

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 18-1019.04 Jery Payne x2157

SENATE BILL 18-234

SENATE SPONSORSHIP

Coram and Crowder,

HOUSE SPONSORSHIP

(None),

Senate Committees
Judiciary

House Committees

A BILL FOR AN ACT

101 **CONCERNING MEASURES TO REDUCE THE SALE WITHOUT CONSENT OF**
102 **THE REMAINS OF A HUMAN WHO WAS BORN ALIVE.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill makes it unlawful under the "Mortuary Science Code" for a person to own more than a 10% indirect interest in a funeral establishment or crematory while simultaneously owning interest in a nontransplant tissue bank. The bill prohibits an entity from profiting from the transfer, sale, storage, or leasing of human remains.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

SENATE
Amended 2nd Reading
April 23, 2018

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 12-54-104, add

3 (1)(p) as follows:

4 **12-54-104. Unlawful acts.** (1) It is unlawful:

5 (p) FOR A PERSON OWNING AN INDIRECT INTEREST WITH MORE

6 THAN TEN-PERCENT OWNERSHIP IN A FUNERAL ESTABLISHMENT OR FOR A

7 PERSON OWNING A DIRECT INTEREST IN A FUNERAL ESTABLISHMENT TO

8 OWN AN INDIRECT INTEREST WITH MORE THAN TEN-PERCENT OWNERSHIP

9 IN A NONTRANSPLANT TISSUE BANK, AS DEFINED IN SECTION 12-54.5-101

10 (5), OR TO OWN A DIRECT INTEREST IN A NONTRANSPLANT TISSUE BANK.

11 **SECTION 2.** In Colorado Revised Statutes, 12-54-301, add (3)

12 as follows:

13 **12-54-301. Unlawful acts.** (3) IT IS UNLAWFUL FOR A PERSON

14 OWNING AN INDIRECT INTEREST WITH MORE THAN TEN-PERCENT

15 OWNERSHIP IN A CREMATORY OR FOR A PERSON OWNING A DIRECT

16 INTEREST IN A CREMATORY TO OWN AN INDIRECT INTEREST WITH MORE

17 THAN TEN-PERCENT OWNERSHIP IN A NONTRANSPLANT TISSUE BANK, AS

18 DEFINED IN SECTION 12-54.5-101 (5), OR TO OWN A DIRECT INTEREST IN A

19 NONTRANSPLANT TISSUE BANK.

20 **SECTION 3.** In Colorado Revised Statutes, add article 54.5 to

21 title 12 as follows:

22 **ARTICLE 54.5**

23 **Nontransplant Tissue Banks**

24 **12-54.5-101. Definitions.** AS USED IN THIS ARTICLE 54.5, UNLESS

25 THE CONTEXT OTHERWISE REQUIRES:

26 (1) "BODY PART" MEANS A PORTION OF THE HUMAN BODY. THE

1 TERM DOES NOT INCLUDE BLOOD UNLESS THE BLOOD IS DONATED FOR THE
2 PURPOSE OF RESEARCH OR EDUCATION.

3 (2) "DESIGNEE" MEANS AN INDIVIDUAL DESIGNATED BY A
4 NONTRANSPLANT TISSUE BANK REGISTERED IN ACCORDANCE WITH
5 SECTION 12-54.5-102.

6 (3) "DIRECTOR" MEANS THE DIRECTOR OF THE DIVISION OR THE
7 DIRECTOR'S DESIGNEE.

8 (4) "DIVISION" MEANS THE DIVISION OF PROFESSIONS AND
9 OCCUPATIONS CREATED IN SECTION 24-34-102.

10 (5) (a) "NONTRANSPLANT TISSUE BANK" MEANS A PERSON THAT,
11 FOR ANY PURPOSE OTHER THAN TRANSPLANTING A BODY PART, RECOVERS,
12 TRANSPORTS, DISTRIBUTES, SCREENS, STORES, AND ARRANGES FOR THE
13 STORAGE AND DISTRIBUTION OF A BODY PART.

