

HB122 ENROLLED



1 5L2V66-3
2 By Representatives Wood (D), Stadthagen, Lipscomb, Butler,
3 Baker, Kirkland, Rigsby, Estes, DuBose, Lamb, Brown, Marques,
4 Moore (P), Carns, Underwood, Lomax, Kiel, Mooney, Ledbetter,
5 Wilcox, Robertson, Collins, Whorton, Rehm, Shaw
6 RFD: Health
7 First Read: 21-Mar-23
8 2023 Regular Session



HB122 Enrolled

1 Enrolled, An Act,

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4 Relating to health care; to prohibit discrimination
5 against an individual with a disability in receiving an
6 anatomical gift or organ transplant based on his or her
7 disability; to require health care providers and organ
8 transplant centers to provide reasonable accommodations to
9 individuals with a disability in medical need of an anatomical
10 gift or organ transplant; and to provide disabled individuals
11 the right to equitable relief.

12 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

13 Section 1. This act shall be known and may be cited as
14 Exton's Law.

15 Section 2. The Legislature finds all of the following:

16 (1) A mental or physical disability does not diminish
17 an individual's right to health care.

18 (2) The Americans with Disabilities Act of 1990
19 prohibits discrimination against individuals with
20 disabilities, yet many individuals with disabilities still
21 experience discrimination in accessing critical health care
22 services.

23 (3) Historically, individuals with mental and physical
24 disabilities have been denied life-saving organ transplants
25 based on assumptions their lives are less worthy, they are
26 incapable of complying with post-transplant medical regimens,
27 or they lack adequate support systems to ensure compliance.

28 (4) Although organ transplant centers must consider



HB122 Enrolled

29 medical and psychosocial criteria when determining if a
30 patient is suitable to receive an organ transplant, transplant
31 centers that participate in Medicare, Medicaid, and other
32 federal funding programs are required to use patient selection
33 criteria that result in a fair and nondiscriminatory
34 distribution of organs.

35 (5) Alabama residents in need of organ transplants are
36 entitled to assurances that they will not encounter
37 discrimination on the basis of a disability.

38 Section 3. As used in this act, the following terms
39 have the following meanings:

40 (1) ANATOMICAL GIFT. The donation of all or part of a
41 human body to take effect after the donor's death for the
42 purpose of transplantation or transfusion.

43 (2) AUXILIARY AIDS AND SERVICES. Reasonable
44 accommodations that include the following:

45 a. Qualified interpreters or other effective methods of
46 making aurally delivered materials available to individuals
47 with hearing impairments.

48 b. Qualified readers, taped texts, or other effective
49 methods of making visually delivered material available to
50 individuals with visual impairments.

51 c. Acquisition or modification of equipment or devices.

52 d. Any other aid or service that is used to provide
53 information in a format that is easily understandable and
54 accessible to individuals with cognitive, neurological,
55 developmental, or intellectual disabilities.

56 (3) COVERED ENTITY. Any of the following:



HB122 Enrolled

57 a. A health care provider licensed under Title 34, Code
58 of Alabama 1975.

59 b. A health care facility licensed under Chapter 21 of
60 Title 22, Code of Alabama 1975.

61 c. An entity responsible for matching anatomical gift
62 donors to potential recipients.

63 (4) DISABILITY. The definition as provided in 42 U.S.C.
64 § 12102.

65 (5) ORGAN TRANSPLANT. The transplantation or
66 transfusion of a part of a human body into the body of another
67 for the purpose of treating or curing a medical condition.

68 (6) QUALIFIED INDIVIDUAL. An individual with a
69 disability who meets the essential eligibility requirements
70 for the receipt of an anatomical gift, with or without any of
71 the following:

72 a. A support network available to the individual.

73 b. The provision of auxiliary aids and services.

74 c. Access to a covered entity that has made reasonable
75 modifications to its policies or practices, including
76 modifications to allow both of the following:

77 1. Communication with individuals responsible for
78 supporting the individual with post-surgical and
79 post-transplantation care, including medication.

