



Legislative
Council Staff

Nonpartisan Services for Colorado's Legislature

**FINAL
FISCAL NOTE**

Drafting Number:	LLS 18-1019	Date:	July 25, 2018
Prime Sponsors:	Sen. Coram; Crowder Rep. Kraft-Tharp; Catlin	Bill Status:	Signed into Law
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Bill Topic: HUMAN REMAINS DISPOSITION SALE BUSINESSES

Summary of Fiscal Impact:

<input checked="" type="checkbox"/> State Revenue	<input checked="" type="checkbox"/> TABOR Refund
<input checked="" type="checkbox"/> State Expenditure	<input checked="" type="checkbox"/> Local Government (<i>minimal</i>)
<input type="checkbox"/> State Transfer	<input type="checkbox"/> Statutory Public Entity

This bill makes it unlawful to own an interest in a funeral establishment or a crematory and also own an interest in a nontransplant tissue bank. This bill also requires nontransplant tissue banks to register with the Department of Regulatory Agencies and creates a misdemeanor crime for law violations by nontransplant tissue banks. This bill increases state revenue and expenditures on an ongoing basis. Local government revenue, expenditures, and workload are also increased by a minimal amount on an ongoing basis.

Appropriation Summary: For FY 2018-19, this bill includes an appropriation of \$17,159 to the Department of Regulatory Agencies.

Fiscal Note Status: This fiscal note reflects the enacted bill.

**Table 1
State Fiscal Impacts Under SB 18-234**

		FY 2018-19	FY 2019-20
Revenue	General Fund and Cash Funds	less than \$50,000	less than \$50,000
Expenditures	Cash Funds	\$17,159	\$35,046
	Centrally Appropriated Funds	\$2,677	\$7,452
	Total	\$19,836	\$42,498
	Total FTE	0.3 FTE	0.6 FTE
Transfers		-	-
TABOR Refund	General Fund	less than \$50,000	less than \$50,000

Summary of Legislation

This bill makes it unlawful for a person owning an indirect or direct interest in a funeral establishment or in a crematory to own an indirect or direct interest in a nontransplant tissue bank. Indirect interest is ownership of more than 10 percent.

This bill also requires each nontransplant tissue bank to register with the Department of Regulatory Agencies (DORA) by July 1, 2019. Nontransplant tissue banks are required to appoint a designee, pay registration and renewal fees set by DORA, comply with standards of practice as specified in the bill, maintain delivery records, and disclose donor information. DORA may initiate disciplinary actions against a nontransplant tissue bank, which can include the suspension, denial, or revocation of a registration. These requirements for nontransplant tissue banks repeal September 1, 2024, and are subject to a sunset review by DORA prior to this date.

This bill also creates a misdemeanor for violations of law by nontransplant tissue banks punishable by a fine of up to \$5,000, imprisonment in a county jail of 24 months, or both.

Comparable Crime

Legislative Council Staff is required to include certain information in the fiscal note for any bill that creates a new crime, changes the classification of an existing crime, or changes an element of the existing crime that creates a new factual basis for the offense.

Mortuary science code. By making it unlawful for a person to have an indirect or direct interest in a funeral establishment or a crematory and a nontransplant tissue bank, this bill changes the element of an existing crime and creates a new factual basis for the offense. Under current law, a violation of the mortuary science code can be charged as an unclassified misdemeanor or may be enforced by civil action initiated by the Attorney General or a district attorney. Since 2015, there have been zero convictions for violating the mortuary science code.

Nontransplant tissue bank violations. This bill creates a new misdemeanor crime for nontransplant tissue bank law violations. Since this is a new crime, sentencing data does not exist. To form an estimate on the prevalence of this crime, data on the abuse of a corpse, which includes any person, association, corporation, or officer knowingly transporting or accepting a body for transportation, interment, or other disposition without a legally issued permit, which is a class 2 misdemeanor, was analyzed. Since 2015, there have been zero convictions of abuse of a corpse.

Background and Assumptions

A mortuary science practitioner is a person who, for profit, prepares human remains for final disposition, embalms or cremates human remains, or arranges, directs, or supervises funerals, memorial services, or grave side services. This analysis assumes a high level of compliance with this bill's requirements and that the number of misdemeanor or civil cases resulting from this bill will be minimal.

State Revenue

Beginning in FY 2018-19, this bill may increase cash fund state revenue by less than \$5,000 per year from criminal fines and fees to the extent violations occur and \$42,514 from nontransplant tissue bank registration fees for a total annual increase of less than \$50,000.

Criminal fines. The bill may increase state revenue by less than \$5,000 per year credited to the Fines Collection Cash Fund in the Judicial Department. The fine penalty violations under this bill is up to \$5,000. Because the courts have the discretion of incarceration, imposing a fine, or both, the precise impact to state revenue cannot be determined. However, based on the low number of fines imposed by the courts, the fiscal note assumes that any revenue generated is likely to be less than \$5,000.

Court and administrative fees. The bill may also increase state fee revenue credited to the General Fund and various cash funds. Fees are imposed for a variety of court-related costs, which vary based on the offense, but may include probation supervision, drug or sex offender surcharges, victim compensation, and late fees, among others. Revenue may also be received from fees assessed in civil actions against mortuary science practitioners. Some fee revenue is shared with local governments; refer to the Local Government section for additional information.

Nontransplant tissue bank registration fees. This bill increases state cash fund revenue from nontransplant tissue bank registration and renewal fees. Colorado law requires legislative service agency review of measures which create or increase any fee collected by a state agency. Fee estimates are shown in Table 2 and are estimates only, actual fees will be set administratively by DORA based on regulation costs, the number of annual nontransplant tissue bank registrations, and cash fund balance.