14 (b) "NONTRANSPLANT TISSUE BANK" DOES NOT INCLUDE:

15 (I) AN EYE BANK, AN ORGAN PROCUREMENT ORGANIZATION, OR A
16 TISSUE BANK, AS THOSE TERMS ARE DEFINED IN SECTION 15-19-202 (10),
17 (16), AND (31), RESPECTIVELY;

18 (II) A FUNERAL ESTABLISHMENT REGISTERED IN ACCORDANCE
19 WITH SECTION 12-54-110; OR

20 (III) A CREMATORY REGISTERED IN ACCORDANCE WITH SECTION
21 12-54-303.

22 **12-54.5-102. Registration required - repeal. (1) (a) BY JULY 1,**
23 **2019, EACH NONTRANSPLANT TISSUE BANK SHALL REGISTER WITH THE**
24 **DIRECTOR IN THE FORM AND MANNER DETERMINED BY THE DIRECTOR. THE**
25 **REGISTRATION MUST INCLUDE:**

26 **(I) THE SPECIFIC ADDRESS OF THE NONTRANSPLANT TISSUE BANK;**

27 **(II) THE FULL NAME AND ADDRESS OF THE DESIGNEE APPOINTED**

1 IN ACCORDANCE WITH SUBSECTION (2)(a) OF THIS SECTION;

2 (III) THE DATE THE NONTRANSPLANT TISSUE BANK BEGAN DOING
3 BUSINESS;

4 (IV) THE CATEGORY OF BODY PARTS AND THE TYPE OF BODY PART
5 SERVICES PROVIDED; AND

6 (V) A DESCRIPTION OF THE NONTRANSPLANT TISSUE BANK'S
7 PREMISES AND EQUIPMENT.

8 (b) EACH NONTRANSPLANT TISSUE BANK REGISTRATION IS SUBJECT
9 TO RENEWAL PURSUANT TO A SCHEDULE ESTABLISHED BY THE DIRECTOR
10 IN ACCORDANCE WITH SECTION 24-34-102 (8) AND IN THE FORM AND
11 MANNER DETERMINED BY THE DIRECTOR.

12 (c) IN ACCORDANCE WITH SECTION 24-34-105, THE DIRECTOR MAY
13 ADJUST THE REGISTRATION FEE SET UNDER SUBSECTION (3) OF THIS
14 SECTION AND ESTABLISH RENEWAL FEES AND DELINQUENCY FEES FOR
15 REINSTATEMENT. IF A NONTRANSPLANT TISSUE BANK FAILS TO RENEW THE
16 REGISTRATION IN ACCORDANCE WITH THE SCHEDULE ESTABLISHED BY THE
17 DIRECTOR, THE REGISTRATION EXPIRES.

18 (2) (a) EACH NONTRANSPLANT TISSUE BANK SHALL APPOINT AN
19 INDIVIDUAL AS THE DESIGNEE OF THE NONTRANSPLANT TISSUE BANK. A
20 DESIGNEE MUST:

21 (I) BE AT LEAST EIGHTEEN YEARS OF AGE;

22 (II) HAVE AT LEAST TWO YEARS OF EXPERIENCE WORKING FOR A
23 NONTRANSPLANT TISSUE BANK;

24 (III) BE EMPLOYED BY THE REGISTERED NONTRANSPLANT TISSUE
25 BANK THAT THE DESIGNEE REPRESENTS;

26 (IV) HAVE THE AUTHORITY WITHIN THE NONTRANSPLANT TISSUE
27 BANK'S ORGANIZATION TO REQUIRE THAT PERSONNEL COMPLY WITH THIS

