

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

REVISED

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

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

Appropriations

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, AND, IN
103 CONNECTION THEREWITH, REGISTERING NONTRANSPLANT TISSUE
104 BANKS AND PROHIBITING CERTAIN OWNERS OF NONTRANSPLANT TISSUE
105 BANKS FROM OWNING CERTAIN OTHER BUSINESSES THAT PROVIDE FOR
106 THE FINAL DISPOSITION OF HUMAN REMAINS, AND MAKING AN
107 APPROPRIATION.

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>.)

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.

HOUSE
Amended 2nd Reading
May 4, 2018

SENATE
3rd Reading Unamended
April 24, 2018

SENATE
Amended 2nd Reading
April 23, 2018

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.

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**

1 **Nontransplant Tissue Banks**

2 **12-54.5-101. Definitions.** AS USED IN THIS ARTICLE 54.5, UNLESS
3 THE CONTEXT OTHERWISE REQUIRES:

4 [REDACTED] [REDACTED]
5 (1) "DESIGNEE" MEANS AN INDIVIDUAL DESIGNATED BY A
6 NONTRANSPLANT TISSUE BANK REGISTERED IN ACCORDANCE WITH
7 SECTION 12-54.5-102.

8 (2) "DIRECTOR" MEANS THE DIRECTOR OF THE DIVISION OR THE
9 DIRECTOR'S DESIGNEE.

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

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

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

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

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

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

24 (III) A CREMATORY REGISTERED IN ACCORDANCE WITH SECTION
25 12-54-303.

26 **12-54.5-102. Registration required - repeal.** (1) (a) BY JULY 1,
27 2019, EACH NONTRANSPLANT TISSUE BANK SHALL REGISTER WITH THE

1 DIRECTOR IN THE FORM AND MANNER DETERMINED BY THE DIRECTOR. THE
2 REGISTRATION MUST INCLUDE:

3 (I) THE SPECIFIC ADDRESS OF THE NONTRANSPLANT TISSUE BANK;

4 (II) THE FULL NAME AND ADDRESS OF THE DESIGNEE APPOINTED
5 IN ACCORDANCE WITH SUBSECTION (2)(a) OF THIS SECTION;

6 (III) THE DATE THE NONTRANSPLANT TISSUE BANK BEGAN DOING
7 BUSINESS;

8 (IV) THE TYPE OF SERVICES PROVIDED BY THE NONTRANSPLANT
9 TISSUE BANK; AND

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

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

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

22 (2) (a) EACH NONTRANSPLANT TISSUE BANK SHALL APPOINT AN
23 INDIVIDUAL AS THE DESIGNEE OF THE NONTRANSPLANT TISSUE BANK. A
24 DESIGNEE MUST:

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

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

1 (III) BE EMPLOYED BY THE REGISTERED NONTRANSPLANT TISSUE
2 BANK THAT THE DESIGNEE REPRESENTS;

3 (IV) HAVE THE AUTHORITY WITHIN THE NONTRANSPLANT TISSUE
4 BANK'S ORGANIZATION TO REQUIRE THAT PERSONNEL COMPLY WITH THIS
5 ARTICLE 54.5; AND

6 (V) NOT BE DESIGNATED FOR MORE THAN ONE NONTRANSPLANT
7 TISSUE BANK UNLESS EACH ADDITIONAL NONTRANSPLANT TISSUE BANK IS
8 OPERATED UNDER COMMON OWNERSHIP AND MANAGEMENT AND UNLESS
9 EACH ADDITIONAL NONTRANSPLANT TISSUE BANK IS SIXTY MILES OR LESS
10 FROM ALL OTHER NONTRANSPLANT TISSUE BANKS HELD UNDER THE SAME
11 COMMON OWNERSHIP.

12 (b) IF, AFTER INITIAL REGISTRATION, THE NONTRANSPLANT TISSUE
13 BANK APPOINTS A NEW DESIGNEE IN ACCORDANCE WITH SUBSECTION
14 (2)(a) OF THIS SECTION, THE NONTRANSPLANT TISSUE BANK SHALL NOTIFY
15 THE DIRECTOR WITHIN THIRTY DAYS AFTER APPOINTING THE DESIGNEE.

