

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City, Metro Manila

FIFTEENTH CONGRESS
First Regular Session

HOUSE BILL NO. 4849

Introduced by **HON. RENE LOPEZ RELAMPAGOS**
1st District, Bohol

EXPLANATORY NOTE

Recent developments and advancements in medicine and technology have made possible the transplantation of human organs, tissues or parts from one person to another. The demand for organs, tissues or parts has grown at a steadily increasing pace in the market. Human organ and tissue trading have become lucrative business: a source of easy but big profit.

Many people are lured into selling their organs, tissues or parts with the promise of money as consideration. In the present set up, it is usually the poor and uneducated that are lured into selling their organs, tissues or parts for the benefit of rich recipients.

Commodification of human organs, tissues or parts has led to exploitation born out of social inequalities among the members of society. It is not only socially problematic but also morally repugnant. It is enshrined in the Philippine Constitution that the dignity of persons must be respected and preserved at all cost. The commodification of the human body is an attack against human dignity.

It is the policy under the Constitution for the State to protect and promote the right to health of the people. Commercialization of human organs is an affront to this policy. Social justice also demands that the state protect those who are vulnerable to exploitation and abuse.

When the government ventured into medical tourism in the year 2005, health facilities opened their services to foreign patients. Within two (2) years, hundreds of patients from foreign countries had visited the Philippines for organ (mostly kidney) transplantation.

According to the Department of Health (DOH), twenty (20) medical facilities in Metro Manila alone perform organ transplantation. Seven of these facilities were found to have violated a DOH Administrative Order mandating that only ten percent (10%) of organ transplantation should be for foreign recipients.

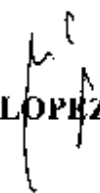
According to the Philippine Society of Nephrology, there were four hundred (400) documented kidney transplants from local donors to foreign recipients between the years 2002 and 2005 or more than forty percent (40%) of total kidney transplants despite the ten percent (10%) limit on foreign beneficiaries. By 2007, the number of foreign recipients had reached five hundred twenty eight (528) for that year alone, even more the number of Filipino recipients.

Protests from concerned medical professionals and the Department of Social Welfare and Development (DSWD) caught the attention of President Gloria Macapagal Arroyo and resulted

in a Presidential Directive to the DOH to totally ban organ transplantation to foreigners in the Philippines using Filipino living non-related donors in March of 2008.

The current system to supervise organ transplantation is not enough to deter unscrupulous individuals from exploiting poor Filipinos into organ trade. According to Santosh Digal in an Asia News report dated February 9, 2007, more than three thousand (3,000) Filipinos have been victims of kidney trading. This report is confirmed in a BioEdge report that stated that many depressed areas in the Philippines have been identified as 'hotspots' for organ trading including: Baseco Tondo, Caloocan, Novaliches, Montalban, Carmona, Quezon, Camarines Norte, Masbate, Samar, Surigao, Agusan, Zamboanga, Davao and North Cotabato.

There is a need for greater institutionalized measures to protect the vulnerable, poor and uneducated from being exploited into selling their organs. It is imperative that a law be passed prohibiting and penalizing commercial dealings in human organs to deter those who would prey on the vulnerabilities of others and entice them to sell their organs for consideration. This bill aims to prohibit this form of commodification and penalize those who engage in the same.


RENE LOPEZ RELAMPAGOS

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Fifteenth Congress
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HOUSE BILL NO. 4849

Introduced by **HON. RENE LOPEZ RELAMPAGOS**
1st District, Bohol

AN ACT
TO INSTITUTE POLICIES TO PROHIBIT COMMERCIAL DEALINGS
IN HUMAN ORGANS, TISSUES AND/OR PARTS, PROVIDING PENALTIES
THEREFOR FOR ITS VIOLATIONS, AND FOR OTHER PURPOSES

SECTION. 1. Title – This Act shall be known as the “Anti-Commercial Dealings in Human Organs and/or Tissues Act”.