1 ARTICLE 54.5; AND
2 (V) NOT BE DESIGNATED FOR MORE THAN ONE NONTRANSPLANT
3 TISSUE BANK UNLESS EACH ADDITIONAL NONTRANSPLANT TISSUE BANK IS
4 OPERATED UNDER COMMON OWNERSHIP AND MANAGEMENT AND UNLESS
5 EACH ADDITIONAL NONTRANSPLANT TISSUE BANK IS SIXTY MILES OR LESS
6 FROM ALL OTHER NONTRANSPLANT TISSUE BANKS HELD UNDER THE SAME
7 COMMON OWNERSHIP.
8 (b) IF, AFTER INITIAL REGISTRATION, THE NONTRANSPLANT TISSUE
9 BANK APPOINTS A NEW DESIGNEE IN ACCORDANCE WITH SUBSECTION
10 (2)(a) OF THIS SECTION, THE NONTRANSPLANT TISSUE BANK SHALL NOTIFY
11 THE DIRECTOR WITHIN THIRTY DAYS AFTER APPOINTING THE DESIGNEE.
12 (3) TO REGISTER, A PERSON MUST PAY THE FEE SET BY THE
13 DIRECTOR. THE DIRECTOR SHALL SET THE REGISTRATION FEE TO OFFSET
14 THE DIVISION'S DIRECT AND INDIRECT COSTS OF IMPLEMENTING THIS
15 ARTICLE 54.5. THE DIRECTOR SHALL TRANSMIT THE FEE TO THE STATE
16 TREASURER, WHO SHALL CREDIT IT TO THE DIVISION OF PROFESSIONS AND
17 OCCUPATIONS CASH FUND CREATED IN SECTION 24-34-105.
18 (4) THIS SECTION IS REPEALED, EFFECTIVE SEPTEMBER 1, 2024.
19 BEFORE ITS REPEAL, THIS SECTION IS SCHEDULED FOR REVIEW IN
20 ACCORDANCE WITH SECTION 24-34-104.
21 **12-54.5-103. Records and receipts.** (1) A NONTRANSPLANT
22 TISSUE BANK SHALL FURNISH TO A PERSON WHO DELIVERS A BODY PART TO
23 THE NONTRANSPLANT TISSUE BANK A RECEIPT, WHICH MUST BE SIGNED BY
24 BOTH THE NONTRANSPLANT TISSUE BANK AND THE PERSON WHO DELIVERS
25 THE BODY PART. THE NONTRANSPLANT TISSUE BANK SHALL RETAIN A
26 COPY OF THE RECEIPT IN ITS RECORDS IN ACCORDANCE WITH SUBSECTION
27 (2) OF THIS SECTION. THE RECEIPT MUST INCLUDE THE FOLLOWING:

- 1 (a) THE DATE AND TIME OF THE DELIVERY;
- 2 (b) THE NAME OF THE PERSON WHO DELIVERED THE BODY PART;
- 3 (c) THE NAME OF THE DECEDENT;
- 4 (d) THE NAME OF ANY BUSINESSES WITH WHICH THE PERSON
5 DELIVERING THE BODY PART IS AFFILIATED; AND
- 6 (e) THE NAME OF THE PERSON WHO RECEIVED THE BODY PART ON
7 BEHALF OF THE NONTRANSPLANT TISSUE BANK.

8 (2) A NONTRANSPLANT TISSUE BANK SHALL MAINTAIN FOR AT
9 LEAST THREE YEARS AT ITS REGISTERED LOCATION THE FOLLOWING
10 RECORDS:

- 11 (a) THE DONOR'S FULL NAME AND ADDRESS;
- 12 (b) THE DATE OF DONATION;
- 13 (c) DOCUMENTATION OF THE DECEDENT'S INFORMED CONSENT OR
14 THE CONSENT OF THE PERSON AUTHORIZED BY LAW TO CONSENT ON
15 BEHALF OF THE DONOR TO THE DONATION;
- 16 (d) A DESCRIPTION AND THE QUANTITY OF EACH BODY PART TO BE
17 DONATED FOR SCIENTIFIC OR EDUCATIONAL PURPOSES;
- 18 (e) DECEDENT MEDICAL HISTORY, INCLUDING ANY OF THE
19 FOLLOWING IF USED BY THE NONTRANSPLANT TISSUE BANK: AUTOPSY
20 REPORTS, DONATION QUESTIONNAIRES, AND OTHER DONOR OR DECEDENT
21 SOLICITATION MATERIALS; AND
- 22 (f) TRACKING DOCUMENTATION OF THE LOCATION OF EACH BODY
23 PART.

