

SENATE BILL 792

J1

EMERGENCY BILL

5lr2736
CF HB 1122

By: ~~Senator Astle~~ **Senators Astle, Benson, Feldman, Hershey, Jennings, Kelley,
Klausmeier, Mathias, Middleton, Pugh, and Reilly**

Introduced and read first time: February 19, 2015

Assigned to: Rules

Re-referred to: Finance, February 27, 2015

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 20, 2015

CHAPTER _____

1 AN ACT concerning

2 **Public Health – Nondiscrimination in Access to Anatomical Gifts and Organ**
3 **Transplantation**

4 FOR the purpose of prohibiting certain entities from taking certain actions regarding organ
5 transplantation and anatomical gifts solely on the basis of an individual's disability;
6 authorizing, under certain circumstances, certain entities to take an individual's
7 disability into account when making certain recommendations or decisions;
8 requiring, except under certain circumstances, certain entities to make certain
9 modifications to policies, practices, and procedures to ~~make allow an individual with~~
10 a disability access to certain services available to an individual with a disability;
11 requiring, except under certain circumstances, certain entities to take certain steps
12 to ensure that an individual with a disability is not denied certain services;
13 authorizing, under certain circumstances, a certain individual to bring a certain
14 action in a certain court for certain relief; requiring a circuit court in a certain action
15 to schedule a hearing as soon as possible and apply certain standards in rendering a
16 judgment; prohibiting certain insurers, nonprofit health service plans, and health
17 maintenance organizations from denying coverage for organ transplantations solely
18 on the basis of an insured's or enrollee's disability; declaring the findings of the
19 General Assembly; providing for the construction and application of this Act;
20 defining certain terms; making this Act an emergency measure; and generally
21 relating to nondiscrimination in access to anatomical gifts and organ
22 transplantation.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 BY adding to
 2 Article – Health – General
 3 Section 20–1601 through 20–1606 to be under the new subtitle “Subtitle 16.
 4 Nondiscrimination in Access to Anatomical Gifts and Organ Transplantation”
 5 Annotated Code of Maryland
 6 (2009 Replacement Volume and 2014 Supplement)

7 BY adding to
 8 Article – Insurance
 9 Section 27–915
 10 Annotated Code of Maryland
 11 (2011 Replacement Volume and 2014 Supplement)

12 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
 13 That the Laws of Maryland read as follows:

14 **Article – Health – General**

15 **SUBTITLE 16. NONDISCRIMINATION IN ACCESS TO ANATOMICAL GIFTS AND**
 16 **ORGAN TRANSPLANTATION.**

17 **20–1601.**

18 **(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS**
 19 **INDICATED.**

20 **(B) “ANATOMICAL GIFT” MEANS THE DONATION OF ALL OR PART OF A**
 21 **HUMAN BODY TO TAKE EFFECT AFTER THE DONOR’S DEATH FOR THE PURPOSE OF**
 22 **TRANSPLANTATION OR TRANSFUSION.**

23 **(C) “AUXILIARY AIDS AND SERVICES” INCLUDES:**

24 **(1) QUALIFIED INTERPRETERS OR OTHER EFFECTIVE METHODS OF**
 25 **MAKING AURALLY DELIVERED MATERIALS AVAILABLE TO INDIVIDUALS WITH**
 26 **HEARING IMPAIRMENTS;**

27 **(2) QUALIFIED READERS, TAPED TEXTS, TEXTS IN ACCESSIBLE**
 28 **ELECTRONIC FORMAT, OR OTHER EFFECTIVE METHODS OF MAKING VISUALLY**
 29 **DELIVERED MATERIALS AVAILABLE TO INDIVIDUALS WITH VISUAL IMPAIRMENTS;**

30 **(3) SUPPORTED DECISION–MAKING SERVICES, INCLUDING:**

31 **(i) THE USE OF A SUPPORT INDIVIDUAL TO ASSIST IN MAKING**
 32 **MEDICAL DECISIONS, COMMUNICATING INFORMATION TO THE INDIVIDUAL, OR**
 33 **ASCERTAINING AN INDIVIDUAL’S WISHES;**

