

SEVENTEENTH CONGRESS OF THE REPUBLIC  
OF THE PHILIPPINES )  
First Regular Session )

HOUSE OF REPRESENTATIVES  
H. B. No. 255

HOUSE OF REPRESENTATIVES

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Introduced by Representative Herminio Harry L. Roque Jr.

AN ACT  
PROHIBITING THE COMMERCIALIZATION OF HUMAN ORGANS, TISSUES, OR  
PARTS OF LIVING PERSONS, PROVIDING PENALTIES FOR ITS VIOLATIONS, AND  
ESTABLISHING A PHILIPPINE BOARD OF ORGAN DONATION AND  
TRANSPLANTATION AND A NATIONAL TRANSPLANT AND ETHICS COMMITTEE

EXPLANATORY NOTE

The demand for organs, tissues or parts has grown at a steadily increasing pace in the market. Human organ and tissue trading has 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.

Organ trade continues to rise at an alarming rate and has become an even bigger threat to society, especially the poor and vulnerable sectors. There is a need for greater institutionalized measures to protect the vulnerable, the poor and uneducated from being exploited into selling their organs, tissues or parts. These persons regularly end up even poorer than they were before they sold their kidneys and in addition, contracting illnesses like urinary tract infection and hypertension which are directly related to poor or absent medical care after the organ sale. It is imperative that a law be passed prohibiting and penalizing commercial dealings in human organs, tissues or parts to deter those who would prey on the vulnerabilities of others and entice them to sell their organs, tissues or parts for consideration.

The state should make it a policy to prohibit this form of commodification and penalize those who would engage in the same.

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 a 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.

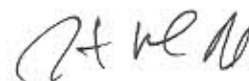
According to the Department of Health (DOH), twenty (20) medical facilities in Metro Manila alone perform organ transplantation. Seven of these facilities were found to have violated a DOH Administrative Order mandating that only ten percent (10%) of organ transplantation should be for foreign recipients. 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 than the number of Filipino recipients. Asia Time Online noted on June 5, 2008 that the DOH had reported eight (8) different facilities including a government hospital, (the National Kidney and Transplant Institute) which did not abide by the annual cap on transplants for foreign 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 in March of 2008.

Even with the ban on foreign recipients, commercialization of human organs has been going from bad to worse. An article in Pinoy Ambisyo Online dated December 15, 2008 reported that organ sale is now facilitated in the internet. An article in the Philippine Star dated December 13, 2008 reported that human organs traffickers are already using online marketing, offering human organs to both local and foreign buyers.

There is a need to establish a national body that would oversee the government action against commercialization of human organs, tissues or parts and formulate policies related to organ transplantation. Furthermore, we should also establish a committee that would formulate ethical guidelines and resolve ethical issues on organ transplantation.

This bill provides for criminalization of acts commercializing human organs, tissues or parts and establishing a Philippine Board of Organ Donation and Transplantation and a National Transplant and Ethics Committee.<sup>1</sup>



HERMINIO HARRY L. ROQUE JR.

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<sup>1</sup> This bill was originally filed during the Fourteenth Congress, Second Regular Session.

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6

*Be it enacted by the Senate and the House of Representatives of the Philippines in Congress assembled:*

7 SECTION 1. *Title.* – This Act shall be known as the “Anti-Commercialization of  
8 Human Organs, Tissues or Parts of Living Persons Act.”

9 SECTION 2. *Declaration of Policy.* – The State values the dignity of every human  
10 person and guarantees the respect of human dignity. The State protects and promotes the  
11 right to health of the people. It recognizes the need to prevent commercial trade and  
12 trafficking in human organs and tissues of living persons and gives highest priority to the  
13 enactment of measures and development of programs, projects and policies that will promote  
14 human dignity and the health of the people, protect them from any threat of violence and  
15 exploitation, and prevent and eliminate commercial trade and trafficking in human organs,  
16 tissues or parts.

17 The State recognizes the inherent human dignity of persons as enshrined in the United  
18 Nations Universal Declaration on Human Rights and is a state party to the United Nations

Convention against Transnational Organized Crime Including its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

SECTION 3. *Definition of Terms.* – As used in this Act, the term:

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

(b) “Commercial dealings” refers to: (1) the sale, barter, or any transaction of human organs, tissues or parts which involves consideration in whatever form; (2) any transaction involving the trafficking of persons for the purpose of sale of human organs, tissues or parts through whatever means; and, (3) acting as a broker or participating in any way for such transactions for any consideration in violation of this Act; Provided, that the parties are not legally married or genetically related up to the fourth (4<sup>th</sup>) degree of consanguinity.

(c) “Hospital” refers to a facility devoted primarily to the diagnosis, treatment and care of individuals suffering from illness, disease, injury or deformity, or in need of surgical, 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 aforementioned purposes. It includes but is not limited to a nursing home, clinic, medical center, medical teaching institution and other similar institutions.