24 (3) A NONTRANSPLANT TISSUE BANK SHALL KEEP COMPLETE AND
25 ACCURATE RECORDS AND MAKE THE RECORDS OPEN FOR INSPECTION BY
26 THE DIRECTOR.

27 **12-54.5-104. Standards of practice. (1) A NONTRANSPLANT**

1 TISSUE BANK SHALL:

2 (a) HANDLE BODY PARTS IN A SAFE AND SANITARY MANNER;

3 (b) BE EQUIPPED WITH INSTRUMENTS AND SUPPLIES NECESSARY TO
4 PROTECT THE HEALTH AND SAFETY OF THE PUBLIC AND EMPLOYEES OF THE
5 NONTRANSPLANT TISSUE BANK; AND

6 (c) AFFIX IDENTIFICATION TO EACH BODY PART AND PROVIDE
7 TRACKING PAPERWORK TO MATCH THE IDENTIFICATION.

8 (2) A NONTRANSPLANT TISSUE BANK SHALL NOT COMMINGLE
9 UNIDENTIFIED OR UNHARVESTED BODY PARTS PRIOR TO TRANSFER TO A
10 CREMATORY OR FUNERAL ESTABLISHMENT, AS THOSE TERMS ARE DEFINED
11 IN SECTION 12-54-102 (5) AND (12), RESPECTIVELY.

12 (3) AN INCINERATOR THAT IS USED FOR THE DISPOSAL OF BODY
13 PARTS AND THAT IS OPERATED BY A REGISTERED NONTRANSPLANT TISSUE
14 BANK NEED NOT BE REGISTERED UNDER PART 3 OF ARTICLE 54 OF THIS
15 TITLE 12. THE INCINERATOR MAY COMMINGLE TISSUE FROM MEDICAL OR
16 EDUCATIONAL RESEARCH FROM MULTIPLE DECEDENTS.

17 **12-54.5-105. Disclosure.** (1) A NONTRANSPLANT TISSUE BANK
18 SHALL DISCLOSE, IN CLEAR AND UNAMBIGUOUS TERMS, THE FOLLOWING
19 INFORMATION TO THE DONOR OR TO THE PERSON AUTHORIZED BY LAW TO
20 CONSENT TO DONATION:

21 (a) THAT THE DONATED BODY PART MAY BE DISTRIBUTED, IN
22 WHOLE OR IN PART, BY THE NONTRANSPLANT TISSUE BANK;

23 (b) THAT THE DONATED BODY PART MAY BE RETURNED, IN WHOLE
24 OR IN PART, TO THE NONTRANSPLANT TISSUE BANK; AND

25 (c) THAT THE NONTRANSPLANT TISSUE BANK WILL BE
26 COMPENSATED FOR DISTRIBUTION OF THE BODY PART.

27 **12-54.5-106. Discipline.** (1) THE DIRECTOR MAY DENY, SUSPEND,

1 REVOKE, OR PLACE ON PROBATION A NONTRANSPLANT TISSUE BANK OR
2 ISSUE A LETTER OF ADMONITION TO AN APPLICANT FOR OR HOLDER OF A
3 NONTRANSPLANT TISSUE BANK REGISTRATION IF THE NONTRANSPLANT
4 TISSUE BANK OR APPLICANT:

5 (a) VIOLATES AN ORDER OF THE DIRECTOR, THIS ARTICLE 54.5, OR
6 THE RULES ESTABLISHED UNDER THIS ARTICLE 54.5:

