

2147--A

2011-2012 Regular Sessions

I N   S E N A T E

January 18, 2011

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Introduced by Sens. GOLDEN, DeFRANCISCO, JOHNSON, LARKIN, LIBOUS, YOUNG  
-- read twice and ordered printed, and when printed to be committed to  
the Committee on Health -- recommitted to the Committee on Health in  
accordance with Senate Rule 6, sec. 8 -- committee discharged, bill  
amended, ordered reprinted as amended and recommitted to said commit-  
tee

AN ACT to amend the public health law, in relation to sales and  
purchases of human organs

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-  
BLY, DO ENACT AS FOLLOWS:

1     Section 1. Section 4307 of the public health law, as amended by chap-  
2     ter 362 of the laws of 2009, is amended to read as follows:  
3     S 4307. Prohibition of sales and purchases of human organs OR BODY  
4     PARTS. 1. It shall be unlawful for any person to knowingly acquire,  
5     receive, or otherwise transfer for valuable consideration any human  
6     organ for use in human transplantation, OR TO PROCURE ANY BODY PART IN  
7     VIOLATION OF THIS SECTION. [The term human organ means the human kidney,  
8     liver, heart, lung, bone marrow, and any other human organ or tissue as  
9     may be designated by the commissioner but shall exclude blood. The term  
10    "valuable consideration" does not include the reasonable payments asso-  
11    ciated with the removal, transportation, implantation, processing, pres-  
12    ervation, quality control, and storage of a human organ or the expenses  
13    of travel, housing, and lost wages incurred by the donor of a human  
14    organ in connection with the donation of the organ.] Any person who  
15    violates this section shall be guilty of a class E felony FOR EACH  
16    INSTANCE OF SALE.  
17    2. For the purposes of this section, the donation of a kidney or other  
18    organ from a live donor for transplantation into an individual condi-  
19    tioned upon the donation and transplantation of a similar organ into an  
20    individual specified by the donor shall not, in and of itself, be  
21    considered to be "valuable consideration" provided that such donation

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

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1 and transplant are performed in accordance with other applicable laws,  
2 rules and regulations, including any specific rules and regulations the  
3 commissioner may adopt, with the advice and consent of the transplant  
4 council, with respect to such conditional donations. No individual may  
5 make a donation conditioned upon the race, color, creed, national origin  
6 or religious affiliation of the recipient, and no hospital, organ  
7 procurement organization, tissue bank, physician or other professional  
8 may participate in the performance of any procedure or otherwise facili-  
9 tate the donation and/or transfer of organs and/or tissue conditioned on  
10 such factors.

11 3. FOR PURPOSES OF THIS SECTION:

12 (A) THE TERM "PROCURE" MEANS AND INCLUDES THE ACT OF KNOWINGLY ACQUIR-  
13 ING, RECEIVING, OR OTHERWISE TRANSFERRING;

14 (B) THE TERM "HUMAN ORGAN" MEANS THE HUMAN KIDNEY, LIVER, HEART, LUNG,  
15 BONE MARROW, AND ANY OTHER HUMAN ORGAN OR TISSUE AS MAY BE DESIGNATED BY  
16 THE COMMISSIONER BUT SHALL EXCLUDE BLOOD, AND OCULAR TISSUE WHICH IS  
17 RECOVERED BY LICENSED EYE BANK PERSONNEL;

18 (C) THE TERM "VALUABLE CONSIDERATION" DOES NOT INCLUDE THE REASONABLE  
19 PAYMENTS ASSOCIATED WITH THE REMOVAL, TRANSPORTATION, IMPLANTATION,  
20 PROCESSING, PRESERVATION, QUALITY CONTROL, AND STORAGE OF A HUMAN ORGAN  
21 OR THE EXPENSES OF TRAVEL, HOUSING, AND LOST WAGES INCURRED BY THE DONOR  
22 OF A HUMAN ORGAN IN CONNECTION WITH THE DONATION OF THE ORGAN OR REASON-  
23 ABLE COMPENSATION FOR RESTORATIVE WORK PERFORMED BY A LICENSED FUNERAL  
24 DIRECTOR IN CONNECTION WITH PROCUREMENT OF A HUMAN ORGAN;

25 (D) THE TERM "BODY PART" MEANS AND INCLUDES THE TERMS INCLUDED IN THE  
26 DEFINITION OF BODY PART PURSUANT TO SUBDIVISION FIVE OF SECTION  
27 FORTY-THREE HUNDRED OF THIS ARTICLE, BUT SHALL EXCLUDE BLOOD, AND OCULAR  
28 TISSUE WHICH IS RECOVERED BY LICENSED EYE BANK PERSONNEL OR ANY OTHER  
29 ELEMENT AS THE COMMISSIONER MAY DEEM NECESSARY.

30 4. THE COMMISSIONER SHALL PRESCRIBE RULES AND REGULATIONS CONCERNING  
31 PROCUREMENT OF HUMAN BODY PARTS, WHICH SHALL REQUIRE AT A MINIMUM THAT  
32 (A) ALL PROCUREMENT OF SUCH BODY PARTS BE PERFORMED ONLY BY A FACILITY  
33 REGISTERED WITH THE DEPARTMENT TO UNDERTAKE SUCH PROCUREMENT, (B) ALL  
34 FACILITIES REGISTERED FOR PROCUREMENT OF HUMAN BODY PARTS SHALL REPORT  
35 AND DOCUMENT THE PROCUREMENT OF EACH BODY PART TO THE MEDICAL EXAMINER  
36 OR CORONER OF THE COUNTY WHERE THE FACILITY IS LOCATED, AND (C) NO  
37 FUNERAL DIRECTOR, UNDERTAKER, REGISTERED RESIDENT, MORTUARY STUDENT OR  
38 REGISTERED FUNERAL HOME OR FACILITY SHALL CONDUCT OR PARTICIPATE IN  
39 PROCUREMENT OF HUMAN BODY PARTS.

40 S 2. This act shall take effect immediately.