1 **(II) THE PROVISION OF INFORMATION TO A PERSON**
2 **DESIGNATED BY THE INDIVIDUAL CONSISTENT WITH THE FEDERAL HEALTH**
3 **INSURANCE PORTABILITY AND ACCOUNTABILITY ACT AND OTHER APPLICABLE**
4 **LAWS AND REGULATIONS GOVERNING THE DISCLOSURE OF HEALTH INFORMATION;**
5 **AND**

6 **(III) IF AN INDIVIDUAL HAS A COURT-APPOINTED GUARDIAN OR**
7 **OTHER INDIVIDUAL RESPONSIBLE FOR MAKING MEDICAL DECISIONS ON BEHALF OF**
8 **THE INDIVIDUAL, ANY MEASURES USED TO ENSURE THAT THE ~~RESPONSIBLE~~**
9 **INDIVIDUAL IS INCLUDED IN DECISIONS INVOLVING THE INDIVIDUAL'S HEALTH**
10 **CARE AND THAT MEDICAL DECISIONS ARE IN ACCORDANCE WITH THE INDIVIDUAL'S**
11 **OWN EXPRESSED INTERESTS; AND**

12 **(4) ANY OTHER AID OR SERVICE THAT IS USED TO PROVIDE**
13 **INFORMATION IN A FORMAT THAT IS EASILY UNDERSTANDABLE AND ACCESSIBLE TO**
14 **INDIVIDUALS WITH COGNITIVE, NEUROLOGICAL, DEVELOPMENTAL, OR**
15 **INTELLECTUAL DISABILITIES.**

16 **(D) "COVERED ENTITY" MEANS:**

17 **(1) A LICENSED HEALTH CARE PROVIDER;**

18 **(2) A HEALTH CARE FACILITY AS DEFINED IN § 19-114 OF THIS**
19 **ARTICLE;**

20 **(3) A LABORATORY;**

21 **(4) A STATE PSYCHIATRIC HOSPITAL;**

22 **(5) A STATE RESIDENTIAL CENTER AS DEFINED IN § 7-101 OF THIS**
23 **ARTICLE;**

24 **(6) AN ALTERNATIVE LIVING UNIT AS DEFINED IN § 7-101 OF THIS**
25 **ARTICLE;**

26 **(7) A GROUP HOME AS DEFINED IN § 7-101 OF THIS ARTICLE;**

27 **(8) AN INSTITUTIONAL MEDICAL UNIT IN A CORRECTIONAL FACILITY;**

28 **OR**

29 **(9) ~~A HEALTH INSURANCE CARRIER; OR~~**

1 ~~(10) ANY ENTITY RESPONSIBLE FOR MATCHING AN ANATOMICAL GIFT~~
2 ~~DONOR WITH POTENTIAL RECIPIENTS OF THE ANATOMICAL GIFT.~~

3 (E) "DISABILITY" HAS THE MEANING STATED IN THE FEDERAL AMERICANS
4 WITH DISABILITIES ACT.

5 (F) "ORGAN TRANSPLANT" MEANS THE TRANSPLANTATION OR
6 TRANSFUSION OF A PART OF A HUMAN BODY INTO THE BODY OF ANOTHER
7 INDIVIDUAL FOR THE PURPOSE OF TREATING OR CURING A MEDICAL CONDITION.

