



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

HB0158

Introduced 1/16/2013, by Rep. Lou Lang

SYNOPSIS AS INTRODUCED:

New Act

Creates the Human Tissue Transfer Act. Sets forth definitions. Provides that the living donor from whom the human tissue specimen was physically removed is the owner of that human tissue specimen prior to removal and that to transfer ownership of a human tissue specimen from a living donor to another party requires the written agreement as set forth in the Act if that other party is a physician. Provides that ownership of human tissue specimens that are physically removed from a living donor resides in the party who has signed and complied with the conditions of the agreement in the Act if that party is a physician. Provides that when the agreement set forth in the Act has been fully executed by the living donor and a physician and the human tissue specimens have been physically removed prior to the death of the living donor, but the payment required by the agreement has not been made prior to the death of the donor, the payment shall be made to the successor in interest. Sets forth provisions concerning the misappropriation of human tissue specimens, remedies, actions for misappropriation, the applicability of the Act, the scope of the human tissue agreement, and the form of the agreement.

LRB098 04087 RPM 34110 b

1 AN ACT concerning health.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the Human
5 Tissue Transfer Act.

6 Section 5. Definitions. As used in this Act, and unless
7 the context requires otherwise:

8 "Human tissue specimen" means any biological material
9 originating within and taken from a living donor (i) as
10 designated exclusively by items (6) and (7) of subsection (b)
11 of Section 12-20 of the Criminal Code of 2012 and (ii) not to
12 be transplanted directly into another human body.

13 "Informed consent" means a living person's agreement to a
14 medical procedure in which tissue will be removed, which is
15 based upon complete disclosure of facts required to proceed
16 intelligently with that medical procedure, and which includes
17 disclosure of a physician's financial and commercial interests
18 in the removed tissues.

19 "Living donor" means the viable natural person from whom a
20 human tissue specimen is physically and permanently removed.

21 "Medical procedure" means an act accomplished upon a human
22 body for therapeutic or diagnostic purposes.

23 "Ownership" means the maximum collection of rights to enjoy

1 property, including the rights to transfer property to others,
2 as well as to control, handle, and dispose the property, and
3 including the right to use the property to the exclusion of
4 others.

5 "Possession" means the detention, control, or manual
6 custody of property so that one can exercise power over
7 property to the exclusion of others.

8 "Successors in interest" includes those persons who own or
9 obtain ownership interests in a decedent's assets subsequent to
10 the decedent's death.

11 Section 10. Ownership of human tissue specimens.

12 (a) The living donor from whom the human tissue specimen
13 was physically removed is the owner of that human tissue
14 specimen prior to removal.

15 (b) To transfer ownership of a human tissue specimen from a
16 living donor to another party requires the written agreement as
17 set forth in Section 40 of this Act if that other party is a
18 physician.

19 (c) Ownership of human tissue specimens that are physically
20 removed from a living donor resides in the party who has signed
21 and complied with the conditions of the agreement in Section 40
22 of this Act if that party is a physician.

23 (d) When the agreement set forth in Section 40 of this Act
24 has been fully executed by the living donor and a physician and
25 the human tissue specimens have been physically removed prior

1 to the death of the living donor, but the payment required by
2 the agreement has not been made prior to the death of the
3 donor, the payment shall be made to the successor in interest.

4 Section 15. Misappropriation. Misappropriation of human
5 tissue specimens occurs whenever:

6 (1) there was no written informed consent for
7 commercialization of the human tissue specimens prior to
8 physical removal of the tissue specimen from the living
9 donor;

10 (2) there was no written authorization from the living
11 donor to sell, license, or otherwise use the tissue
12 specimens for commercial advantage;

13 (3) human tissue specimens were otherwise unlawfully
14 obtained and commercially exploited by misrepresentation,
15 breach of a confidential relationship, or breach of a
16 fiduciary duty; or

17 (4) unlawful taking occurred by a person who knew or
18 had reason to know that the human tissue specimens were
19 unlawfully obtained or derived from a person who utilized
20 improper means to acquire or use them.

21 Section 20. Remedies.

22 (a) Misappropriation, or imminent misappropriation, of
23 human tissue specimens may be enjoined by a court of
24 appropriate jurisdiction.

1 (b) If the court determines that it would be unreasonable
2 to prohibit future use due to an overriding public interest, an
3 injunction may condition future use and possession upon payment
4 of a reasonable royalty to the living donor successors in
5 interest.

6 (c) The living donor successors in interest may recover
7 profits or a reasonable royalty, as well as attorney's fees,
8 upon proof of misappropriation.

