S T A T E O F N E W Y O R K

4846

2009-2010 Regular Sessions

I N S E N A T E

April 27, 2009

Introduced by Sen. DUANE -- 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 allowing persons who have tested positive for HIV or AIDS to donate organs

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

Section 1. Section 4360 of the public health law is amended by adding four new subdivisions 11, 12, 13 and 14 to read as follows:

11. "HIV INFECTED DONOR" MEANS A DECEASED DONOR WHO WAS INFECTED WITH HIV OR A LIVING DONOR KNOWN TO BE INFECTED WITH HIV AND WHO IS WILLING TO DONATE A PART OF ONE OR MORE OF HIS OR HER ORGANS. A DETERMINATION OF THE DONOR'S HIV INFECTION SHALL BE MADE BY THE DONOR'S MEDICAL HISTORY OR BY SPECIFIC HIV RELATED TESTS.

12. "AIDS" MEANS ACQUIRED IMMUNE DEFICIENCY SYNDROME, AS MAY BE DEFINED FROM TIME TO TIME BY THE CENTERS FOR DISEASE CONTROL OF THE UNITED STATES PUBLIC HEALTH SERVICE.

13. "HIV INFECTION" MEANS INFECTION WITH THE HUMAN IMMUNODEFICIENCY VIRUS OR ANY OTHER RELATED VIRUS IDENTIFIED AS A PROBABLE CAUSATIVE AGENT OF AIDS.

14. "HIV RELATED TEST" MEANS ANY LABORATORY TEST OR SERIES OF TESTS OF ANY VIRUS, ANTIBODY, ANTIGEN OR ETIOLOGIC AGENT WHATSOEVER THOUGHT TO CAUSE OR TO INDICATE THE PRESENCE OF AIDS.

S 2. The public health law is amended by adding a new section 4363-a to read as follows:

S 4363-A. ORGAN DONATION; HIV OR AIDS. 1. IT SHALL BE LAWFUL FOR A PERSON TO PERFORM A SOLID ORGAN TRANSPLANT OF AN ORGAN FROM AN HIV INFECTED DONOR TO A PERSON WHO HAS TESTED POSITIVE FOR EXPOSURE TO HIV OR ANY OTHER IDENTIFIED CAUSATIVE AGENT OF AIDS AND WHO IS IN IMMEDIATE THREAT OF DEATH UNLESS THE TRANSPLANT IS PERFORMED. A TISSUE BANK THAT PROVIDES AN ORGAN FROM AN HIV INFECTED DONOR UNDER THIS SECTION MAY NOT

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

LBD01333-01-9

BE CRIMINALLY OR CIVILLY LIABLE FOR THE FURNISHING OF SUCH ORGAN UNDER THIS SECTION.

2. FOR THE PURPOSES OF THIS SECTION, "SOLID ORGAN TRANSPLANT" SHALL MEAN THE SURGICAL TRANSPLANTATION OF AN ORGAN, AS SUCH TERM IS DEFINED IN SUBDIVISION FOUR OF SECTION FORTY-THREE HUNDRED SIXTY OF THIS ARTICLE. SOLID ORGAN TRANSPLANT SHALL NOT INCLUDE A BONE MARROW BASED TRANSPLANT OR A BLOOD TRANSFUSION.

S 3. This act shall take effect immediately.