7 (b) MAKES A MATERIAL MISSTATEMENT OR OMISSION IN THE
8 REGISTRATION OR THE APPLICATION FOR A REGISTRATION:

9 (c) VIOLATES FEDERAL LAW, COLORADO LAW, OR AN ORDINANCE
10 OR RESOLUTION OF A POLITICAL SUBDIVISION OF COLORADO IN THE
11 OPERATION OF THE NONTRANSPLANT TISSUE BANK; OR

12 (d) HAS INCURRED DISCIPLINARY ACTION RELATED TO THE
13 ADMINISTRATION OF A NONTRANSPLANT TISSUE BANK IN ANOTHER
14 JURISDICTION. EVIDENCE OF THIS DISCIPLINARY ACTION IS PRIMA FACIE
15 EVIDENCE FOR DENIAL OF REGISTRATION OR OTHER DISCIPLINARY ACTION
16 IF THE VIOLATION WOULD BE GROUNDS FOR DISCIPLINARY ACTION IN THIS
17 STATE.

18 (2) TO BE VALID, A PROCEEDING TO DENY, SUSPEND, REVOKE, OR
19 PLACE ON PROBATION A REGISTRATION MUST BE CONDUCTED IN
20 ACCORDANCE WITH SECTIONS 24-4-104 AND 24-4-105. THE DIRECTOR
21 MAY USE AN ADMINISTRATIVE LAW JUDGE EMPLOYED BY THE OFFICE OF
22 ADMINISTRATIVE COURTS IN THE DEPARTMENT OF PERSONNEL TO
23 CONDUCT A HEARING.

24 **12-54.5-107. Violations and penalties.** A PERSON WHO VIOLATES
25 THIS ARTICLE 54.5 IS GUILTY OF A MISDEMEANOR AND, UPON CONVICTION,
26 SHALL BE PUNISHED BY A FINE OF NOT MORE THAN FIVE THOUSAND
27 DOLLARS, IMPRISONMENT IN THE COUNTY JAIL FOR NOT MORE THAN

1 TWENTY-FOUR MONTHS, OR BOTH THE FINE AND IMPRISONMENT.

2 **SECTION 4.** In Colorado Revised Statutes, 24-34-104, amend
3 (25)(a)(XIII) as follows:

4 **24-34-104. General assembly review of regulatory agencies**
5 **and functions for repeal, continuation, or reestablishment - legislative**
6 **declaration - repeal.** (25) (a) The following agencies, functions, or both,
7 are scheduled for repeal on September 1, 2024:

8 (XIII) The regulation of persons registered to practice mortuary
9 science by sections 12-54-110 and 12-54-111 and cremation by sections
10 12-54-303 and 12-54-304, and the administration thereof in accordance
11 with part 4 of article 54 of title 12, AND THE REGULATION OF
12 NONTRANSPLANT TISSUE BANKS BY SECTION 12-54.5-102;

13 **SECTION 5.** In Colorado Revised Statutes, 12-54-303, amend (1)
14 as follows:

15 **12-54-303. Registration required.** (1) Unless practicing at a
16 registered crematory pursuant to UNDER this section AND EXCEPT AS
17 PROVIDED IN SECTION 12-54.5-104 (3), a person shall not practice as, or
18 offer the services of, a cremationist, nor shall the crematory sell or offer
19 to sell funeral goods and services to the public.

20 **SECTION 6. Act subject to petition - effective date.** This act
21 takes effect at 12:01 a.m. on the day following the expiration of the
22 ninety-day period after final adjournment of the general assembly (August
23 8, 2018, if adjournment sine die is on May 9, 2018); except that, if a
24 referendum petition is filed pursuant to section 1 (3) of article V of the
25 state constitution against this act or an item, section, or part of this act
26 within such period, then the act, item, section, or part will not take effect
27 unless approved by the people at the general election to be held in

- 1 November 2018 and, in such case, will take effect on the date of the
- 2 official declaration of the vote thereon by the governor.