(d) “Human organ” includes, but is not limited to human kidney, liver, heart, lung, pancreas, cornea, skin or any other human organ or part or any nonrenewable or nonregenerative tissue.

(e) "Organ/tissue bank or storage facility" refers to a facility licensed, accredited or approved under the law for storage of human bodies, organs or parts thereof.

(f) "Medical practitioner" refers to any physician, dentist, nurse, pharmacist or paramedical or other supporting personnel (including medical and dental technicians, nursing assistants, and therapists);

(g) "Allowable reimbursement" refers to the reasonable costs incurred by a donor associated with the legal removal, storage, transportation, and transplantation of a human organ, tissue or part, or the expenses of travel, housing, and lost wages, medical expenses and insurance of the donor for death or complications that arise from the donation.

(h) "Organ provider" refers to the person from whom the organ/tissue is taken.

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

(a) To advertise or cause to be advertised in any manner, whether formally or informally through print, broadcast or electronic media including the internet an offer to sell, barter or transact in human organs, tissues or parts or an offer to acquire, buy or receive human organs, tissues or parts for consideration in whatever form or any material that promotes commercial dealings in human organs, tissues or parts;

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

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

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

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

(f) To store or handle human organs, tissues or parts that have been acquired or transferred or sold for consideration in whatever form;

(g) To deliver, transport, transfer or distribute human organs, tissues or parts that have been acquired or transferred or sold for consideration in whatever form;

(h) To remove or transplant human organs, tissues or parts that have been acquired or transferred or sold for consideration in whatever form;

(i) To offer to supply human organs, tissues or parts for consideration or initiate or negotiate any arrangement for the supply thereof or for an offer to supply human organs, tissues or parts;

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

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

SECTION 5. *Acts that Promote or Facilitate Commercialization of Human Organs, Tissues or Parts.* – The following acts which promote or facilitate commercialization of human organs, tissues or parts shall be unlawful:

(a) To 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 or parts;

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



(c) To maintain a data bank of prospective commercial donors. The Philippine Board of Organ Donation and Transplantation established under this Act shall promulgate rules to provide for proper authorization of data bank of prospective donors.

SECTION 6. *Qualified Commercialization of Human Organs or Tissues.* – If any acts under Section 4 and 5 are committed under the following circumstances, the crime committed shall be qualified commercialization of human organs or tissues:

(a) When the crime is committed by a syndicate, or in large scale. Commercial dealing in human organs, tissues or parts is deemed committed by a syndicate if carried out 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;

(b) When the offense is committed by a medical practitioner, public officer or employee or a law enforcer or member of the military;

(c) When the crime is committed by a corporation, association, group or other juridical persons whether or not registered with the Securities and Exchange Commission (SEC);

(d) When the organ provider is a minor or is already of age but unable to fully take care of himself or protect himself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or economic vulnerability;

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



(f) When the organ provider suffers severe complications as a result of organ removal or died as a consequence thereof.

(g) When the tissue/organ is transported, or when there is attempt to transfer the tissue/organ outside Philippine territory.

SECTION 7. *Presumptions.* – Any of the following circumstance shall be considered *prima facie* evidence of commercialization of organs and tissues of living person:

(a) When the money or value of the thing or object given to the donor far exceeds the costs of allowable reimbursement that may be received by the donor; and,

(b) When the recipient of the organ or tissue is a foreign national not related to the donor up to the fourth (4<sup>th</sup>) degree of consanguinity.

SECTION 8. *Custody.* – When necessary, the organ provider may be placed under the protective custody of the Department of Social Welfare and Development pursuant to its mandate under Executive Order No. 292.

SECTION 9. *Immunity from Criminal Prosecution.* – The State Prosecutor may exempt from prosecution any person who has personal knowledge of the commission of any of the offenses penalized under the Act and who voluntarily gives material information relative thereto and willingly testifies against the offender for the offense with reference to which his information and testimony were given, subject to the relevant provisions under the Rules of Court on discharge of accused to be state witness.

SECTION 10. *Extraterritorial Protection.* – An organ provider or a prospective organ provider *who is a Filipino national and* allowed the removal of his/her organs, tissues or parts

1 for consideration outside the territorial jurisdiction of the Philippines shall be entitled to  
2 protection from the state through the Department of Foreign Affairs (DFA) and its agents,  
3 which protection shall include but is not limited to the following; medical assistance, legal  
4 assistance, psychosocial services, rehabilitative services and repatriation of victims.

5 The DFA shall monitor cases of Filipino nationals outside of the Philippines who  
6 were victimized by commercial dealings in organs, tissues or parts and coordinate with  
7 different governmental agencies, non-governmental organizations and other support groups to  
8 combat commercialization of organs, tissues or parts of Filipino nationals outside of the  
9 Philippines.

