1999 DRAFTING REQUEST

Bill

Received: 12/27/ 1999

Received By: **kenneda**

Wanted: As time permits

Identical to LRB:

For: **Sheryl Albers (608) 266-8531**

By/Representing: **Herself**

This file may be shown to any legislator: NO

Drafter: **kenneda**

May Contact:

Alt. Drafters:

Subject: **Health - miscellaneous**

Extra Copies: **ISR, JEO**

Pre Topic:

No specific pre topic given

Topic:

Sale of child's body parts and tissue prohibited

Instructions:

See Attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
I?	kenneda 01/03/2000	gilfokm 01/03/2000		_____ _____			State
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/2	kenneda 02/09/2000	gilfokm 02/09/2000	martykr 02/09/2000	_____ _____	lrb-docadmin 02/09/2000		State
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/6	kenneda 02/18/2000	gilfokm 02/18/2000	jfrantze 02/18/2000	_____ _____ _____ _____	lrb-docadmin 02/18/2000	gretskl 02/22/2000 lrb-docadmin 02/22/2000	

FE Sent For: 2/29/00

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/4	kenneda	gilfokm	jfrantze	_____	lrb-docadmin		State

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Bill

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LRB-4118

1999 DRAFTING REQUEST

Bill

Received: **12/27/1999**

Received By: **kenneda**

Wanted: **As time permits**

Identical to LRB:

For: **Sheryl Albers (608) 266-8531**

By/Representing: **Herself**

This file may be shown to any legislator: NO

Drafter: **kenneda**

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Subject: **Health - miscellaneous**

Extra Copies: **ISR, JEO**

Pre Topic:

No specific pre topic given

Topic:

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Instructions:

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'2	kenneda 02'09'2000	gilfokm 02'09'2000	martykr 02'09'2000	_____ _____	lrb-docadmin 02/09/2000		
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LRB-4118

1999 DRAFTING REQUEST

Bill

Received: **1212711999**

Received By: **kenneda**

Wanted: **As time permits**

Identical to LRB:

For: **Sheryl Albers (608) 266-8531**

By/Representing: **Herself**

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Drafter: **kenneda**

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Subject: **Health - miscellaneous**

Extra Copies: **ISR, JEO**

Pre Topic:

No specific pre topic given

Topic:

Sale of child's body parts and tissue prohibited

Instructions:

See Attached

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LRB-4118

1999 DRAFTING REQUEST

Bill

Received: **12/27/1999**

Received By: **kenneda**

Wanted: **As time permits**

Identical to LRB:

For: **Sheryl Albers (608) 266-8531**

By/Representing: **Herself**

This file may be shown to any legislator: **NO**

Drafter: **kenneda**

May Contact:

Alt. Drafters:

Subject: **Health - miscellaneous**

Extra Copies: **ISR, JEO**

Pre Topic:

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Topic:

Sale of child's body parts and tissue prohibited

Instructions:

See Attached

Drafting History:

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FE Sent For:

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Sheryl Albers

To: Legislative Reference Bureau - Drafting
From: Representative Sheryl K. Albers

Date: December 23, 1999
Subject: Child Tissue Trafficking Legislation

Please draft legislation which will mirror, as closely as possible, the following model language:

000.00 Trafficking of Child Tissue

(1) DEFINITIONS. In this section:
(a) "Child" means a human being from the time of fertilization until it is completely delivered from a pregnant woman.
(b) "Tissue" means tissue, organs, bodily fluids or a bodily part. Def part;
(c) "Item of value" means money, real estate, funeral related services, and personal property. includes incl. tissue

(2) Any person who intentionally acquires, receives, sells or transfers tissue from a child who is aborted or stillborn, or who dies immediately after birth, in exchange for an item of value is guilty of a Class D Felony.

I would like the legislation available to my office no later than Friday, January 7, 1999, if possible.

Thank you.

1/3/2000 Note to file: I discussed this draft with Scott Southworth (aide); he agreed that s.146.345, stats., covers this request, except for the following:
1) "Human" should be defined to be from fertilization
2) Connective and cardiovascular tissue should be added to def. of "human organ".

Office: P.O. Box 8952 . State Capitol . Madison, WI 53708-8952 . (808) 266-8531
Home: S6696 Seeley Creek Road . Loganville, WI 53943 . (608) 727-5084

By Thurs. 1/6

State of Wisconsin
1999 – 2000 LEGISLATURE

D-NOTE

LRB–4118/1

DAK:...

PRELIMINARY DRAFT – NOT READY FOR INTRODUCTION

Gen. Cat.

AN ACT ...; **relating to:** prohibiting the sale of organs of a human being from the time of fertilization.

Analysis by the Legislative Reference Bureau

Under current law, no one may knowingly and for valuable consideration acquire, receive or otherwise transfer a human organ for use in human organ transplantation. A "human organ" is defined to mean a human kidney, liver, heart, lung, pancreas, bone marrow, cornea, eye, bone or skin or any other human organ specified by the department of health and family services by rule.