16 (3) TO REGISTER, A PERSON MUST PAY THE FEE SET BY THE
17 DIRECTOR. THE DIRECTOR SHALL SET THE REGISTRATION FEE TO OFFSET
18 THE DIVISION'S DIRECT AND INDIRECT COSTS OF IMPLEMENTING THIS
19 ARTICLE 54.5. THE DIRECTOR SHALL TRANSMIT THE FEE TO THE STATE
20 TREASURER, WHO SHALL CREDIT IT TO THE DIVISION OF PROFESSIONS AND
21 OCCUPATIONS CASH FUND CREATED IN SECTION 24-34-105.

22 (4) THIS SECTION IS REPEALED, EFFECTIVE SEPTEMBER 1, 2024.
23 BEFORE ITS REPEAL, THIS SECTION IS SCHEDULED FOR REVIEW IN
24 ACCORDANCE WITH SECTION 24-34-104.

25 **12-54.5-103. Records and receipts.** (1) A NONTRANSPLANT
26 TISSUE BANK SHALL FURNISH TO A PERSON WHO DELIVERS HUMAN
27 REMAINS TO THE NONTRANSPLANT TISSUE BANK A RECEIPT, WHICH MUST

1 BE SIGNED BY BOTH THE NONTRANSPLANT TISSUE BANK AND THE PERSON
2 WHO DELIVERS THE HUMAN REMAINS. THE NONTRANSPLANT TISSUE BANK
3 SHALL RETAIN A COPY OF THE RECEIPT IN ITS RECORDS IN ACCORDANCE
4 WITH SUBSECTION (2) OF THIS SECTION. THE RECEIPT MUST INCLUDE THE
5 FOLLOWING:

- 6 (a) THE DATE AND TIME OF THE DELIVERY;
- 7 (b) THE NAME OF THE PERSON WHO DELIVERED THE HUMAN
8 REMAINS;
- 9 (c) THE NAME OF THE DECEDENT;
- 10 (d) THE NAME OF ANY BUSINESSES WITH WHICH THE PERSON
11 DELIVERING THE HUMAN REMAINS IS AFFILIATED; AND
- 12 (e) THE NAME OF THE PERSON WHO RECEIVED THE HUMAN
13 REMAINS ON BEHALF OF THE NONTRANSPLANT TISSUE BANK.

14 (2) A NONTRANSPLANT TISSUE BANK SHALL MAINTAIN FOR AT
15 LEAST THREE YEARS AT ITS REGISTERED LOCATION THE FOLLOWING
16 RECORDS:

- 17 (a) THE DONOR'S FULL NAME AND ADDRESS;
- 18 (b) THE DATE OF DONATION;
- 19 (c) DOCUMENTATION OF THE DECEDENT'S INFORMED CONSENT OR
20 THE CONSENT OF THE PERSON AUTHORIZED BY LAW TO CONSENT ON
21 BEHALF OF THE DONOR TO THE DONATION;
- 22 (d) A DESCRIPTION OF THE HUMAN REMAINS TO BE DONATED FOR
23 SCIENTIFIC OR EDUCATIONAL PURPOSES;
- 24 (e) DECEDENT MEDICAL HISTORY, INCLUDING ANY OF THE
25 FOLLOWING IF USED BY THE NONTRANSPLANT TISSUE BANK: AUTOPSY
26 REPORTS, DONATION QUESTIONNAIRES, AND OTHER DONOR OR DECEDENT
27 SOLICITATION MATERIALS; AND

1 (f) TRACKING DOCUMENTATION OF THE TRANSPORT OF AND
2 DELIVERY OF HUMAN REMAINS.

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

6 **12-54.5-104. Standards of practice. (1) A NONTRANSPLANT**
7 **TISSUE BANK SHALL:**

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

9 (b) BE EQUIPPED WITH INSTRUMENTS AND SUPPLIES NECESSARY TO
10 PROTECT THE HEALTH AND SAFETY OF THE PUBLIC AND EMPLOYEES OF THE
11 NONTRANSPLANT TISSUE BANK; AND

12 (c) AFFIX IDENTIFICATION TO ALL HUMAN REMAINS DELIVERED TO
13 THE NONTRANSPLANT TISSUE BANK AND PROVIDE TRACKING PAPERWORK
14 TO MATCH THE IDENTIFICATION.