8 (G) "QUALIFIED INDIVIDUAL" MEANS AN INDIVIDUAL WHO:

9 (1) HAS A DISABILITY; AND

10 (2) MEETS THE ESSENTIAL ELIGIBILITY REQUIREMENTS FOR THE
11 RECEIPT OF AN ANATOMICAL GIFT, WITH OR WITHOUT:

12 (I) THE SUPPORT NETWORKS AVAILABLE TO THE INDIVIDUAL;

13 (II) THE PROVISION OF AUXILIARY AIDS AND SERVICES; OR

14 (III) REASONABLE MODIFICATIONS TO THE POLICIES OR
15 PRACTICES OF A COVERED ENTITY, INCLUDING MODIFICATIONS TO ALLOW:

16 1. COMMUNICATION WITH INDIVIDUALS RESPONSIBLE
17 FOR SUPPORTING THE INDIVIDUAL WITH POSTSURGICAL AND
18 POSTTRANSPLANTATION CARE, INCLUDING MEDICATION; AND

19 2. THE CONSIDERATION OF SUPPORT NETWORKS
20 AVAILABLE TO THE INDIVIDUAL, INCLUDING FAMILY, FRIENDS, AND HOME- AND
21 COMMUNITY-BASED SERVICES FUNDED THROUGH THE MARYLAND MEDICAL
22 ASSISTANCE PROGRAM, MEDICARE, OR ANOTHER HEALTH PLAN IN WHICH THE
23 INDIVIDUAL IS ENROLLED, OR ANY PROGRAM OR SOURCE OF FUNDING AVAILABLE
24 TO THE INDIVIDUAL, IN DETERMINING WHETHER THE INDIVIDUAL IS ABLE TO
25 COMPLY WITH POSTTRANSPLANTATION MEDICAL REQUIREMENTS.

26 20-1602.

27 THIS SUBTITLE MAY NOT BE CONSTRUED TO REQUIRE A COVERED ENTITY TO
28 MAKE A REFERRAL OR RECOMMENDATION FOR OR PERFORM A MEDICALLY
29 INAPPROPRIATE ORGAN TRANSPLANT.

30 20-1603.

1 **THE GENERAL ASSEMBLY FINDS THAT:**

2 **(1) A MENTAL OR PHYSICAL DISABILITY DOES NOT DIMINISH AN**
3 **INDIVIDUAL'S RIGHT TO HEALTH CARE;**

4 **(2) THE FEDERAL AMERICANS WITH DISABILITIES ACT PROHIBITS**
5 **DISCRIMINATION AGAINST INDIVIDUALS WITH DISABILITIES, YET MANY**
6 **INDIVIDUALS WITH DISABILITIES STILL EXPERIENCE DISCRIMINATION IN**
7 **ACCESSING CRITICAL HEALTH CARE SERVICES;**

8 **(3) ~~INDIVIDUALS~~ IN OTHER STATES NATIONWIDE, INDIVIDUALS WITH**
9 **MENTAL AND PHYSICAL DISABILITIES HAVE HISTORICALLY BEEN DENIED**
10 **LIFE-SAVING ORGAN TRANSPLANTS BASED ON ASSUMPTIONS THAT THEIR LIVES**
11 **ARE LESS WORTHY, THAT THEY ARE INCAPABLE OF COMPLYING WITH**
12 **POSTTRANSPLANTATION MEDICAL REQUIREMENTS, OR THAT THEY LACK ADEQUATE**
13 **SUPPORT SYSTEMS TO ENSURE COMPLIANCE WITH POSTTRANSPLANTATION**
14 **MEDICAL REQUIREMENTS;**

15 **(4) ALTHOUGH ORGAN TRANSPLANT CENTERS MUST CONSIDER**
16 **MEDICAL AND PSYCHOSOCIAL CRITERIA WHEN DETERMINING IF A PATIENT IS**
17 **SUITABLE TO RECEIVE AN ORGAN TRANSPLANT, TRANSPLANT CENTERS THAT**
18 **PARTICIPATE IN MEDICARE, THE MARYLAND MEDICAL ASSISTANCE PROGRAM,**
19 **AND OTHER FEDERALLY FUNDED PROGRAMS ARE REQUIRED TO USE PATIENT**
20 **SELECTION CRITERIA THAT RESULT IN A FAIR AND NONDISCRIMINATORY**
21 **DISTRIBUTION OF ORGANS; AND**

22 **(5) STATE RESIDENTS IN NEED OF ORGAN TRANSPLANTS ARE**
23 **ENTITLED TO ASSURANCES THAT THEY WILL NOT ENCOUNTER DISCRIMINATION ON**
24 **THE BASIS OF A DISABILITY.**