This bill expands the definition of "human organ", for purposes of laws prohibiting selling or buying organs for use in human organ transplantation, to include connective tissue and cardiovascular tissue and to specify that the organs to which the prohibitions apply are those of a human being after fertilization.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 146.345 (1) (a) of the statutes is amended to read:

146.345 **(1)** (a) "Human organ" means ~~a human~~ the kidney, liver, heart, lung, pancreas, bone marrow, cornea, eye, bone, connective tissue! cardiovascular tissue

or skin of a human being after fertilization or any other ~~human~~ organ of a human being after fertilization specified by the department by rule. "Human organ" does not mean ~~human~~ whole blood, blood plasma, a blood product or a blood derivative or ~~human~~ semen of a human being; after fertilization.

History: 1981 a. 97; 1997 a. 283.

(END)

D-NOTE

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB–4118/7dn
DAK...:...

To Scott Southworth:

As a follow-up to our conversation today about this draft, if you wish to prohibit the sale or buying of fetal blood, that could be accomplished by substituting the word "delivery or other removal from the mother" for "fertilization" in the second sentence of the definition.

Debora A. Kennedy
Managing Attorney
Phone: (608) 266-0137

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB–4118/1dn
DAK:kmg:jf

January 4, 2000

To Scott Southworth:

As a follow-up to our conversation today about this draft, if you wish to prohibit the sale or buying of fetal blood, that could be accomplished by substituting the word "delivery or other removal from the mother" for "fertilization" in the second sentence of the definition.

Debora A. Kennedy
Managing Attorney
Phone: (608) 266-0137

Sheryl Albers

To: Attorney Debora Kennedy, LRB
From: Attorney Scott Harold Southworth SHS

Date: January 19, 2000
Subject: Body Parts Trafficking Bill (LRB 4118)
Reference: LRB' 4118/1

Debora:

Thank you for your work on /1 of the bill. After studying the draft and meeting with Sheryl and Pro-Life Wisconsin, we would like to make the following changes:

1) You noted that we could prohibit the sale or buying of fetal blood by substituting the phrase "delivery or other removal from the mother" for "fertilization" in the second sentence of the definition of "human organ," I'm not certain that this would stop the sale of blood from a baby after it's born and dies, if the baby is stillborn, or if the baby is aborted. In addition, our conversations have led us to the opinion that we should ban the sale or buying of blood from any child from fertilization until they reach adulthood. We do not want to ban the sale of blood products from adults, since we understand that plasma donation centers, etc. provide a legitimate service [they would argue that they only compensate for people's time, not their plasma; however, we do not want to make this a debatable point in the bill].

   Thus, I believe these changes will accomplish our goal:

   See changes
   - Define "child" as a human being from fertilization up to, and including, the age of 17.
   - Add "any blood product of a child" to the definition of "human organ."
   - Delete "of a human being after fertilization" on page 2, line 4 of the bill and add "of a human being 18 years of age or older."

2) We will need to amend $146.34 (2), since it currently deals strictly with human organ transplantation and we want to cover any sale of human organs. Thus, I recommend that we simply eliminate the words "for use in human organ transplantation."

3) Currently, $146.34 does not offer a definition of "valuable consideration;" rather, it defines what valuable consideration is *not.* In addition, when we eliminate "for use in human organ transplantation" in sub. (2) (see change #2, above), we broaden the entire statutory section to include medical research. If we don't include an exception for certain expenses related to medical research donations, a person who dies and wills their body to a university for

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Home: S6896 Seeley Creek Road . Loganville, WI 53943 . (608) 727-5084

medical research may put all of the expenses onto their family or estate. I believe the following changes will address both of these issues:

- Add the following as the first sentence in sub. (1) (c):

  "Valuable consideration" means money, real estate, funeral related services, and personal property.

  services related to a funeral, cremation or burial

- Make the current definition of sub. (1) (c) the 2nd sentence.
- Add the following exception to the definition of "valuable consideration" as the 3rd sentence:

  "Valuable consideration" does not include reasonable payment associated with the removal, transportation, processing, preservation, quality control or storage of a human organ donated for medical or scientific research.

Thank you for your assistance with this bill. As always, please call me with any thoughts, suggestions or questions.

Kennedy, Debora

From: Southworth, Scott
Sent: Thursday, February 03, 2000 5:15 PM
To: Kennedy, Debora
Subject: Body Parts Trafficking Legislation (LRB 4118/1)

3 Feb 00

Debora.

Is there any chance we can get that body parts trafficking bill sometime early next week? I know you're probably very busy, and I don't mean to pressure you. However, Sheryl is concerned that if we don't get our legislation introduced very soon, we won't even get a committee hearing this session.

I also have one addition to add to my memo of 19 Jan 00. In that memo, I attempted to address the two exceptions to the prohibition to providing any valuable consideration - namely, expenses related to organ transplantation and expenses related to donating human organs for medical or scientific research. As an "exception to the exception," however, we would like to completely exclude any valuable consideration - even for expenses - for aborted children. Our goal is to ensure *no* money or property changes hands as a result of an abortion. I'm not certain how such a statement would be drafted. One thought might be to simply add the phrase, "unless the human organ derives from an aborted child" at the end of both exceptions to the definition of "valuable consideration." In other words: " 'Valuable consideration' does not include . . . unless the human organ derives from an aborted child." Another approach might be the following: " 'Valuable consideration' does not include . . . if the human organ derives from a person not aborted."