SEC. 2. Declaration of Policy. - It is hereby declared that the State values the dignity of every human person and guarantees the respect of individual rights. In pursuit of this policy, the State shall give highest priority to the enactment of measures and development of programs, projects and policies that will promote human dignity, protect the people from any threat of violence and exploitation, and prevent and eliminate commercial dealings in human organs, tissues and/or parts.

It shall be a State policy to recognize the inherent human dignity of persons as enshrined in the United Nations Universal Declaration on Human Rights, United Nations Convention Against Transnational Organized Crime Including its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography to the UN Convention on the Rights of the Child, World Health Organization's Guiding Principles on Human Organ Transplantation and all other relevant and universally accepted human rights instruments and other international conventions to which the Philippines is a signatory.

SEC. 3. Definition of Terms. - As used in this Act:

(1) **Advertisement** – includes any form of advertising or the promotion of goods, services or ideas through paid announcements in the print, broadcast or electronic media whether to the public generally or to any section of the public or individually selected persons for the purpose of promoting commercial dealings in human organs, tissues and/or parts.

(2) **Commercial Dealings** – refers to the sale, barter or any transaction of human organs, tissues and/or parts which involves consideration in whatever form and any transaction involving the illegal trafficking of human organs and/or tissues through whatever means and acting as a broker for such transactions whether for money or any other consideration in violation of this Act. *However, this does not apply among persons related up to the 4th degree of consanguinity.*

(3) **Hospital** – a facility devoted primarily to the diagnosis, treatment and care of individuals suffering from illness, disease, injury or deformity, or in need of obstetrical or other

medical and nursing care. It shall also be construed as any institution, building or place where there are facilities and personnel for the continued and prolonged care of patients. It includes a nursing home, clinic, medical center, medical or teaching institution for therapeutic purposes and other like institution.

(4) Human organ – includes, but is not limited to, a human kidney, liver, heart, lung, pancreas, or any other human organ or nonrenewable or nonregenerative tissue except plasma and sperm.

(5) Organ/tissue Bank Storage Facility – a facility licensed, accredited or approved under the law for storage of human bodies or parts thereof.

(6) Part – includes transplantable organs, tissues, eyes, bones, arteries, blood, other fluids and other portions of the human body.

(7) Physician – refers to a physician licensed or authorized to practice medicine under the laws of the Republic of the Philippines.

(8) Valuable consideration – means financial gain or advantage, but does not include the reasonable costs associated with the removal, storage, transportation, and transplantation of a human organ, tissue and/or part, or reimbursement for those services, or the expenses of travel, housing, and lost wages incurred by the *donor*.

SEC. 4. Prohibited Acts – It shall be unlawful for any person, natural or juridical, to commit any of the following acts:

(1) To advertise in any manner, whether formally through print or broadcast media or informally, an offer to sell, barter or transact in human organs, tissues and/or parts or an offer to acquire, buy or to receive human organs, tissues and/or parts for consideration in whatever form;

(2) To advertise, publish, print, broadcast or distribute, or cause the advertisement, publication, printing, broadcasting or distribution by any means, including the use of information technology and the internet, or any brochure, flyer, or any propaganda material that promotes commercial dealings in human organs, tissues and/or parts;

(3) To recruit, transport, transfer, harbor, provide, or receive a person by any means, for the sale, barter, or any transaction of human organs, tissues and/or parts which involves consideration in whatever form;

(4) To offer consideration in money, kind or services for the purpose of acquiring, buying, offering, selling, or trading human organs, tissues and/or parts;

(5) To act as a facilitator, middleman, broker or other similar role in the sale, barter or other transaction of human organs, tissues and/or parts for consideration in whatever form;

(6) To engage in the sale, barter or other transaction of human organs, tissues and/or parts for consideration in whatever form;

(7) To store and/or handle parts with the knowledge that the human organs, tissues and/or parts has been acquired or transferred or sold for consideration in whatever form;

(8) To deliver, transport, transfer and/or distribute human organs, tissues and/or parts with the knowledge that the human organs, tissues and/or parts has been acquired or transferred or sold for consideration in whatever form;