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

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

24 **12-54.5-105. Disclosure. (1) A NONTRANSPLANT TISSUE BANK**
25 **SHALL DISCLOSE, IN CLEAR AND UNAMBIGUOUS TERMS, THE FOLLOWING**
26 **INFORMATION TO THE DONOR OR TO THE PERSON AUTHORIZED BY LAW TO**
27 **CONSENT TO DONATION:**

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

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

5 (c) THAT THE NONTRANSPLANT TISSUE BANK WILL BE
6 COMPENSATED FOR DISTRIBUTION OF THE HUMAN REMAINS;

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

12 (a) VIOLATES AN ORDER OF THE DIRECTOR, THIS ARTICLE 54.5, OR
13 THE RULES ESTABLISHED UNDER THIS ARTICLE 54.5;

14 (b) MAKES A MATERIAL MISSTATEMENT OR OMISSION IN THE
15 REGISTRATION OR THE APPLICATION FOR A REGISTRATION;

16 (c) VIOLATES FEDERAL LAW, COLORADO LAW, OR AN ORDINANCE
17 OR RESOLUTION OF A POLITICAL SUBDIVISION OF COLORADO IN THE
18 OPERATION OF THE NONTRANSPLANT TISSUE BANK; OR

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

25 (2) TO BE VALID, A PROCEEDING TO DENY, SUSPEND, REVOKE, OR
26 PLACE ON PROBATION A REGISTRATION MUST BE CONDUCTED IN
27 ACCORDANCE WITH SECTIONS 24-4-104 AND 24-4-105. THE DIRECTOR

1 MAY USE AN ADMINISTRATIVE LAW JUDGE EMPLOYED BY THE OFFICE OF
2 ADMINISTRATIVE COURTS IN THE DEPARTMENT OF PERSONNEL TO
3 CONDUCT A HEARING.

4 **12-54.5-107. Violations and penalties.** A PERSON WHO VIOLATES
5 THIS ARTICLE 54.5 IS GUILTY OF A MISDEMEANOR AND, UPON CONVICTION,
6 SHALL BE PUNISHED BY A FINE OF NOT MORE THAN FIVE THOUSAND
7 DOLLARS, IMPRISONMENT IN THE COUNTY JAIL FOR NOT MORE THAN
8 EIGHTEEN MONTHS, OR BOTH THE FINE AND IMPRISONMENT.

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

11 **24-34-104. General assembly review of regulatory agencies**
12 **and functions for repeal, continuation, or reestablishment - legislative**
13 **declaration - repeal.** (25) (a) The following agencies, functions, or both,
14 are scheduled for repeal on September 1, 2024:

15 (XIII) The regulation of persons registered to practice mortuary
16 science by sections 12-54-110 and 12-54-111 and cremation by sections
17 12-54-303 and 12-54-304, and the administration thereof in accordance
18 with part 4 of article 54 of title 12, AND THE REGULATION OF
19 NONTRANSPLANT TISSUE BANKS BY SECTION 12-54.5-102;

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

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

27 **SECTION 6. Appropriation.** (1) For the 2018-19 state fiscal year,

1 \$17,159 is appropriated to the department of regulatory agencies. This
2 appropriation is from the division of professions and occupations cash
3 fund created in section 24-34-105 (2)(b)(I), C.R.S. To implement this act,
4 the department may use this appropriation as follows:

5 (a) \$11,831 for use by division of professions and occupations for
6 personal services, which amount is based on an assumption that the
7 division will require an additional 0.3 FTE; and

8 (b) \$5,328 for the purchase of legal services.

9 (2) For the 2018-19 state fiscal year, \$5,328 is appropriated to the
10 department of law. This appropriation is from reappropriated funds
11 received from the department of regulatory agencies under subsection
12 (1)(b) of this section. To implement this act, the department of law may
13 use this appropriation to provide legal services for the department of
14 regulatory agencies.

15 **SECTION 7. Act subject to petition - effective date.** This act
16 takes effect at 12:01 a.m. on the day following the expiration of the
17 ninety-day period after final adjournment of the general assembly (August
18 8, 2018, if adjournment sine die is on May 9, 2018); except that, if a
19 referendum petition is filed pursuant to section 1 (3) of article V of the
20 state constitution against this act or an item, section, or part of this act
21 within such period, then the act, item, section, or part will not take effect
22 unless approved by the people at the general election to be held in
23 November 2018 and, in such case, will take effect on the date of the
24 official declaration of the vote thereon by the governor.