If you can think of a better way to handle this, please do so! Neither of my examples are sitting right with my sense of good English.

Give me a call when you get a chance, and we can talk further about this - or the bill in general. Thanks for your help and time. I do hope all is well for you and the other staff at LRB.

Sincerely,
Scott

TODAY 2/9

STAYS

1999 - 2000 LEGISLATURE

LRB–4118/2
DAK:kmg:~~[illegible]~~

Redraft makes has been run

1999 BILL

or purchase

Gen Cat.

AN ACT *to amend* 146.345 (1) (a) of the statutes; **relating to:** prohibiting the sale of organs of a human being ~~from the time of fertilization~~.

Analysis by the Legislative Reference Bureau

INSERT ANAL

Under current law, no one may knowingly and for valuable consideration acquire, receive or otherwise transfer a human organ for use in human organ transplantation. A "human organ" is defined to mean a human kidney, liver, heart, lung, pancreas, bone marrow, cornea, eye, bone or skin or any other human organ specified by the department of health and family services by rule.

This bill expands the definition of "human organ", for purposes of laws prohibiting selling or buying organs for use in human organ transplantation, to include connective tissue and cardiovascular tissue and to specify that the organs to which the prohibitions apply are those of a human being after fertilization.

For further information see the ***state*** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 146.345 (1) (a) of the statutes is amended to read:

146.345 **(1)** (a) "Human organ" means ~~a human~~ the kidney, liver, heart, lung, pancreas, bone marrow, cornea, eye, bone, connective tissue, cardiovascular tissue

1 or skin of a human being after fertilization **or any other** ~~human~~ **organ of a human**
2 being after fertilization specified by the department by rule. "Human organ" does
3 not mean ~~human~~ whole blood, blood ~~plasma~~, a blood product or a blood derivative or
4 ~~human~~ **semen of a human being after fertilization.**

5 **(END)**

INSERT 2-4

INSERT ANAL

no # "Va 1uable consideration" is defined *not* to include reasonable payment associated with the removal, transportation, implantation, processing, preservation, quality control or storage of a human organ or expenses incurred by a human organ donor in connection with donation of the human organ.

This bill expands laws prohibiting the sale or purchase of human organs for use in human organ transplantation to prohibit *any* sale or purchase of human organs. The bill expands the definition of "human organ", for purposes of this prohibition, to include the organs of a human being after fertilization (i.e., fetal tissue) and, among the organs specified, to include the blood of a human being after fertilization and before 18 years of age and connective and cardiovascular tissue. The bill defines the "valuable consideration" to mean services related to a funeral, cremation or burial, money or real or personal property. Further, the bill changes the exclusion from the definition of "valuable consideration" so that the prohibition against sale or purchase of human organs does not apply when the "valuable consideration" involves reasonable payment associated with a human organ that is donated for transplantation, other than the human organ of an aborted fetus, or reasonable payment associated with a human organ that is donated for medical or scientific research, other than the human organ of an aborted fetus.

INSERT 2-4

SECTION 1. 146.345 (1) (a) of the statutes is repealed and recreated to read:

146.345 **(1)** (a) 1. "Human organ" means any of the following:

a. The kidney, liver, heart, lung, pancreas, bone marrow, cornea, eye, bone, connective tissue, cardiovascular tissue or skin of a human being after fertilization, or any other organ of a human being after fertilization that is specified by the department by rule.

b. The whole blood, blood plasma, blood product or blood derivative of a human being after fertilization and before 18 years of age.

2. "Human organ" does not mean the whole blood, blood plasma, blood product, blood derivative or semen of a human being 18 years of age or older.

SECTION 2. 146.345 (1) (c) of the statutes is repealed and recreated to read:

146.345 **(1)** (c) 1. Except as provided in subd. 2, "valuable consideration" means services related to a funeral, cremation or burial, money or real or personal property.

2. "Valuable consideration" does not mean any of the following:

a. Reasonable payment associated with the removal, transportation, implantation, processing, preservation, quality control or storage of a human organ that is donated for transplantation, other than the human organ of an aborted fetus, or an expense of travel, housing or lost wages incurred by a human organ donor in connection with donation of the human organ.

b. Reasonable payment associated with the removal, transportation, processing, preservation, quality control or storage of a human organ that is donated for medical or scientific research, other than the human organ of an aborted fetus.

SECTION 3. 146.345 (2) of the statutes is amended to read:

146.345 (2) No person may knowingly and for valuable consideration acquire, receive or otherwise transfer any human organ ~~for use in human organ transplantation~~

History: 1987 a. 97; 1997 a 283.

Kennedy, Debora

From: Southworth, Scott
Sent: Thursday, February 10, 2000 11:07 AM
To: Kennedy, Debora
Subject: LRB 411812 -- Sale or purchase of organs of a human being

10 Feb 00

Debora,

Thank you so much for your excellent work. I can tell you that your analysis is one of the best I've seen in my 2+ years at the Capitol - legislators and the public will definitely understand the current status of the law, and where this legislation takes us. Bravo!