80 2. The consideration of a support network available to
81 the individual, including family, friends, and home-based and
82 community-based services funded through Medicaid, Medicare, or
83 another health plan in which the individual is enrolled, or
84 any program or source of funding available to the individual



HB122 Enrolled

85 in determining whether the individual is able to comply with
86 post-transplantation medical requirements.

87 (7) SUPPORTED DECISION-MAKING. The reasonable
88 accommodation of a support person or persons to assist an
89 individual in making medical decisions, communicate
90 information to the individual, or ascertain an individual's
91 wishes, including the following:

92 a. The individual's parent, court-appointed guardian,
93 legal custodian, attorney-in-fact, or designated health care
94 proxy.

95 b. A person designated in writing by the individual.

96 Section 4. (a) A covered entity may not do any of the
97 following based solely on a qualified individual's disability:

98 (1) Consider an individual ineligible to receive an
99 anatomical gift or organ transplant.

100 (2) Deny medical and other services related to
101 transplantation, including evaluation, surgery, counseling,
102 and post-transplantation treatment and services.

103 (3) Refuse to refer the individual to a transplant
104 center or other related specialist for the purpose of
105 evaluation or receipt of an anatomical gift or organ
106 transplant.

107 (4) Refuse to place an individual on an organ
108 transplant waiting list.

109 (5) Place the individual at a lower priority position
110 on the list than the position at which he or she would have
111 been placed if not for his or her disability.

112 (6) Decline insurance coverage for any procedure



HB122 Enrolled

113 associated with the receipt of the anatomical gift or organ
114 transplant, including post-transplantation care.

115 (b) (1) Notwithstanding subsection (a), a covered entity
116 may take a qualified individual's disability into account when
117 making treatment or coverage recommendations or decisions,
118 solely to the extent that the disability has been found by a
119 physician, following an individualized evaluation of the
120 individual, to be medically significant to the provision of
121 the anatomical gift or organ transplant.

122 (2) If a qualified individual has the necessary support
123 system to assist the individual in complying with
124 post-transplantation medical requirements, a covered entity
125 may not consider the individual's inability to independently
126 comply with the post-transplantation medical requirements to
127 be medically significant for the purposes of subdivision (1).

128 (c) A covered entity shall make reasonable
129 modifications in policies, practices, or procedures when the
130 modifications are necessary to allow a qualified individual
131 access to services, including transplantation-related
132 counseling, information, coverage, or treatment, unless the
133 covered entity can demonstrate that making the modifications
134 would fundamentally alter the nature of the services being
135 offered or result in an undue burden.

136 (d) A covered entity shall implement auxiliary aids and
137 services and supported decision-making services as necessary
138 to ensure that a qualified individual is not denied services,
139 including transplantation-related counseling, information,
140 coverage, or treatment, unless the covered entity can



HB122 Enrolled

141 demonstrate that implementation of the accommodations would
142 fundamentally alter the nature of the services being offered
143 or would result in an undue burden.

144 (e) Nothing in this section shall require a covered
145 entity to refer or recommend, or to perform, a medically
146 inappropriate organ transplant based on medical review.

147 Section 5. (a) When it appears that a covered entity
148 has violated or is violating this act, the affected individual
149 may commence a civil action, limited to injunctive and other
150 equitable relief, against the covered entity for purposes of
151 enforcing compliance with this act. The action shall be
152 brought in the circuit court for the county in which the
153 individual resides or was denied the organ transplant or
154 referral.

155 (b) The court shall give priority on its docket and
156 expedited review to an action brought under subsection (a) and
157 may grant injunctive or other equitable relief only.

158 (c) Nothing in this act is intended to limit or replace
159 available remedies under the Americans with Disabilities Act
160 of 1990, as amended, or any other applicable law.

161 (d) In an action under this section, the Court, in its
162 discretion, may allow the prevailing party a reasonable
163 attorney fee as part of the costs of the proceeding.

164 Section 6. This act shall become effective on the first
165 day of the third month following its passage and approval by
166 the Governor, or its otherwise becoming law.



HB122 Enrolled

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Speaker of the House of Representatives

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in and was passed by the House 09-MAY-23 as amended.

John Treadwell
Clerk

Senate 25-May-23

Passed

House 25-May-23

Concurred in
Senate Amendment