

SENATE COMMITTEE OF REFERENCE REPORT

Chairman of Committee

April 18, 2018
Date

Committee on Judiciary.

After consideration on the merits, the Committee recommends the following:

SB18-234 be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation and with a recommendation that it be placed on the consent calendar:

1 Amend printed bill, strike everything below the enacting clause and
2 substitute:

3 "SECTION 1. In Colorado Revised Statutes, 12-54-104, **add**
4 (1)(p) as follows:

5 **12-54-104. Unlawful acts.** (1) It is unlawful:

6 (p) FOR A PERSON OWNING AN INDIRECT INTEREST WITH MORE
7 THAN TEN-PERCENT OWNERSHIP IN A FUNERAL ESTABLISHMENT OR FOR A
8 PERSON OWNING A DIRECT INTEREST IN A FUNERAL ESTABLISHMENT TO
9 OWN AN INDIRECT INTEREST WITH MORE THAN TEN-PERCENT OWNERSHIP
10 IN A NONTRANSPLANT TISSUE BANK, AS DEFINED IN SECTION 12-54.5-101
11 (5), OR TO OWN A DIRECT INTEREST IN A NONTRANSPLANT TISSUE BANK.

12 **SECTION 2.** In Colorado Revised Statutes, 12-54-301, **add** (3)
13 as follows:

14 **12-54-301. Unlawful acts.** (3) IT IS UNLAWFUL FOR A PERSON
15 OWNING AN INDIRECT INTEREST WITH MORE THAN TEN-PERCENT
16 OWNERSHIP IN A CREMATORY OR FOR A PERSON OWNING A DIRECT
17 INTEREST IN A CREMATORY TO OWN AN INDIRECT INTEREST WITH MORE
18 THAN TEN-PERCENT OWNERSHIP IN A NONTRANSPLANT TISSUE BANK, AS
19 DEFINED IN SECTION 12-54.5-101 (5), OR TO OWN A DIRECT INTEREST IN A
20 NONTRANSPLANT TISSUE BANK.

21 **SECTION 3.** In Colorado Revised Statutes, **add** article 54.5 to
22 title 12 as follows:

1 **ARTICLE 54.5**

2 **Nontransplant Tissue Banks**

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

5 (1) "BODY PART" MEANS A PORTION OF THE HUMAN BODY. THE
6 TERM DOES NOT INCLUDE BLOOD UNLESS THE BLOOD IS DONATED FOR THE
7 PURPOSE OF RESEARCH OR EDUCATION.

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

11 (3) "DIRECTOR" MEANS THE DIRECTOR OF THE DIVISION OR THE
12 DIRECTOR'S DESIGNEE.

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

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

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

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

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

25 (III) A CREMATORY REGISTERED IN ACCORDANCE WITH SECTION
26 12-54-303.

27 **12-54.5-102. Registration required - repeal.** (1) (a) BY JULY 1,
28 2019, EACH NONTRANSPLANT TISSUE BANK SHALL REGISTER WITH THE
29 DIRECTOR IN THE FORM AND MANNER DETERMINED BY THE DIRECTOR. THE
30 REGISTRATION MUST INCLUDE:

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

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

34 (III) THE DATE THE NONTRANSPLANT TISSUE BANK BEGAN DOING
35 BUSINESS;

36 (IV) THE CATEGORY OF BODY PARTS AND THE TYPE OF BODY PART
37 SERVICES PROVIDED; AND

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

40 (b) EACH NONTRANSPLANT TISSUE BANK REGISTRATION IS SUBJECT
41 TO RENEWAL PURSUANT TO A SCHEDULE ESTABLISHED BY THE DIRECTOR

1 IN ACCORDANCE WITH SECTION 24-34-102 (8) AND IN THE FORM AND
2 MANNER DETERMINED BY THE DIRECTOR.

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

9 (2) (a) EACH NONTRANSPLANT TISSUE BANK SHALL APPOINT AN
10 INDIVIDUAL AS THE DESIGNEE OF THE NONTRANSPLANT TISSUE BANK. A
11 DESIGNEE MUST:

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

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

15 (III) BE EMPLOYED BY THE REGISTERED NONTRANSPLANT TISSUE
16 BANK THAT THE DESIGNEE REPRESENTS;

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

20 (V) NOT BE DESIGNATED FOR MORE THAN ONE NONTRANSPLANT
21 TISSUE BANK UNLESS EACH ADDITIONAL NONTRANSPLANT TISSUE BANK IS
22 OPERATED UNDER COMMON OWNERSHIP AND MANAGEMENT AND UNLESS
23 EACH ADDITIONAL NONTRANSPLANT TISSUE BANK IS SIXTY MILES OR LESS
24 FROM ALL OTHER NONTRANSPLANT TISSUE BANKS HELD UNDER THE SAME
25 COMMON OWNERSHIP.