We only have two minor changes:

(1) Add the word "semen" to line 7 of page 2 [§146.345 (1) (a) 1. b.]. This just prevents a teenager from selling their semen (it probably doesn't happen, but we don't want anyone asking us why we didn't prevent the possibility - in today's world, who knows what could happen!).

(2) Instead of the word "fetus," we would like to use the word "child" - Aside from the analysis, the word change would be on page 2, line 17 and on page 3, line 5. Using the phrase "aborted child" is consistent with the use of the phrase "unborn child" in 5253.10 (informed consent), and better meets our goal of eliminating the word "fetus" from use in the statutes. Please give me a call if this change will cause a problem. I did consider the possibility that the use of the word "child" might require us to define that word (which we decided to forgo in our conversation yesterday). When I looked at §253.10, however, I noted that they do not define "unborn child." I do see that in 253.10 (2) (a) they use the phrase "dead fetus." However, I conclude that "aborted child" stands on its own merits, and defining "child" or "aborted child" would not be necessary for our bill. Do you agree?

Give me a call if you want to talk about the changes. Also, if possible, could you get me /3 sometime today?

Thanks again for your great work. You made this process of combining a number of different policy objectives into one succinct bill very easy for us.

Scott

Use:
human being who ~~dies~~
is aborted before
being born alive

(4:00 TODAY)

1999 BILL

1 AN ACT *to amend* 146.345 (2); and *to repeal and recreate* 146.345 (1) (a) and
2 146.345 (1) (c) of the statutes; **relating to:** prohibiting the sale or purchase of
3 organs of a human being.

Analysis by the Legislative Reference Bureau

Under current law, no one may knowingly and for valuable consideration acquire, receive or otherwise transfer a human organ for use in human organ transplantation. A "human organ" is defined to mean a human kidney, liver, heart, lung, pancreas, bone marrow, cornea, eye, bone or skin or any other human organ specified by the department of health and family services by rule. "Valuable consideration" is defined to *not* include reasonable payment associated with the removal, transportation, implantation, processing, preservation, quality control or storage of a human organ or expenses incurred by a human organ donor in connection with donation of the human organ.

This bill expands laws prohibiting the sale or purchase of human organs for use in human organ transplantation to prohibit *any* sale or purchase of human organs. The bill expands the definition of "human organ", for purposes of this prohibition, to include the organs of a human being after fertilization (i.e., fetal tissue) and, among the organs specified, to include the blood of a human being after fertilization and before 18 years of age and connective and cardiovascular tissue. The bill defines "valuable consideration" to mean services related to a funeral, cremation or burial, money or real or personal property. Further, the bill changes the exclusion from the definition of "valuable consideration" so that the prohibition against the sale or

, ova and semen

human being who is aborted before being born alive

purchase of human organs does not apply when the "valuable consideration" involves reasonable payment associated with a human organ that is donated for transplantation, other than the human organ of an aborted fetus, or reasonable payment associated with a human organ that is donated for medical or scientific research, other than the human organ of an aborted fetus.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 146.345 (1) (a) of the statutes is repealed and recreated to read:

146.345 (1) (a) 1. "Human organ" means any of the following:

a. The kidney, liver, heart, lung, pancreas, bone marrow, cornea, eye, bone, connective tissue, cardiovascular tissue or skin of a human being after fertilization, or any other organ of a human being after fertilization that is specified by the department by rule.

, ova or semen

b. The whole blood, blood plasma, blood product or blood derivative of a human being after fertilization and before 18 years of age.

2. "Human organ" does not mean the whole blood, blood plasma, blood product, blood derivative or semen of a human being 18 years of age or older.

SECTION 2. 146.345 (1) (c) of the statutes is repealed and recreated to read:

146.345 (1) (c) 1. Except as provided in subd. 2, "valuable consideration" means services related to a funeral, cremation or burial, money or real or personal property.

2. "Valuable consideration" does not mean any of the following:

a. Reasonable payment associated with the removal, transportation, implantation, processing, preservation, quality control or storage of a human organ that is donated for transplantation, other than the human organ of an aborted fetus,

human being who is aborted before being born alive

or an expense of travel, housing or lost wages incurred by a human organ donor in connection with donation of the human organ.

b. Reasonable payment associated with the removal, transportation, processing, preservation, quality control or storage of a human organ that is donated for medical or scientific research, other than the human organ of an aborted fetus.

SECTION 3. 146.345 (2) of the statutes is amended to read:

146.345 (2) No person may knowingly and for valuable consideration acquire, receive or otherwise transfer any human organ ~~for use in human organ transplantation~~.

(END)

human being who is aborted before being born alive

Kennedy, Debora

From: Southworth, Scott
Sent: Thursday, February 10, 2000 4:32 PM
To: Kennedy, Debora
Subject: LRB 411813 -- one final change!