Table 2
Estimated Registration Fee for Nontransplant Tissue Banks

Fiscal Year	Type of Fee	Estimated Fee	Number Affected	Total Fee Impact
FY 2018-19	Nontransplant tissue bank annual registration	\$733	58	\$42,514
FY 2019-20	Nontransplant tissue bank annual registration	\$733	58	\$42,514

TABOR Refund

This bill increases state revenue from criminal fines and DORA registration fees, which will increase the amount of money required to be refunded under TABOR by less than \$50,000 for FY 2018-19 and FY 2019-20. Since the bill increases the TABOR refund obligation without a corresponding change in General Fund revenue, the amount of money available in the General Fund for the budget will decrease by an identical amount. State revenue subject to TABOR is not estimated for years beyond FY 2019-20.

State Expenditures

This bill increases DORA cash fund expenditures by \$19,836 and 0.3 FTE in FY 2018-19 and \$42,498 and 0.6 FTE in FY 2019-20 and thereafter from the Division of Professions and Occupations Cash Fund. Beginning in FY 2018-19, this bill may increase workload in the Judicial Department, Department of Law, and Department of Regulatory Agencies. These impacts are shown in Table 3 and discussed below.

**Table 3
Expenditures Under SB 18-234**

Cost Components	FY 2018-19	FY 2019-20
Department of Regulatory Agencies		
Personal Services	\$11,831	\$29,148
Operating Expenses and Capital Outlay Costs	-	\$570
Legal Services	\$5,328	\$5,328
Centrally Appropriated Costs*	\$2,677	\$7,452
FTE – Personal Services	0.3 FTE	0.6 FTE
Total	\$19,836	\$42,498
Total FTE	0.3 FTE	0.6 FTE

* Centrally appropriated costs are not included in the bill's appropriation.

Department of Regulatory Agencies. For FY 2018-19, DORA requires 0.3 FTE for a technician to develop the nontransplant tissue bank registration process and to support rule making for this process. This assumes a August 1, 2018, start date based on the effective date of the bill. Funds are included for 50 hours of legal services at \$106.56 per hour for legal assistance in the promulgation of rules. Beginning in FY 2019-20, an additional 0.3 FTE is needed for a criminal investigator. This assumes there will be approximately 10 complaints per year that require a criminal investigation and settlement resolution services. Legal services are required in FY 2019-20 to provide counsel on these investigations.

DORA workload may also increase beginning in FY 2018-19 to provide education and outreach to mortuary science practitioners. Workload increases in FY 2023-24 to provide a sunset review of the nontransplant tissue bank registration program. This work can be accomplished within existing appropriations.

Additionally, under current law, the Department of Law provides representation to the DORA on legal matters concerning mortuary science practitioners. By expanding the mortuary science code, this bill may increase Department of Law workload to represent DORA or pursue civil actions. Any expenses incurred will be paid, using reappropriated funds from DORA.

Judicial Department. By expanding the scope of what is considered to be unlawful under the mortuary science code and creating a new misdemeanor crime for nontransplant tissue bank law violations, this bill may increase trial court workload. To the extent that offenders are sentenced to probation for the new misdemeanor, probation workload will also increase. A high level of compliance is anticipated; therefore, any impact is considered minimal and can be accomplished within existing appropriations.

Agencies providing representation to indigent persons. Workload and costs for the Office of the State Public Defender and the Office of the Alternate Defense Counsel may increase under the bill to represent any indigent offenders. It is assumed any impact will be minimal and can be accomplished within existing appropriations.

Local Government Impact

This bill may increase local government revenue, costs, and workload as described below. Any impact to a particular local government will vary depending on the number of offenses committed within its jurisdiction, but is expected to be minimal.

District attorneys. The bill may increase workload and costs for district attorneys to prosecute any new misdemeanor offenses under the bill. This bill may also increase workload to initiate additional civil actions against mortuary science practitioners. Overall, a high level of compliance is expected and this impact will be minimal.

County jails. Under current law, a court may sentence an offender to jail for a misdemeanor violation of the mortuary science code for a period of up to 24 months. This bill could increase county jail expenses by expanding mortuary science code penalties and by creating a new misdemeanor penalty for nontransplant tissue bank law violations. Because the courts have the discretion of incarceration or imposing a fine, the precise impact at the local level cannot be determined. Estimated costs to house an offender in a county jail vary from \$53 to \$114 per day. For the current fiscal year, the state reimburses county jails at a daily rate of \$54.39 to house state inmates.

Denver County Court. The bill may increase criminal fine and fee revenue and workload for the Denver County Court, managed and funded by the City and County of Denver. The court will try any misdemeanor nontransplant tissue bank cases and may try additional mortuary science code civil cases. Probation services in the Denver County Courts may also experience a minimal increase in revenue and workload to supervise persons convicted under the bill within Denver County. Overall, any impacts are expected to be minimal.

Cemetery districts. There are 81 county cemetery districts in the state. This bill may increase workload for cemetery districts to update policies and procedures and provide training to employees. This workload is expected to be minimal.

Effective Date

This bill was signed into law by the Governor on May 30, 2018, and takes effect August 8, 2018, assuming no referendum petition is filed.

State Appropriation

For FY 2018-19, this bill includes an appropriation of \$17,159 and an allocation of 0.3 FTE from the Divisions of Professions and Occupations Cash Fund to the Department of Regulatory Agencies. Of this, \$5,328 should be reappropriated to the Department of Law.

State and Local Government Contacts

Counties
Regulatory Agencies

District Attorneys
School Districts

Judicial