

2147

2011-2012 Regular Sessions

I N S E N A T E

January 18, 2011

Introduced by Sens. GOLDEN, DeFRANCISCO, JOHNSON -- read twice and ordered printed, and when printed to be committed to the Committee on Health

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 ASSEMBLY, 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
22 and transplant are performed in accordance with other applicable laws,
23 rules and regulations, including any specific rules and regulations the
24 commissioner may adopt, with the advice and consent of the transplant

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

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1 council, with respect to such conditional donations. No individual may
2 make a donation conditioned upon the race, color, creed, national origin
3 or religious affiliation of the recipient, and no hospital, organ
4 procurement organization, tissue bank, physician or other professional
5 may participate in the performance of any procedure or otherwise facili-
6 tate the donation and/or transfer of organs and/or tissue conditioned on
7 such factors.

8 3. FOR PURPOSES OF THIS SECTION:

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

11 (B) THE TERM "HUMAN ORGAN" MEANS THE HUMAN KIDNEY, LIVER, HEART, LUNG,
12 BONE MARROW, AND ANY OTHER HUMAN ORGAN OR TISSUE AS MAY BE DESIGNATED BY
13 THE COMMISSIONER BUT SHALL EXCLUDE BLOOD;

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

21 (D) THE TERM "BODY PART" MEANS AND INCLUDES THE TERMS INCLUDED IN THE
22 DEFINITION OF BODY PART PURSUANT TO SUBDIVISION FIVE OF SECTION
23 FORTY-THREE HUNDRED OF THIS ARTICLE, BUT SHALL EXCLUDE BLOOD OR ANY
24 OTHER ELEMENT AS THE COMMISSIONER MAY DEEM NECESSARY.

25 4. THE COMMISSIONER SHALL PRESCRIBE RULES AND REGULATIONS CONCERNING
26 PROCUREMENT OF HUMAN BODY PARTS, WHICH SHALL REQUIRE AT A MINIMUM THAT

27 (A) ALL PROCUREMENT OF SUCH BODY PARTS BE PERFORMED ONLY BY A FACILITY
28 REGISTERED WITH THE DEPARTMENT TO UNDERTAKE SUCH PROCUREMENT, (B) ALL
29 FACILITIES REGISTERED FOR PROCUREMENT OF HUMAN BODY PARTS SHALL REPORT
30 AND DOCUMENT THE PROCUREMENT OF EACH BODY PART TO THE MEDICAL EXAMINER
31 OR CORONER OF THE COUNTY WHERE THE FACILITY IS LOCATED, AND (C) NO
32 FUNERAL DIRECTOR, UNDERTAKER, REGISTERED RESIDENT, MORTUARY STUDENT OR
33 REGISTERED FUNERAL HOME OR FACILITY SHALL CONDUCT OR PARTICIPATE IN
34 PROCUREMENT OF HUMAN BODY PARTS.

35 S 2. This act shall take effect immediately.