25 **20-1604.**

26 **THIS SUBTITLE APPLIES TO EACH PART OF THE ORGAN TRANSPLANT**
27 **PROCESS.**

28 **20-1605.**

29 **(A) A COVERED ENTITY MAY NOT SOLELY ON THE BASIS OF AN INDIVIDUAL'S**
30 **DISABILITY:**

31 **(1) CONSIDER A QUALIFIED INDIVIDUAL INELIGIBLE TO RECEIVE AN**
32 **ANATOMICAL GIFT OR ORGAN TRANSPLANT;**

1 (2) DENY MEDICAL AND OTHER SERVICES RELATED TO ORGAN
2 TRANSPLANTATION, INCLUDING EVALUATION, SURGERY, COUNSELING, AND
3 POSTTRANSPLANTATION TREATMENT AND SERVICES;

4 (3) REFUSE TO REFER THE INDIVIDUAL TO A TRANSPLANT CENTER
5 OR A RELATED SPECIALIST FOR THE PURPOSE OF EVALUATION OR RECEIPT OF AN
6 ORGAN TRANSPLANT;

7 (4) REFUSE TO PLACE A QUALIFIED INDIVIDUAL ON AN ORGAN
8 TRANSPLANT WAITING LIST; OR

9 (5) PLACE A QUALIFIED INDIVIDUAL AT A LOWER-PRIORITY
10 POSITION ON AN ORGAN TRANSPLANT WAITING LIST THAN THE POSITION AT WHICH
11 THE QUALIFIED INDIVIDUAL WOULD HAVE BEEN PLACED IF NOT FOR THE
12 DISABILITY; ~~OR~~

13 ~~(6) DECLINE HEALTH INSURANCE COVERAGE FOR ANY PROCEDURE~~
14 ~~ASSOCIATED WITH THE RECEIPT OF AN ANATOMICAL GIFT, INCLUDING~~
15 ~~POSTTRANSPLANTATION CARE.~~

16 (B) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, A COVERED
17 ENTITY MAY TAKE AN INDIVIDUAL'S DISABILITY INTO ACCOUNT WHEN MAKING
18 TREATMENT OR COVERAGE RECOMMENDATIONS OR DECISIONS, SOLELY TO THE
19 EXTENT THAT THE DISABILITY HAS BEEN FOUND BY A PHYSICIAN, FOLLOWING AN
20 INDIVIDUALIZED EVALUATION OF THE INDIVIDUAL, TO BE MEDICALLY SIGNIFICANT
21 TO THE PROVISION OF THE ANATOMICAL GIFT.

22 (2) IF AN INDIVIDUAL HAS THE NECESSARY SUPPORT SYSTEM TO
23 ASSIST THE INDIVIDUAL IN COMPLYING WITH POSTTRANSPLANTATION MEDICAL
24 REQUIREMENTS, A COVERED ENTITY MAY NOT CONSIDER THE INDIVIDUAL'S
25 INABILITY TO INDEPENDENTLY COMPLY WITH THE POSTTRANSPLANTATION
26 MEDICAL REQUIREMENTS TO BE MEDICALLY SIGNIFICANT FOR THE PURPOSES OF
27 PARAGRAPH (1) OF THIS SUBSECTION.

28 (C) A COVERED ENTITY SHALL MAKE REASONABLE MODIFICATIONS IN
29 POLICIES, PRACTICES, OR PROCEDURES, WHEN THE MODIFICATIONS ARE
30 NECESSARY TO ~~MAKE~~ ALLOW AN INDIVIDUAL WITH A DISABILITY ACCESS TO
31 SERVICES, INCLUDING TRANSPLANTATION-RELATED COUNSELING, INFORMATION,
32 COVERAGE, OR TREATMENT, AVAILABLE TO AN INDIVIDUAL WITH A DISABILITY,
33 UNLESS THE COVERED ENTITY CAN DEMONSTRATE THAT MAKING THE
34 MODIFICATIONS WOULD FUNDAMENTALLY ~~WOULD~~ ALTER THE NATURE OF THE
35 SERVICES.