Debora,

Thanks for /3. Only one final change: We added "ova" to the kids section, and we need to add it to the adult section (i.e. that "ova" is NOT a "human organ" for purposes of this bill). Like you, I don't want to create legal problems or inconsistencies in the statutes. By including "ova" as part of the definition of "human organ" for kids, I don't want questions to arise when people see that "semen" is in both the adult and child sections, but "ova" is only in the child section. Someone may ask why we allow adult men to sell their semen, but don't allow women to sell their ova. Others may say we've created a vague legal standard for the selling of ova - is it or is not against the law? We've worked hard to make the bill clear, and this change will ensure it stays that way.

Thanks for all of your work on this. I understand that you won't be able to get me the revision until tomorrow sometime - that's completely fine. Have a good evening.'

Scott

2/11/00 From Scott Southworth:

Delete references to "ova" and "semen" throughout the bill.

TODAY 2/11

1999 - 2000 LEGISLATURE

LRB–4118/~~3~~4
DAK:kmg:~~kf~~

1999 BILL

AN ACT *to amend* 146.345 (2); and *to repeal and recreate* 146.345 (1) (a) and 146.345 (1) (c) of the statutes; **relating to:** prohibiting the sale or purchase of organs of a human being.

Analysis by the Legislative Reference Bureau

Under current law, no one may knowingly and for valuable consideration acquire, receive or otherwise transfer a human organ for use in human organ transplantation. A "human organ" is defined to mean a human kidney, liver, heart, lung, pancreas, bone marrow, cornea, eye, bone or skin or any other human organ specified by the department of health and family services by rule. "Valuable consideration" is defined to *not* include reasonable payment associated with the removal, transportation, implantation, processing, preservation, quality control or storage of a human organ or expenses incurred by a human organ donor in connection with donation of the human organ.

This bill expands laws prohibiting the sale or purchase of human organs for use in human organ transplantation to prohibit *any* sale or purchase of human organs. The bill expands the definition of "human organ", for purposes of this prohibition, to include the organs of a human being after fertilization (i.e., fetal tissue) and, among the organs specified, to include the blood, ova and semen of a human being after fertilization and before 18 years of age and connective and cardiovascular tissue. The bill defines "valuable consideration" to mean services related to a funeral, cremation or burial, money or real or personal property. Further, the bill changes the exclusion from the definition of "valuable consideration" so that the prohibition against the

sale or purchase of human organs does not apply when the "valuable consideration" involves reasonable payment associated with a human organ that is donated for transplantation, other than the human organ of a human being who is aborted before being born alive, or reasonable payment associated with a human organ that is donated for medical or scientific research, other than the human organ of a human being who is aborted before being born alive.

For further information see the ***state*** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 146.345 (1) (a) of the statutes is repealed and recreated to read:

146.345 **(1)** (a) 1. "Human organ" means any of the following:

a. The kidney, liver, heart, lung, pancreas, bone marrow, cornea, eye, bone, connective tissue, cardiovascular tissue or skin of a human being after fertilization, or any other organ of a human being after fertilization that is specified by the department by rule.

b. The whole blood, blood plasma, blood product, blood derivative or semen of a human being after fertilization and before 18 years of age.

2. "Human organ" does not mean the whole blood, blood plasma, blood product, blood derivative or semen of a human being 18 years of age or older.

SECTION 2. 146.345 **(1)** (c) of the statutes is repealed and recreated to read:

146.345 **(1)** (c) 1. Except as provided in subd. 2, "valuable consideration" means services related to a funeral, cremation or burial, money or real or personal property

2. "Valuable consideration" does not mean any of the following:

a. Reasonable payment associated with the removal, transportation, implantation, processing, preservation, quality control or storage of a human organ that is donated for transplantation, other than the human organ of a human being

who is aborted before being born alive, or an expense of travel, housing or lost wages incurred by a human organ donor in connection with donation of the human organ.

b. Reasonable payment associated with the removal, transportation, processing, preservation, quality control or storage of a human organ that is donated for medical or scientific research, other than the human organ of a human being who is aborted before being born alive.

SECTION 3. 146.345 (2) of the statutes is amended to read:

146.345 (2) No person may knowingly and for valuable consideration acquire, receive or otherwise transfer any human organ ~~for use in human organ transplantation~~.

(END)

Sheryl Albers

To: Attorney Debora Kennedy
From: Attorney Scott Harold Southworth SHS

Date: February 14, 2000
Subject: Body Parts Trafficking Bill (LRB 4118/4)

Debora,

1) After much discussion, we have decided to modify the bill to cover "human body parts," rather than "human organs." It was always our intent to stop the sale of nearly every human body part, and earlier I did not pick up on the fact that there are a number of important organs and body parts not listed in our definition of "human organ" currently being sold. For example, one of the marketable body parts of an aborted child is the brain; another is the spinal cord. We also want to cover glands and other bodily systems, and "human body parts" should encompass this intent.

   By using the term "human body part," we should also be able to accomplish the goal of covering human embryos - in other words, if one cannot buy any part of the human body from fertilization onward, that encompasses the human embryo.