(9) To remove or transplant human organs, tissues and/or parts with the knowledge that the human organs, tissues and/or parts has been acquired or transferred or sold for consideration in whatever form;

(10) To consent to the transplantation of human organs, tissues and/or parts and be transplanted with the same with the knowledge that the human organs, tissues and/or parts has been acquired or transferred or sold for consideration in whatever form;

(11) To offer to supply human organs, tissues and/or parts for consideration or initiates or negotiates any argument for the supply thereof or for an offer to supply human organs, tissues and/or parts;

(12) To engage in the trading of human organs, tissues and/or parts for consideration in whatever form;

(13) To recruit or invite persons to supply human organs, tissues and/or parts for consideration;

(14) To make or receive payment for the supply of or for an offer to supply human organs, tissues and/or parts.

SEC. 5. Acts that Promote or Facilitate Commercial Dealings in Human Organs and/or Tissues. - The following acts which promote or facilitate commercial dealings in human organs, tissues and/or parts shall be unlawful:

(1) To knowingly lease or sublease, use or allow to be used any house, building or establishment for the purpose of promoting commercial dealings in human organs, tissues and/or parts;

(2) To produce, print and issue or distribute publications which include advertisements of the sale, barter, or other transactions on human organs, tissues and/or parts for consideration in whatever form;

(3) To knowingly benefit from, financial or otherwise, from commercial dealings in human organs, tissues and/or parts;

(4) To maintain a data bank of prospective commercial donors.

SEC. 6. Qualified Commercial Dealings in Human Organs and/or Tissues. - The following are considered as qualified commercial dealings in human organs and/or tissues:

(1) When the crime is committed by a syndicate, or in large scale. Commercial dealing in human organs, tissues and/or parts is deemed committed by a syndicate if carried by a group of three (3) or more persons conspiring or confederating with one another. It is deemed committed in large scale if committed against three (3) or more persons, individually or as a group;

(2) *When the offender is a medical practitioner, doctor or physician or when the offense is committed by a public officer or employee;*

(3) When the crime is committed by a corporation, association or a group;

(4) When the victim of the crime is a minor or those already of age but are unable to

fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition; and,

(5) When the victim was forced to enter into the commercial dealing of his/her organs, tissues and/or parts due to force, violence, intimidation, threat, fraudulent machinations, grave abuse of authority and other similar means which vitiate free will and consent;

(6) *When the donor suffered severe complications as a result of organ removal and died as a consequence thereof.*

SEC. 7. Prosecution of Cases. - Any person who has personal knowledge of the commission of any offense under this Act may file a complaint for commercial dealings in human organs, tissues and/or parts.

SEC. 8. Venue. - A criminal action arising from violation of this Act shall be filed where the offense was committed, or where any of its elements occurred: *Provided*, that the court where the criminal action is first filed shall acquire jurisdiction to the exclusion of other courts.

SEC. 9. Penalties and Sanctions. - The following penalties and sanctions are hereby established for the offenses enumerated in the Act:

(1) Any person found guilty of committing any of the acts enumerated in Section 4 shall suffer the penalty of imprisonment of twenty (20) years and a fine of not less than One million pesos (P 1,000,000.00) but not more than Two million pesos (P 2,000,000.00);

(2) Any person found guilty of committing any of the acts enumerated in Section 5 shall suffer the penalty of imprisonment of fifteen (15) years and a fine of not less than Five hundred thousand pesos (P 500,000.00) but not more than One million pesos (P 1,000,000.00);

(3) Any person found guilty of qualified commercial dealing in human organs and/or tissues under Section 6 shall suffer a penalty of life imprisonment and a fine of not less than Two million pesos (P 2,000,000.00) but not more than Five million pesos (P 5,000,000.00);

(4) If the offender is a corporation, partnership, association, club, establishment or any juridical person, the penalty shall be imposed upon the owner, president, partner, manager, and/or any responsible officer who participated in the commission of the crime or who shall have knowingly permitted or failed to prevent its commission;

