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

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:

Section 1. Section 4307 of the public health law, as amended by chapter 362 of the laws of 2009, is amended to read as follows:

S 4307. Prohibition of sales and purchases of human organs OR BODY PARTS. 1. It shall be unlawful for any person to knowingly acquire, receive, or otherwise transfer for valuable consideration any human organ for use in human transplantation, OR TO PROCURE ANY BODY PART IN VIOLATION OF THIS SECTION. [The term human organ means the human kidney, liver, heart, lung, bone marrow, and any other human organ or tissue as may be designated by the commissioner but shall exclude blood. The term "valuable consideration" does not include the reasonable payments associated with the removal, transportation, implantation, processing, preservation, quality control, and storage of a human organ or the expenses of travel, housing, and lost wages incurred by the donor of a human organ in connection with the donation of the organ.] Any person who violates this section shall be guilty of a class E felony FOR EACH INSTANCE OF SALE.

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

LBD05136-06-2

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

3. FOR PURPOSES OF THIS SECTION:

(A) THE TERM "PROCURE" MEANS AND INCLUDES THE ACT OF KNOWINGLY ACQUIRING, RECEIVING, OR OTHERWISE TRANSFERRING;

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

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

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

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

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