject to subsection (c), an anatomical gift by a  
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.

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



1 physician or technician knows of the revocation before an  
2 incision has been made to remove a body part from the donor, or  
3 before invasive procedures have begun to prepare the recipient.

4 §327-K Persons that may receive anatomical gift; purpose  
5 of anatomical gift. (a) An anatomical gift of a body or body  
6 part may be 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 of all body parts is made in a document of gift that  
21 does not name a person described in subsection (a) but



1 identifies the purpose for which an anatomical gift may be used,  
2 the following 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 purpose of an anatomical gift set forth in the document  
18 of gift but the purposes are not set forth in any priority, the  
19 gift shall be used for transplantation or therapy if suitable  
20 for those purposes and, if the gift cannot be used for  
21 transplantation or therapy, the gift may be used for research or  
22 education.



1 (d) If an anatomical gift of one or more specific body  
2 parts is made in a document of gift that does not name a person  
3 described in subsection (a) and does not identify the purpose of  
4 the gift, the decedent's body parts may be used only for  
5 transplantation or therapy, and the gift shall pass in  
6 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), the  
14 following rules shall apply:

- 15 (1) If the body part is an eye, the gift shall pass to the  
16 appropriate eye bank;
- 17 (2) If the body part is tissue, the gift shall pass to the  
18 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.



1 (g) An anatomical gift of an organ for transplantation or  
2 therapy, other than an anatomical gift under subsection (a)(2),  
3 shall pass to the organ procurement organization as custodian of  
4 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



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.

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

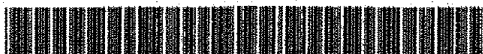


1 anatomical gift with respect to the individual shall allow  
2 examination and copying of the document of gift or refusal by a  
3 person authorized to make or object to the making of an  
4 anatomical gift with respect to the individual or by a person to  
5 which the gift could pass under section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

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.

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

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

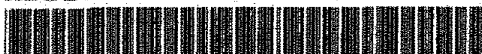


1 examination period, measures necessary to ensure the medical  
2 suitability of the body part may not be withdrawn unless the  
3 hospital or procurement organization knows that the individual  
4 expressed a contrary intent or the attending physician has  
5 determined that continuing these measures would not be  
6 consistent with generally accepted standards of care for  
7 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.

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

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





1 opportunity to revoke or amend the anatomical gift or revoke a  
2 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 (i) Subject to sections 327-K(h) and 327-W, the rights of  
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.

21 (j) Neither the physician who attends the decedent at  
22 death nor the physician who determines the time of the



1 decedent's death may participate in the procedures for removing  
2 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.

6 §327-O Coordination of procurement and use. Each hospital  
7 in this state, after consultation with procurement  
8 organizations, shall establish agreements or affiliations for  
9 coordination of procurement and use of human bodies and body  
10 parts.

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

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



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.

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.

16           (c) A person who documents the making, amending, or  
17 revoking of an anatomical gift under this part may rely upon  
18 representations of the individuals listed in section  
19 327-I(a)(2), (3), (4), (5), (6), (7), and (8) relating to their  
20 relationship to the donor or prospective donor unless the person  
21 knows that the representation is untrue.



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.



1 (b) The examiner of drivers shall cooperate with any donor  
2 registry that this State establishes, contracts for, or  
3 recognizes for transferring to the donor registry all relevant  
4 information regarding a donor's making, amendment to, or  
5 revocation 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



1 purpose other than to determine, at or near death of the donor  
2 or a prospective donor, whether the donor or prospective donor  
3 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 directive. (a) If a prospective donor has a declaration or  
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



1 as expeditiously as possible. Information relevant to the  
2 resolution of the conflict may be obtained from the appropriate  
3 procurement organization and any other person authorized to make  
4 an anatomical gift for the prospective donor under section  
5 327-I. Before resolution of the conflict, measures necessary to  
6 ensure the medical suitability of the body part may not be  
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:

11 "Advance health-care directive" means a record signed or  
12 authorized by a prospective donor containing the prospective  
13 donor's direction concerning a health-care decision for the  
14 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 the  
19 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



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

3 (b) If a medical examiner or coroner receives notice from  
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





1 body parts of a decedent under the jurisdiction of the medical  
2 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  
10 decedent's body or body part is medically suitable for  
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.

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



1 medical examiner or coroner, which the medical examiner or  
2 coroner determines may be relevant to the investigation.

3 (c) A person that has any information requested by a  
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  
18 removal of the body part from the decedent for transplantation,  
19 therapy, research, or education.

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



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 (f) Following the consultation under subsection (e), in  
12 the absence of mutually agreed-upon protocols to resolve  
13 conflict between the medical examiner or coroner and the  
14 procurement organization, if the medical examiner or coroner  
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



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 (g) If the medical examiner or coroner or designee denies  
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



1 administered and distributed by the department of health and  
2 shall be used exclusively for public education programs and  
3 activities on organ, tissue, and eye donation.

4       §327-Y Uniformity of application and construction. In  
5 applying and construing this uniform act, consideration shall be  
6 given to the need to promote uniformity of the law with respect  
7 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"  
4 shall have the same meaning as procurement organization in  
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  
15 section [~~327-5-6-~~] 327-X. The counties may retain a portion of  
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.



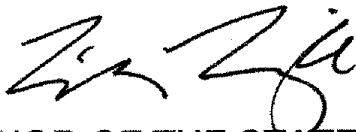
1 SECTION 5. On the effective date of this Act, the director  
2 of finance shall transfer all of the funds in the organ and  
3 tissue education special fund established by section 327-5.6,  
4 Hawaii Revised Statutes, to the Hawaii organ and tissue  
5 education special fund created by section 327-X 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.

APPROVED this 29 day of MAY, 2008



GOVERNOR OF THE STATE OF HAWAII