1 (D) A COVERED ENTITY SHALL TAKE ~~ANY~~ SUCH STEPS AS MAY BE
2 NECESSARY TO ENSURE THAT AN INDIVIDUAL WITH A DISABILITY IS NOT DENIED
3 SERVICES, INCLUDING TRANSPLANTATION-RELATED COUNSELING, INFORMATION,
4 COVERAGE, OR TREATMENT, DUE TO THE ABSENCE OF AUXILIARY AIDS AND
5 SERVICES, UNLESS THE COVERED ENTITY CAN DEMONSTRATE THAT TAKING THE
6 STEPS WOULD FUNDAMENTALLY ~~WOULD~~ ALTER THE NATURE OF THE SERVICES
7 BEING OFFERED OR WOULD RESULT IN AN UNDUE BURDEN.

8 **20-1606.**

9 (A) IF A COVERED ENTITY VIOLATES THIS SUBTITLE, THE AFFECTED
10 INDIVIDUAL MAY BRING AN ACTION IN THE APPROPRIATE CIRCUIT COURT FOR
11 INJUNCTIVE OR OTHER EQUITABLE RELIEF.

12 (B) IN AN ACTION BROUGHT UNDER SUBSECTION (A) OF THIS SECTION, THE
13 CIRCUIT COURT SHALL:

14 (1) SCHEDULE A HEARING AS SOON AS POSSIBLE; AND

15 (2) APPLY THE SAME STANDARDS IN RENDERING A JUDGMENT IN THE
16 ACTION AS WOULD BE APPLIED IN AN ACTION BROUGHT IN FEDERAL COURT UNDER
17 THE FEDERAL AMERICANS WITH DISABILITIES ACT.

18 Article - Insurance

19 **27-915.**

20 (A) IN THIS SECTION, "ORGAN TRANSPLANTATION" MEANS THE
21 TRANSPLANTATION OR TRANSFUSION OF A HUMAN BODY PART INTO THE BODY OF
22 ANOTHER INDIVIDUAL FOR THE PURPOSE OF TREATING OR CURING A MEDICAL
23 CONDITION.

24 (B) THIS SECTION APPLIES TO:

25 (1) INSURERS AND NONPROFIT HEALTH SERVICE PLANS THAT
26 PROVIDE COVERAGE FOR ORGAN TRANSPLANTATION TO INDIVIDUALS OR GROUPS
27 ON AN EXPENSE-INCURRED BASIS UNDER HEALTH INSURANCE POLICIES OR
28 CONTRACTS THAT ARE ISSUED OR DELIVERED IN THE STATE; AND

29 (2) HEALTH MAINTENANCE ORGANIZATIONS THAT PROVIDE
30 COVERAGE FOR ORGAN TRANSPLANTATION TO INDIVIDUALS OR GROUPS UNDER
31 CONTRACTS THAT ARE ISSUED OR DELIVERED IN THE STATE.

1 **(C) AN ENTITY SUBJECT TO THIS SECTION MAY NOT DENY COVERAGE FOR**
 2 **AN ORGAN TRANSPLANTATION SOLELY ON THE BASIS OF AN INSURED'S OR**
 3 **ENROLLEE'S DISABILITY.**

4 **(D) THIS SECTION MAY NOT BE CONSTRUED TO REQUIRE AN ENTITY**
 5 **SUBJECT TO THIS SECTION TO PROVIDE COVERAGE FOR AN ORGAN**
 6 **TRANSPLANTATION THAT IS NOT MEDICALLY NECESSARY.**

7 SECTION 2. AND BE IT FURTHER ENACTED, That this Act is an emergency
 8 measure, is necessary for the immediate preservation of the public health or safety, has
 9 been passed by a ye and nay vote supported by three-fifths of all the members elected to
 10 each of the two Houses of the General Assembly, and shall take effect from the date it is
 11 enacted.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.