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

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

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

39 **12-54.5-103. Records and receipts.** (1) A NONTRANSPLANT
40 TISSUE BANK SHALL FURNISH TO A PERSON WHO DELIVERS A BODY PART TO
41 THE NONTRANSPLANT TISSUE BANK A RECEIPT, WHICH MUST BE SIGNED BY

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

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

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

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

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

31 **12-54.5-104. Standards of practice.** (1) A NONTRANSPLANT
32 TISSUE BANK SHALL:

- 33 (a) HANDLE BODY PARTS IN A SAFE AND SANITARY MANNER;
- 34 (b) BE EQUIPPED WITH INSTRUMENTS AND SUPPLIES NECESSARY TO
35 PROTECT THE HEALTH AND SAFETY OF THE PUBLIC AND EMPLOYEES OF THE
36 NONTRANSPLANT TISSUE BANK; AND
- 37 (c) AFFIX IDENTIFICATION TO EACH BODY PART AND PROVIDE
38 TRACKING PAPERWORK TO MATCH THE IDENTIFICATION.

39 (2) A NONTRANSPLANT TISSUE BANK SHALL NOT COMMINGLE
40 UNIDENTIFIED OR UNHARVESTED BODY PARTS PRIOR TO TRANSFER TO A
41 CREMATORY OR FUNERAL ESTABLISHMENT, AS THOSE TERMS ARE DEFINED

1 IN SECTION 12-54-102 (5) AND (12), RESPECTIVELY.
2 (3) AN INCINERATOR THAT IS USED FOR THE DISPOSAL OF BODY
3 PARTS AND THAT IS OPERATED BY A REGISTERED NONTRANSPLANT TISSUE
4 BANK NEED NOT BE REGISTERED UNDER PART 3 OF ARTICLE 54 OF THIS
5 TITLE 12. THE INCINERATOR MAY COMMINGLE TISSUE FROM MEDICAL OR
6 EDUCATIONAL RESEARCH FROM MULTIPLE DECEDENTS.
7 **12-54.5-105. Disclosure.** (1) A NONTRANSPLANT TISSUE BANK
8 SHALL DISCLOSE, IN CLEAR AND UNAMBIGUOUS TERMS, THE FOLLOWING
9 INFORMATION TO THE DONOR OR TO THE PERSON AUTHORIZED BY LAW TO
10 CONSENT TO DONATION:
11 (a) THAT THE DONATED BODY PART MAY BE DISTRIBUTED, IN
12 WHOLE OR IN PART, BY THE NONTRANSPLANT TISSUE BANK;
13 (b) THAT THE DONATED BODY PART MAY BE RETURNED, IN WHOLE
14 OR IN PART, TO THE NONTRANSPLANT TISSUE BANK; AND
15 (c) THAT THE NONTRANSPLANT TISSUE BANK WILL BE
16 COMPENSATED FOR DISTRIBUTION OF THE BODY PART.
17 **12-54.5-106. Discipline.** (1) THE DIRECTOR MAY DENY, SUSPEND,
18 REVOKE, OR PLACE ON PROBATION A NONTRANSPLANT TISSUE BANK OR
19 ISSUE A LETTER OF ADMONITION TO AN APPLICANT FOR OR HOLDER OF A
20 NONTRANSPLANT TISSUE BANK REGISTRATION IF THE NONTRANSPLANT
21 TISSUE BANK OR APPLICANT:
22 (a) VIOLATES AN ORDER OF THE DIRECTOR, THIS ARTICLE 54.5, OR
23 THE RULES ESTABLISHED UNDER THIS ARTICLE 54.5;
24 (b) MAKES A MATERIAL MISSTATEMENT OR OMISSION IN THE
25 REGISTRATION OR THE APPLICATION FOR A REGISTRATION;
26 (c) VIOLATES FEDERAL LAW, COLORADO LAW, OR AN ORDINANCE
27 OR RESOLUTION OF A POLITICAL SUBDIVISION OF COLORADO IN THE
28 OPERATION OF THE NONTRANSPLANT TISSUE BANK; OR
29 (d) HAS INCURRED DISCIPLINARY ACTION RELATED TO THE
30 ADMINISTRATION OF A NONTRANSPLANT TISSUE BANK IN ANOTHER
31 JURISDICTION. EVIDENCE OF THIS DISCIPLINARY ACTION IS PRIMA FACIE
32 EVIDENCE FOR DENIAL OF REGISTRATION OR OTHER DISCIPLINARY ACTION
33 IF THE VIOLATION WOULD BE GROUNDS FOR DISCIPLINARY ACTION IN THIS
34 STATE.
35 (2) TO BE VALID, A PROCEEDING TO DENY, SUSPEND, REVOKE, OR
36 PLACE ON PROBATION A REGISTRATION MUST BE CONDUCTED IN
37 ACCORDANCE WITH SECTIONS 24-4-104 AND 24-4-105. THE DIRECTOR
38 MAY USE AN ADMINISTRATIVE LAW JUDGE EMPLOYED BY THE OFFICE OF
39 ADMINISTRATIVE COURTS IN THE DEPARTMENT OF PERSONNEL TO
40 CONDUCT A HEARING.
41 **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 TWENTY-FOUR 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
28 state constitution against this act or an item, section, or part of this act
29 within such period, then the act, item, section, or part will not take effect
30 unless approved by the people at the general election to be held in
31 November 2018 and, in such case, will take effect on the date of the
32 official declaration of the vote thereon by the governor."

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