   Note that we will have the following exceptions, as we're aware that our new term will necessitate exceptions:

   Hair
   Semen of a human being 18 years of age or older
   Ova of a human being 18 years of age or older
   Whole blood, blood plasma, blood product or blood derivative of a human being 18 years of age or older

2) We would like to add the word, "retrieval" and "preparation" after the words "removal" and "preservation," respectively, in both (1) (c) 2. a. and (1) (c) 2. b. While we agree that these may be redundant terms given the phraseology already in place in the bill, the National Institutes of Health specifically utilize these terms, and we want to be consistent with their verbiage as we proceed with the bill.

Thank you for your continued assistance. As always, please call me with thoughts, suggestions or questions.

Office: **P.O. Box 8952** . State **Capitol** . **Madison, WI 53708-8952** . **(608) 266-8531**
Home: S6896 Seeley Creek Road . Loganville, WI 53943 . (608) **727-5084**

To: Attorney Debora Kennedy
From: Attorney Scott Harold Southworth

Date: February 14, 2000
Subject: Body Parts Trafficking Bill (LRB 4118/4)

Debora,

1) After much discussion, we have decided to modify the bill to cover "human body parts," rather than "human organs." It was always our intent to stop the sale of nearly every human body part, and earlier I did not pick up on the fact that there are a number of important organs and body parts not listed in our definition of "human organ" currently being sold. For example, one of the marketable body parts of an aborted child is the brain; another is the spinal cord. We also want to cover glands and other bodily systems, and "human body parts" should encompass this intent.

   By using the term "human body part," we should also be able to accomplish the goal of covering human embryos - in other words, if one cannot buy any part of the human body from fertilization onward, that encompasses the human embryo.

   Note that we will have the following exceptions, as we're aware that our new term will necessitate exceptions:

   Hair
   Semen of a human being 18 years of age or older
   Ova of a human being 18 years of age or older
   Whole blood, blood plasma, blood product or blood derivative of a human being 18 years of age or older

2) We would like to add the word, "retrieval" and "preparation" after the words "removal" and "preservation," respectively, in both (1) (c) 2. a. and (1) (c) 2. b. While we agree that these may be redundant terms given the phraseology already in place in the bill, the National Institutes of Health specifically utilize these terms, and we want to be consistent with their verbiage as we proceed with the bill.

Thank you for your continued assistance. As always, please call me with thoughts, suggestions or questions.

Kennedv. Debora

From: Southworth, Scott
Sent: Monday, February 14, 2000 2:41 PM
To: Kennedy, Debora
Subject: LRB 4118/4

Debora,

Here are the changes from our meeting . . . . . if you can get me the changes soon, I would greatly appreciate it. I do hope these are the final changes! ☺

A hard copy is on its way over as a rush, but I wanted to get you this ASAP. Thanks again.

Scott

body parts trafficking - draft...

TODAY, if possible 2/16

1999 – 2000 LEGISLATURE

LRB–4118/~~1~~5
DAK:kmg:~~jf~~

D-NOTE

1999 BILL

, ova and semen

REGENERATE

a body part of

1 AN ACT ***to amend*** 146.345 (2); and ***to repeal and recreate*** 146.345 (1) (a) and

2 146.345 (1) (c) of the statutes; **relating to:** prohibiting the sale or purchase of

3 ~~organs of~~ a human being.

excludes from the definition

e - - c -

Analysis by the Legislative Reference Bureau

Under current law, no one may knowingly and for valuable consideration acquire, receive or otherwise transfer a human organ for use in human organ transplantation. A "human organ" is defined to mean a human kidney, liver, heart, lung, pancreas, bone marrow, cornea, eye, bone or skin or any other human organ specified by the department of health and family services by rule. "Valuable consideration" is defined to *not* include reasonable payment associated with the removal, transportation, implantation, processing, preservation, quality control or storage of a human organ or expenses incurred by a human organ donor in connection with donation of the human organ.

defines

body part

for example

This bill expands laws prohibiting the sale or purchase of human organs for use in human organ transplantation to prohibit *any* sale or purchase of human ~~organs~~. The bill ~~expands the definition of~~ "human ~~organ~~", for purposes of this prohibition, to ~~include the organs~~ of a human being after fertilization (~~i.e.~~, fetal tissue) and, among ~~the organs specified to include~~ the blood of a human being after ~~fertilization and before~~ 18 years of age and ~~connective and cardiovascular tissue~~. The bill defines "valuable consideration" to mean services related to a funeral, cremation or burial, money or real or personal property. Further, the bill changes the exclusion from the definition of "valuable consideration" so that the prohibition against the sale or

body parts

3

be an organ, tissue or other part

hair

purchase of human organs does not apply when the "valuable consideration" involves reasonable payment associated with a human organ that is donated for transplantation, other than the human organ of a human being who is aborted before being born alive, or reasonable payment associated with a human organ that is donated for medical or scientific research, other than the human organ of a human being who is aborted before being born alive.