9 Section 25. Actions for misappropriation. An action for
10 misappropriation must be brought within 2 years after the
11 misappropriation is discovered, or by reasonable diligence
12 should have been discovered. For the purposes of this Act, a
13 continuing misappropriation of human tissue specimens from a
14 single living donor constitutes a single claim.

15 Section 30. Applicability.

16 (a) Except as provided in subsection (b) of this Section,
17 this Act supersedes conflicting tort restitution and other laws
18 of this State that provide civil remedies for conversion and
19 misappropriation of personal property.

20 (b) This Act does not affect:

21 (1) criminal remedies for misappropriation;

22 (2) the definition of misappropriation contained in
23 any other Act of this State;

24 (3) remedies available for invasion of privacy or

1 wrongful taking of genetic or other health information
2 pursuant to federal or State law;
3 (4) laws for organ donations;
4 (5) laws for cadavers; or
5 (6) violations of the Illinois Anatomical Gift Act.

6 Section 35. Scope of the agreement. The agreement in
7 Section 40 of this Act is not effective or intended for persons
8 and entities outside the scope of living donors and physicians.

9 Section 40. Agreement; form. A human tissue transfer
10 agreement between a living donor and a physician shall be in
11 substantially the following form:

12 ".....(hereinafter 'Physician'), a natural person doing
13 business at, and, a natural person
14 residing at (hereinafter 'Living Donor'), enter
15 into the following Agreement:

16 1. Living Donor's body contains a rare kind of
17(hereinafter 'human tissue specimen').

18 2. Physician requests that Living Donor physically
19 transfer a human tissue specimen and ownership thereof to
20 Physician.

1 3. Physician will apply the human tissue specimen
2 potentially for commercial purposes in addition to research
3 purposes.

4 4. Living Donor consents to the physical transfer and
5 Physician's ownership of a human tissue specimen solely for
6 these purposes.

7 5. Physician will compensate Living Donor for physical
8 transfer and ownership of a human tissue specimen with the
9 statutory fee of \$2,000 upon physical transfer of the human
10 tissue specimen to Physician. In the alternative, if Living
11 Donor so requests, Physician will negotiate a reasonable fee
12 for physical transfer and ownership of the human tissue
13 specimen.

14 6. After Living Donor relinquishes physical possession of
15 the human tissue specimen, Physician acquires all rights,
16 title, and ownership in that human tissue specimen after
17 signing this Agreement and payment of either fee of Item 5.

18 7. If Living Donor becomes deceased after this Agreement is
19 executed, but before the human tissue specimen has been
20 physically transferred to Physician, this Agreement is null and
21 void.

1 8. If Living Donor becomes deceased after this Agreement is
2 executed, and after the human tissue specimen has been
3 physically transferred to the Physician, Physician agrees to
4 compensate successor(s) in interest pursuant to Item 5.

5 9. Notwithstanding Item 5 above, Living Donor may
6 voluntarily and affirmatively opt out from the requirements of
7 Item 5. Living Donor hereby affirmatively donates the human
8 tissue specimen without the statutory or negotiated fee by
9 initialing and dating this Item 9:

10 10. Notwithstanding other provisions in this Agreement,
11 Living Donor or Deceased Donor's successor(s) in interest
12 retain(s) all ownership rights to human tissue which remain
13 integrally part of Living Donor body, and they may provide
14 human tissue specimens therefrom to other parties, including by
15 donating organs or tissue pursuant to the Illinois Anatomical
16 Gift Act.

17 11. This Agreement is not applicable to persons or entities
18 who are not physicians, Living Donors, or successors in
19 interest of Deceased Donors.

20 12. Physician's financial and commercial interests in the
21 removed human tissue and in any medical laboratory, research
22 facility, or any other entity that may make use of the removed

1 tissue are as follows:

2 -----
 3 -----
 4 -----

5 13. This Agreement does not supersede confidentiality and
 6 access restrictions for tissue banks, or other medical and
 7 genetic information restrictions under Illinois or federal
 8 law.

9 14. This Agreement is governed by the laws of the State of
 10 Illinois, including conflicts of laws.

11 Date:.....
 12 Living Donor - Signature

13 Date:.....
 14 Physician - Signature

15 By signing this Agreement, Physician verifies that he or
 16 she has made a full disclosure of all financial and commercial
 17 interests in the removed human tissue specimen and in any
 18 medical laboratory, research facility, or any other entity that
 19 may make use of the removed human tissue specimen.".