(5) The registration with the Securities and Exchange Commission (SEC) and license to operate of the erring corporation, association, or group shall be cancelled and revoked permanently. The owner, president, partner or manager thereof shall not be allowed to operate similar establishments in a different name;

(6) If the offender is a hospital, clinic or other similar licensed medical institution, the penalty shall be imposed upon its owner, president, director, members of the board, officials, doctors with knowledge of the illegal acts and participates therein including the medical staff;

(7) The license of the hospital, clinic or medical institution with the Department of Health and other regulatory institutions shall be cancelled and revoked and the license to practice of medical professionals found guilty of the illegal acts shall be cancelled and revoked;

(8) If the offender is a foreigner, he shall be immediately deported after serving his sentence and be barred permanently from entering the country;

(9) Any employee or official of government agencies who shall commit the prohibited acts enumerated under Section 4 and Section 5 shall be held administratively liable, without prejudice to criminal liability under this Act. The concerned government official or employee shall, upon conviction, be dismissed from the service and be barred permanently to hold public office. His/her retirement and other benefits shall be likewise be forfeited.

SEC. 10. Prescriptive Period. - Commercial dealing in human organs, tissues and/or parts cases under this Act shall prescribe in ten (10) years; *provided however*, that cases under Section 6 of this Act shall prescribe in twenty (20) years.

The prescriptive period shall commence to run from the day on which the organ, tissue and/or part subject of the commercial dealings has been removed for the purpose of transplantation or when the crime was discovered by authorities and shall be interrupted by the filing of the complaint or information and shall commence to run again when the proceedings terminate without the accused being convicted or acquitted or unjustifiably stopped for any reason not imputable to the accused.

SEC. 11. Confiscation and Forfeiture of the Proceeds and Instruments Derived from Commercial Dealings in Human Organs and Tissues. - In addition to the penalty imposed for the violation of this Act, the court shall order the confiscation and forfeiture, in favor of the government, of all the proceeds and properties derived from the commission of the crime, unless they are the property of a third person not liable for the unlawful act; Provided, however, that all awards for damages shall be taken from the personal and separate properties of the offender; Provided, further, that if such properties are insufficient, the balance shall be taken from the confiscated and forfeited properties.

When the proceeds, properties and instruments of the offense have been destroyed, diminished in value or otherwise rendered worthless by any act or omission, directly or indirectly, of the offender, or it has been concealed, removed, converted or transferred to prevent the same from being found or to avoid forfeiture or confiscation, the offender shall be ordered to pay the amount equal to the value of the proceeds, property or instruments of the offense.

SEC. 12. Preferential Option to be State Witnesses and Entitlement under the Witness Protection Program. - Any person who allowed the removal of his/her organ/s tissue/s and/or part/s for consideration in whatever form shall have the option to be a state witness and shall be entitled to the witness protection program under Republic Act No. 6981.

SEC. 13. Duty of Hospitals and Organ/Tissue Bank Storage Facility. - It shall be the duty of all hospitals to ensure that all removal and transplantation of human organs, tissues and/or parts do not contravene the provisions of this Act and to report to the proper authorities any contravention of this Act. Likewise, it shall be the duty of Organ/Tissue Bank Storage Facility to ensure that all organs, tissues or parts stored in the facility were not acquired or received for consideration in whatever form in contravention of this Act and to report to the proper authorities any contravention of this Act.

All hospitals and medical institutions shall create a Hospital Ethics Committee whose purpose is to improve health care delivery and outcomes by helping to identify, analyze and resolve ethical dilemmas as they emerge predominantly through consultation, education and policy development. The Ethics Committee shall make recommendations in determining the ethical principles and policies on organ, tissue and part transplantation in order to prevent and avoid participation of the hospital, whether directly or indirectly, in commercial dealings in human organs, tissues and/or parts.