For further information see the state fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

INSERT 2-1

SECTION 1. 146.345 (1) (a) of the statutes is repealed and recreated to read:

146.345 **(1)** (a) 1. "Human organ" means ~~any of the following:~~

~~a. The kidney, liver, heart, lung, pancreas, bone marrow, cornea, eye, bone, connective tissue, cardiovascular tissue or skin of a human being after fertilization, or any other organ of a human being after fertilization that is specified by the department by rule.~~

~~b. The whole blood, blood plasma, blood product or blood derivative of a human being after fertilization and before 18 years of age.~~

2. "Human organ" does not mean the whole blood, blood plasma, blood product or blood derivative of a human being 18 years of age or older.

INSERT 2-10

SECTION 2. 146.345 (1) (c) of the statutes is repealed and recreated to read:

146.345 (1) (c) 1. Except as provided in subd. 2, "valuable consideration" means services related to a funeral, cremation or burial, money or real or personal property.

2. "Valuable consideration" does not mean any of the following:

a. Reasonable payment associated with the removal, transportation, implantation, processing, preservation, quality control or storage of a human organ that is donated for transplantation, other than the human organ of a human being

preparation, body part retrieval,

who is aborted before being born alive, or an expense of travel, housing or lost wages incurred by a human ~~organ~~ donor in connection with donation of the human ~~organ~~.

b. Reasonable payment associated with the removal, transportation, processing, preservation, quality control or storage of a human ~~organ~~ that is donated for medical or scientific research, other than the human ~~organ~~ of a human being who is aborted before being born alive.

body part

SECTION 3. 146.345 (2) of the statutes is amended to read:

146.345 (2) No person may knowingly and for valuable consideration acquire, receive or otherwise transfer any human ~~organ for use in human organ transplantation~~. body part

(END)

D-NOTE

INSERT 2–1

1 **SECTION 1.** 146.345 (title) of the statutes is amended to read:

2 **146.345** (title) Sale **of human ~~organs~~ body parts prohibited.**

History: 1987 a. 97; 1997 a. 283.

INSERT 2-10

3 **SECTION** 2. 146.345 (1) (b) of the statutes is amended to read:

4 146.345 **(1)** (b) ~~"Human organ transplantation"~~ "Transplantation" means the

5 medical procedure by which transfer of a human ~~organ~~ body part is made from the

6 body of a person to the body of another person.

History: 1987 a. 97; 1997 a. 283.

D-NOTE

:Kmg:

To Scott Southworth:

Please look at s. 146.31 (, so far as I can tell, it does not affect s. 146.345, as changed under this bill, but I am calling it to your attention.

DAK

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB–4118/5dn
DAK:kmg:jf

February 16, 2000

To Scott Southworth:

Please look at s. 146.31, stats. So far as I can tell, it does not affect s. 146.345, as changed under this bill, but I am calling it to your attention.

Debora A. Kennedy
Managing Attorney
Phone: (608) 266-0137

Kennedv. Debora

From: Southworth, Scott
Sent: Thursday, February 17, 2000 5:56 PM
To: Kennedy, Debora
Subject: 4118/5

Debora,

A hard copy will follow tomorrow . . . . . .

body parts trafficking - dra...

To: Attorney Debora Kennedy, LRB
From: Attorney Scott Harold Southworth

Date: February 17, 2000
Subject: Body Parts Trafficking Legislation (LRB 4118/5)

Debora:

We sent /5 of the draft to Father Joseph Howard, Director of the American Bioethics Advisory Commission, as well as to Attorney Mary Waver, Legislative Legal Counsel for Wisconsin Right to Life. From their recommendations, we would like to make the following 3 minor changes:

1) Page 2, lines 4-5: Add the word "cell" to the definition of "human body part." Father Howard noted that cells form tissues, tissues form organs, and organs form systems. "Systems" is not a word we can include, since it's not a tangible thing to sell; however, a "cell" is a building block which is tangible, especially in a newly forming embryo. To provide an "orderly" listing, I think that beginning with cells, then moving to tissues and then organs will work well:

> "Except as provided in subd. 2., "human body part" means a cell, tissue, an organ or other part of a human being after fertilization."

2) Page 3, lines 2 and 8: Add the word "induced" to "abortion." Father Howard also noted that when we say "human being who is aborted before being alive," we can encompass both an induced abortion and a miscarriage. I'm not certain if Wisconsin statutes define what "abortion" means specifically; nonetheless, we do not intend to disallow reimbursement of expenses for donation of a miscarried child. To avoid any confusion, he recommends referring to "induced abortion," which will encompass both surgical and chemical abortions. The wording here seems tricky, and I can only recommend the following:

> ". . . other than the human body part of a human being who is aborted through an induced abortion before being born alive."

3) Mary Klaver questioned why we want to define what "valuable consideration" ***is.*** She correctly points out that our list would exclude something like a promise. I originally questioned why section 146.345 (1) (c) does not include a positive definition. After my conversation with Mary, I can understand why the legislature likely excluded such a definition. Therefore, I think we should simply eliminate our 146.345 (1) (c) l., and only keep what "valuable consideration" is ***not.***

If you have any thoughts on these changes, or can think of a different mechanism for accomplishing these goals, please let me know. Though I did not anticipate three changes at this late stage of drafting, I'm pleased that Father Howard and Attorney Klaver provided us these simple, but valuable ideas. However, once I receive these changes from you, we will put out the cosponsorship memo! Since we would like to send out the cosponsorship tomorrow afternoon, if you can get the changes (namely, the changes to the analysis) at your earliest convenience, I would greatly appreciate it.