10 SECTION 11. *Penalties and Sanctions.* – The following penalties and sanctions are  
11 hereby established for the offenses enumerated in the Act:

12 (a) Any person found guilty of committing any of the acts enumerated in Section  
13 4 shall suffer the penalty of *reclusion temporal* and a fine of not less than One million pesos  
14 (Php 1,000,000.00) but not more than Two million pesos (Php 2,000,000.00);

15 (b) Any person found guilty of committing any of the acts enumerated in Section  
16 5 shall suffer the penalty of *prision mayor* and a fine of not less than Five hundred thousand  
17 pesos (Php 500,000.00) but not more than One million pesos (Php 1,000,000.00), except that  
18 an organ provider found guilty of committing the Acts provided under Section 5, paragraphs  
19 h and k shall suffer the penalty of *arresto mayor* and a fine of not less than One thousand  
20 pesos (Php 1,000.00) but not more than Five thousand pesos (Php 5,000.00)

21 (c) Any person found guilty of qualified commercial dealing in human organs or  
22 tissues under the circumstances provided in Section 6 shall suffer the penalty of *reclusion*  
23 *perpetua* and a fine of not less than Two million pesos (Php 2,000,000.00) but not more  
24 than Five million pesos (Php 5,000,000.00);

(d) 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, or any responsible officer who participated in the commission of the crime or who shall have knowingly permitted or failed to prevent its commission;

(e) 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 under a different name;

(f) 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 and doctors and/or other members of the medical, nursing and allied staff with knowledge of the illegal acts and participates therein;

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

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

(i) 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 likewise be forfeited.

SECTION 12. *Prescriptive Period.* – Commercialization in human organs, tissues or parts cases under this Act shall prescribe in ten (10) years; provided however, that cases committed under the circumstances provided in Section 6 of this Act shall prescribe in twenty (20) years.

SECTION 13. *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 have 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.

SECTION 14. *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 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

1 acquired or received for consideration in whatever form in contravention of this Act and to  
2 report to the proper authorities any contravention of this Act.

3 All hospitals and medical institutions shall create a Hospital Ethics Committee whose  
4 purpose is to improve health care delivery and outcomes by helping to identify, analyze and  
5 resolve ethical dilemmas as they emerge predominantly through consultation, education and  
6 policy development. The Ethics Committee shall make recommendations in determining the  
7 ethical principles and policies on organs, tissues or parts transplantation in order to prevent  
8 and suppress commercialization in human organs, tissues or parts in their hospitals or  
9 institutions, provided that these are in conformity with national ethical standards and policies.

10 All hospitals, medical institutions, organ or tissue bank storage facility shall record all  
11 organs, tissues or parts retrieved, the source of the donation, the purpose for the donation, the  
12 names, address and contact numbers of the persons concerned including but not limited to the  
13 surgeon, donor and recipient, the date of the donation, storage, removal or transplant of the  
14 organs, tissues or parts and other relevant information necessary and make a determination  
15 that the organs, tissues or parts is not a product of commercialization. The records and  
16 documents containing such information shall be made available and transparent to the public.

17 All hospitals, medical institutions, organ or tissue bank storage facility shall submit  
18 periodic reports which shall include relevant records and documents to the Philippine Board  
19 for Organ Donation and Transplantation as defined under section 18 on their compliance with  
20 the provisions of this Act

21 *SECTION 15. Philippine Board for Organ Donation and Transplantation (PBODT).*

22 – There is hereby established a Philippine Board for Organ Donation and Transplantation  
23 which shall formulate and oversee the implementation of policies related to organ  
24 transplantation. It shall have the following functions:

(a) Formulate, review and approve policies in support of a rational, ethical, accessible and equitable organ transplantation program in the country;

(b) Set up a system of accreditation of transplant facilities and approve the issuance of a Certificate of Accreditation of transplant facilities.

(c) Set the guidelines and overall monitoring and evaluation framework and ensure the proper implementation of this Act;

(d) Require the submission of reports from government and non-government agencies concerned with the conduct of programs, projects and policies relating to the implementation of this Act;

(e) Submit periodic reports to the President of the Philippines and Congress on the implementation of the provisions of this Act;

(f) Determine inherent weaknesses in the law and its implementation and recommend the necessary remedial legislation or executive measures; and

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

SECTION 16. *Composition of the Board.* – The Philippine Board for Organ Donation and Transplantation shall be composed of the following:

(a) The Secretary of Health as Chairperson;

(b) The Secretary of Social Welfare and Development as Chairperson; and,

The following as Members:

(i) The Chief Executive Officer of the Philippine Health Insurance Corporation or his representative;

(ii) Representative from a government transplant facility on a rotational basis and for a term of two (2) years, to be appointed jointly by the chairpersons;

(iii) Representative from a private transplant facility, on a rotational basis and for a term of two (2) years, to be appointed jointly by the chairpersons;

(iv) The President of the Philippine Society of Nephrology;

(v) The President of the Philippine Society of Transplant Surgeons;

(vi) Representative from a Non-Government Organization engaged in health care advocacy, on a rotational basis and for a term of two (2) years, to be appointed jointly by the chairpersons; and

(vii) Expert on bioethics, on a rotational basis and for a term of two (2) years, to be appointed jointly by the chairpersons.

