

2147--B

Cal. No. 813

2011-2012 Regular Sessions

I N S E N A T E

January 18, 2011

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 committee -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, passed by Senate and delivered to the Assembly, recalled, vote reconsidered, restored to third reading, amended and ordered reprinted, retaining its place in the order of third reading

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.

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

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1 2. For the purposes of this section, the donation of a kidney or other
2 organ from a live donor for transplantation into an individual condi-
3 tioned upon the donation and transplantation of a similar organ into an
4 individual specified by the donor shall not, in and of itself, be
5 considered to be "valuable consideration" provided that such donation
6 and transplant are performed in accordance with other applicable laws,
7 rules and regulations, including any specific rules and regulations the
8 commissioner may adopt, with the advice and consent of the transplant
9 council, with respect to such conditional donations. No individual may
10 make a donation conditioned upon the race, color, creed, national origin
11 or religious affiliation of the recipient, and no hospital, organ
12 procurement organization, tissue bank, physician or other professional
13 may participate in the performance of any procedure or otherwise facili-
14 tate the donation and/or transfer of organs and/or tissue conditioned on
15 such factors.

16 3. FOR PURPOSES OF THIS SECTION:

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

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

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

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

35 4. THE COMMISSIONER SHALL PRESCRIBE RULES AND REGULATIONS CONCERNING
36 PROCUREMENT OF HUMAN BODY PARTS, WHICH SHALL REQUIRE AT A MINIMUM THAT
37 (A) ALL PROCUREMENT OF SUCH BODY PARTS BE PERFORMED ONLY BY A FACILITY
38 REGISTERED WITH THE DEPARTMENT TO UNDERTAKE SUCH PROCUREMENT, (B) ALL
39 FACILITIES REGISTERED FOR PROCUREMENT OF HUMAN BODY PARTS SHALL DOCUMENT
40 THE PROCUREMENT OF EACH BODY PART, RETAIN SUCH DOCUMENTATION FOR A MINI-
41 MUM OF SIX YEARS FROM THE DATE OF THE PROCUREMENT, AND PRODUCE SUCH
42 DOCUMENTATION UPON REQUEST BY THE DEPARTMENT OR BY ANY POLICE OFFICER
43 ACTING IN HIS OR HER OFFICIAL CAPACITY, AND (C) NO FUNERAL DIRECTOR,
44 UNDERTAKER, REGISTERED RESIDENT, MORTUARY STUDENT OR REGISTERED FUNERAL
45 HOME OR FACILITY SHALL CONDUCT OR PARTICIPATE IN PROCUREMENT OF HUMAN
46 BODY PARTS.

47 S 2. This act shall take effect on the one hundred twentieth day after
48 it shall have become a law.