I know that you are very busy, and appreciate all of the time you've given to this bill over the past few weeks. On behalf of Sheryl, I thank you for all of your work!

[TODAY 2/18 by 3:00]

1999 - 2000 LEGISLATURE

LRB–4118/P6
DAK:kmg:jf

1999 BILL

1 AN ACT ***to amend*** 146.345 (title), 146.345 (1) (b) and 146.345 (2); and ***to repeal***
2 ***and recreate*** 146.345 (1) (a) and 146.345 (1) (c) of the statutes; **relating to:**
3 prohibiting the sale or purchase of a body part of a human being.

Analysis by the Legislative Reference Bureau

Under current law, no one may knowingly and for valuable consideration acquire, receive or otherwise transfer a human organ for use in human organ transplantation. A "human organ" is defined to mean a human kidney, liver, heart, lung, pancreas, bone marrow, cornea, eye, bone or skin or any other human organ specified by the department of health and family services by rule. 'Valuable consideration" is defined to *not* include reasonable payment associated with the removal, transportation, implantation, processing, preservation, quality control or storage of a human organ or expenses incurred by a human organ donor in connection with donation of the human organ.

This bill expands laws prohibiting the sale or purchase of human organs for use in human organ transplantation to prohibit *any* sale or purchase of human body parts. The bill defines "human body part", for purposes of this prohibition, to be an organ, ~~tissue~~ or other part of a human being after fertilization (for example, fetal tissue) and excludes from the definition the blood, ova and semen of a human being after 18 years of age and hair. ~~The bill defines "valuable consideration" to mean services related to a funeral, cremation or burial, money or real or personal property.~~ Further, the bill changes the exclusion from the definition of "valuable consideration" so that the prohibition against the sale or purchase of human body

cell, tissue,

by an induced abortion

parts does not apply when the "valuable consideration" involves reasonable payment associated with a human body part that is donated for transplantation, other than the human body part of a human being who is aborted before being born alive, or reasonable payment associated with a human body part that is donated for medical or scientific research, other than the human body part of a human being who is aborted before being born alive.

For further information see the ***state*** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

a cell, tissue,

SECTION 1. 146.345 (title) of the statutes is amended to read:

146.345 (title) **Sale of human ~~organs~~ <u>body parts</u> prohibited.**

SECTION 2. 146.345 (1) (a) of the statutes is repealed and recreated to read:

146.345 **(1)** (a) 1. Except as provided in subd. 2., "human body part" means, ~~an~~ organ, ~~tissue~~ or other part of a human being after fertilization.

2. "Human body part" does not mean the whole blood, blood plasma, blood product, blood derivative, ova or semen of a human being 18 years of age or older or hair.

SECTION 3. 146.345 (1) (b) of the statutes is amended to read:

146.345 **(1)** (b) ~~"Human organ transplantation"~~ <u>"Transplantation"</u> means the medical procedure by which transfer of a human ~~organ~~ <u>body part</u> is made from the body of a person to the body of another person.

SECTION 4. 146.345 (1) (c) of the statutes is repealed and recreated to read:

146.345 **(1)** (c) 1. Except as provided in subd. 2, "valuable consideration" means services related to a funeral, cremation or burial, money or real or personal property.

~~2.~~ "Valuable consideration" does not mean any of the following:

1. ~~a.~~ Reasonable payment associated with the removal, retrieval, transportation, implantation, processing, preservation, preparation, quality control or storage of a

by an induced abortion

human body part that is donated for transplantation, other than the human body part of a human being who is aborted before being born alive, or an expense of travel, housing or lost wages incurred by a human body part donor in connection with donation of the human body part.

2. ~~b.~~ Reasonable payment associated with the removal, retrieval, transportation, processing, preservation, preparation, quality control or storage of a human body part that is donated for medical or scientific research, other than the human body part of a human being who is aborted before being born alive.

SECTION 5. 146.345 (2) of the statutes is amended to read:

146.345 (2) No person may knowingly and for valuable consideration acquire, receive or otherwise transfer any human ~~organ for use in human o~~rgan ~~transplantation~~ body part.

(END)

SUBMITTAL FORM

LEGISLATIVE REFERENCE BUREAU
Legal Section Telephone: 266-3561
5th Floor, 100 N. Hamilton Street

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and **sign** on the appropriate line(s) below.

Date: 02/18/2000

To: Representative Albers

Relating to LRB drafting number: LRB-4118

Topic
Sale of child's body parts and tissue prohibited

Subject(s)
Health - miscellaneous

1. **JACKET** the draft for introduction SA - 22 Feb 00

   in the **Senate** ____ or the **Assembly** X (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT. See** the changes indicated or attached _____.

   A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW,** prior to introduction _____.

   If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-356 1. If you have any questions relating to the attached draft, please feel free to call me.

Debora A. Kennedy, Managing Attorney
Telephone: (608) 266-0137