All hospitals, medical institutions, organ or tissue bank storage facility shall record all organs, tissues and/or parts received, the source of the donation, the purpose for the donation, the names of the persons concerned, the date of the donation, storage, removal or transplant of the organ, tissue and/or part and other relevant information necessary. The records and documents containing such information shall be made available and transparent to the public, whenever necessary.

All hospitals, medical institutions, organ or tissue bank storage facility shall submit periodic reports which shall include relevant records and documents to the Oversight Committee against Commercial Dealings in Human Organs and/or Tissues as defined under the next section on their compliance with the provisions of this Act.

SEC. 14. National Transplant Ethics Committee. - The National Transplant Ethics Committee who shall formulate a national ethical standards or guidelines on organ donation and transplantation for the approval of the Philippine Board for Organ Donation and Transplantation, shall assist the Board in the resolution of ethical issues and in the monitoring of transplant facilities to ensure compliance with ethical standards or guidelines.

SEC. 15. Oversight Committee against Commercial Dealings in Human Organs, Tissues and/or Parts. - There is hereby created an Oversight Committee against Commercial Dealings in Human Organs and/or Tissues composed of the Secretaries of the Department of Health, the Department of Justice and the Department of Social Welfare and Development, two (2) representatives from the private medical sector and two (2) representatives from Non-Government Organizations (NGOs), as members.

SEC. 16. Functions of the Oversight Committee. - The Oversight Committee against Commercial Dealings in Human Organs, Tissues and/or Parts shall have the following functions:

(1) To set the guidelines and overall framework to monitor and ensure the proper implementation of this Act;

(2) To ensure the formulation of programs, projects and policies and their transparency and require the submission of reports from government agencies concerned on the conduct of programs, projects and policies relating to the implementation of this Act;

(3) To approve the budget for the programs of the Oversight Committee, including compensation of all personnel;

(4) To submit periodic reports to the President of the Philippines and Congress on the implementation of the provisions of this Act;

(5) To determine inherent weaknesses in the law and recommend the necessary remedial legislation or executive measures; and

(6) To perform such other duties, functions and responsibilities as may be necessary to effectively attain the objectives of this Act.

SEC. 17. Adoption of Committee Rules and Regulations. - In aid of its oversight functions, the Oversight Committee against Commercial Dealings in Human Organs, Tissues and/or Parts shall adopt its internal rules of procedure, conduct investigations and receive testimonies, reports, and technical advice, invite or summon any public official, private citizen, or any other person to appear before it, or require any person to produce documents or other materials consistent with the provisions of this Act.

The Oversight Committee against Commercial Dealings in Human Organs, Tissues and/or Parts shall be assisted by a secretariat to be composed of personnel that may be seconded from the Departments involved and may retain consultants.

SEC. 18. Programs against Commercial Dealings in Human Organs, Tissues and/or Parts. - There shall be a comprehensive program to be formulated by the Oversight Committee against Commercial Dealings in Human Organs and/or Tissues in coordination with other government agencies and private sector concerned, within one (1) year from the effectivity of this Act, to prevent commercial dealings in human organs and/or tissues for consideration in whatever form.

SEC. 19. Funding. - The amount necessary to carry out the powers and functions of the Oversight Committee against Commercial Dealings in Human Organs, Tissues and/or Parts and for the effective implementation of the Act is hereby authorized to be appropriated under the regular budget of the Department of Health.

SEC. 20. Implementing Rules and Regulations. - The Oversight Committee against Commercial Dealings in Human Organs, Tissues and/or Parts shall promulgate the necessary implementing rules and regulations within six (6) months from the effectivity of this Act.

SEC. 21. Separability Clause. - If for any reason any section or provision of this Act is held unconstitutional or invalid, the other sections or provisions hereof shall not be affected thereby.

SEC. 22. Repealing Clause. - All laws, presidential decrees, executive orders and rules and regulations, or parts thereof, inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

SEC. 23. Effectivity. - This Act shall take effect fifteen (15) days following the completion of its publication in the Official Gazette or in two (2) national newspapers of general circulation.

Approved,