SECTION 17. *National Transplant Ethics Committee.* – There is hereby established a National Transplant Ethics Committee which shall formulate national ethical standards or guidelines on organ donation and transplantation for the approval of the Philippine Board for Organ Donation and Transplantation and 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. It shall also perform such other duties, functions and responsibilities assigned by the PBDOT as may be necessary to effectively attain the objective of this Act.

SECTION 18. *Composition.* – The National Transplant Ethics Committee shall be appointed by the PBODT and shall be composed of the following:

(a) One representative from transplant hospitals, on a rotational basis and for a term of two (2) years;

(b) One representative from non-transplant hospitals, on a rotational basis and for a term of two (2) years;

(c) A representative from the Department of Health;



(d) A representative from the Department of Social Welfare and Development;

and,

(e) Three (3) experts on bioethics, on a rotational basis and for a term of two (2) years in consultation with the academe, Non-Government Organizations or faith-based organization.

The members of the Committee shall designate their Chairman by a majority vote.

SECTION 19. *Honoraria or Emoluments.* – The Members of the PBODT or their designated permanent representatives shall receive honoraria or emoluments as may be determined by the Board in accordance with existing budget and generally accepted accounting rules and regulations. In the same manner, the Members of the National Transplant Ethics Committee shall receive honoraria or emoluments.

SECTION 20. *Adoption of Board Rules and Regulations.* – In aid of its oversight functions, the Philippine Board for Organ Donation and Transplantation 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 as it may need consistent with the provisions of this Act.

The Philippine Board for Organ Donation and Transplantation shall be assisted by a secretariat to be composed of personnel that may be seconded from the Departments involved. The PBODT may retain consultants and other employees.

In the same manner, the members of the National Transplant Ethics Committee shall adopt its rules of procedure and shall be assisted by a Secretariat.

1           SECTION 21. *Programs against Commercialization of Human Organs, Tissues or*  
2 *Parts.* – There shall be a comprehensive program to be formulated by the Philippine Board  
3 for Organ Donation and Transplantation in coordination with other government agencies and  
4 private sector concerned, within one (1) year from the effectivity of this Act, to prevent  
5 commercialization of human organs, tissues or parts of living persons for consideration in  
6 whatever form. Within the same period, the PBODT shall also establish a comprehensive  
7 program for deceased organs, tissues or parts donation. The program for deceased organs,  
8 tissues or parts donation shall be without prejudice to living donation of organ, tissue and  
9 part, provided that this is done without consideration of whatever means in violation of this  
10 Act.

11           The Board shall initiate and sustain an intensified nationwide public education  
12 campaign to raise the level of public awareness on commercialization of organs, tissues or  
13 parts of living persons and organ trafficking and to promote deceased organs, tissues or parts  
14 donation.

15           SECTION 22. *Appropriation.* – Congress shall appropriate the amount of Fifty  
16 Million Pesos (Php 50,000,000) for the initial implementation of this Act. Out of the total  
17 amount, Twenty Four Million Pesos (Php 24,000,000) shall be allocated for advocacy and  
18 promotion of deceased organs, tissues or parts donation and the initial implementation of the  
19 Comprehensive Program for Deceased Organs, tissues or parts Donation, Twenty Four  
20 Million Pesos (Php 24,000,000) shall be allocated for the initial formulation and  
21 implementation of the Comprehensive Program Against Commercialization of Human  
22 Organs, tissues or parts, and Two Million Pesos (Php 2,000,000) shall be allocated for  
23 administrative expenses incidental to the implementation of the aforementioned Programs.

After the initial implementation of this Act, the amount necessary to carry out the Program is hereby authorized to be appropriated under the regular budget of the Department of Health.

SECTION 23. *Implementing Rules and Regulations.* – The Philippine Board for Organ Donation and Transplantation shall convene within three months from the effectivity of this Act and promulgate the necessary implementing rules and regulations within six (6) months thereafter.

SECTION 24. *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.

SECTION 25. *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.

SECTION 26. *Effectivity.* – This Act shall take effect fifteen (15) days from the date of its publication in at least two (2) newspapers of general circulation.

Approved,