

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 18-1019.04 Jery Payne x2157

SENATE BILL 18-234

SENATE SPONSORSHIP

Coram and Crowder,

HOUSE SPONSORSHIP

Kraft-Tharp and Catlin,

Senate Committees

Judiciary

House Committees

Health, Insurance, & Environment

Finance

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
3rd Reading Unamended
April 24, 2018

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

4 (2) "DIRECTOR" MEANS THE DIRECTOR OF THE DIVISION OR THE
5 DIRECTOR'S DESIGNEE.

6 (3) "DIVISION" MEANS THE DIVISION OF PROFESSIONS AND
7 OCCUPATIONS CREATED IN SECTION 24-34-102.

8 (4) "HUMAN REMAINS" MEANS ALL OR ANY PORTION OF THE
9 PHYSICAL REMAINS OF A DEAD HUMAN WHO WAS BORN ALIVE.

10 (5) (a) "NONTRANSPLANT TISSUE BANK" MEANS A PERSON THAT,
11 FOR ANY PURPOSE OTHER THAN TRANSPLANTATION INTO A LIVING HUMAN
12 BEING, RECOVERS, TRANSPORTS, DISTRIBUTES, SCREENS, STORES, AND
13 ARRANGES FOR THE STORAGE AND DISTRIBUTION OF HUMAN REMAINS.

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 TYPE OF SERVICES PROVIDED BY THE NONTRANSPLANT
5 TISSUE BANK; 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 HUMAN
23 REMAINS TO THE NONTRANSPLANT TISSUE BANK A RECEIPT, WHICH MUST
24 BE SIGNED BY BOTH THE NONTRANSPLANT TISSUE BANK AND THE PERSON
25 WHO DELIVERS THE HUMAN REMAINS. THE NONTRANSPLANT TISSUE BANK
26 SHALL RETAIN A COPY OF THE RECEIPT IN ITS RECORDS IN ACCORDANCE
27 WITH SUBSECTION (2) OF THIS SECTION. THE RECEIPT MUST INCLUDE THE

1 FOLLOWING:

2 (a) THE DATE AND TIME OF THE DELIVERY;

3 (b) THE NAME OF THE PERSON WHO DELIVERED THE HUMAN
4 REMAINS;

5 (c) THE NAME OF THE DECEDENT;

6 (d) THE NAME OF ANY BUSINESSES WITH WHICH THE PERSON
7 DELIVERING THE HUMAN REMAINS IS AFFILIATED; AND

8 (e) THE NAME OF THE PERSON WHO RECEIVED THE HUMAN
9 REMAINS ON BEHALF OF THE NONTRANSPLANT TISSUE BANK.

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

13 (a) THE DONOR'S FULL NAME AND ADDRESS;

14 (b) THE DATE OF DONATION;

15 (c) DOCUMENTATION OF THE DECEDENT'S INFORMED CONSENT OR
16 THE CONSENT OF THE PERSON AUTHORIZED BY LAW TO CONSENT ON
17 BEHALF OF THE DONOR TO THE DONATION;

18 (d) A DESCRIPTION OF THE HUMAN REMAINS TO BE DONATED FOR
19 SCIENTIFIC OR EDUCATIONAL PURPOSES;

20 (e) DECEDENT MEDICAL HISTORY, INCLUDING ANY OF THE
21 FOLLOWING IF USED BY THE NONTRANSPLANT TISSUE BANK: AUTOPSY
22 REPORTS, DONATION QUESTIONNAIRES, AND OTHER DONOR OR DECEDENT
23 SOLICITATION MATERIALS; AND

24 (f) TRACKING DOCUMENTATION OF THE TRANSPORT OF AND
25 DELIVERY OF HUMAN REMAINS.

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

1 THE DIRECTOR.

2 **12-54.5-104. Standards of practice. (1) A NONTRANSPLANT**
3 **TISSUE BANK SHALL:**

4 (a) HANDLE HUMAN REMAINS IN A SAFE AND SANITARY MANNER;

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

8 (c) AFFIX IDENTIFICATION TO ALL HUMAN REMAINS DELIVERED TO
9 THE NONTRANSPLANT TISSUE BANK AND PROVIDE TRACKING PAPERWORK
10 TO MATCH THE IDENTIFICATION.

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

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

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

24 (a) THAT THE DONATED HUMAN REMAINS MAY BE DISTRIBUTED, IN
25 WHOLE OR IN PART, BY THE NONTRANSPLANT TISSUE BANK;

26 (b) THAT THE DONATED HUMAN REMAINS MAY BE RETURNED, IN
27 WHOLE OR IN PART, TO THE NONTRANSPLANT TISSUE BANK; AND

1 (c) THAT THE NONTRANSPLANT TISSUE BANK WILL BE
2 COMPENSATED FOR DISTRIBUTION OF THE HUMAN REMAINS.

3 **12-54.5-106. Discipline.** (1) THE DIRECTOR MAY DENY, SUSPEND,
4 REVOKE, OR PLACE ON PROBATION A NONTRANSPLANT TISSUE BANK OR
5 ISSUE A LETTER OF ADMONITION TO AN APPLICANT FOR OR HOLDER OF A
6 NONTRANSPLANT TISSUE BANK REGISTRATION IF THE NONTRANSPLANT
7 TISSUE BANK OR APPLICANT:

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

10 (b) MAKES A MATERIAL MISSTATEMENT OR OMISSION IN THE
11 REGISTRATION OR THE APPLICATION FOR A REGISTRATION:

12 (c) VIOLATES FEDERAL LAW, COLORADO LAW, OR AN ORDINANCE
13 OR RESOLUTION OF A POLITICAL SUBDIVISION OF COLORADO IN THE
14 OPERATION OF THE NONTRANSPLANT TISSUE BANK; OR

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

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

27 **12-54.5-107. Violations and penalties.** A PERSON WHO VIOLATES

1 THIS ARTICLE 54.5 IS GUILTY OF A MISDEMEANOR AND, UPON CONVICTION,
2 SHALL BE PUNISHED BY A FINE OF NOT MORE THAN FIVE THOUSAND
3 DOLLARS, IMPRISONMENT IN THE COUNTY JAIL FOR NOT MORE THAN
4 EIGHTEEN MONTHS, OR BOTH THE FINE AND IMPRISONMENT.

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

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

11 (XIII) The regulation of persons registered to practice mortuary
12 science by sections 12-54-110 and 12-54-111 and cremation by sections
13 12-54-303 and 12-54-304, and the administration thereof in accordance
14 with part 4 of article 54 of title 12, AND THE REGULATION OF
15 NONTRANSPLANT TISSUE BANKS BY SECTION 12-54.5-102;

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

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

23 **SECTION 6. Act subject to petition - effective date.** This act
24 takes effect at 12:01 a.m. on the day following the expiration of the
25 ninety-day period after final adjournment of the general assembly (August
26 8, 2018, if adjournment sine die is on May 9, 2018); except that, if a
27 referendum petition is filed pursuant to section 1 (3) of article V of the

1 state constitution against this act or an item, section, or part of this act
2 within such period, then the act, item, section, or part will not take effect
3 unless approved by the people at the general election to be held in
4 November 2018 and, in such case, will take effect on the date of the
5 official declaration of the vote thereon by the governor.