

SENATE BILL 792

J1

EMERGENCY BILL

5lr2736
CF HB 1122

By: **Senator Astle**

Introduced and read first time: February 19, 2015

Assigned to: Rules

A BILL ENTITLED

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 certain services available
10 to an individual with a disability; requiring, except under certain circumstances,
11 certain entities to take certain steps to ensure that an individual with a disability is
12 not denied certain services; authorizing, under certain circumstances, a certain
13 individual to bring a certain action in a certain court for certain relief; requiring a
14 circuit court in a certain action to schedule a hearing as soon as possible and apply
15 certain standards in rendering a judgment; declaring the findings of the General
16 Assembly; providing for the construction and application of this Act; defining certain
17 terms; making this Act an emergency measure; and generally relating to
18 nondiscrimination in access to anatomical gifts and organ transplantation.

19 BY adding to

20 Article – Health – General

21 Section 20–1601 through 20–1606 to be under the new subtitle “Subtitle 16.

22 Nondiscrimination in Access to Anatomical Gifts and Organ Transplantation”

23 Annotated Code of Maryland

24 (2009 Replacement Volume and 2014 Supplement)

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

27 **Article – Health – General**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 INDIVIDUALS WITH COGNITIVE, NEUROLOGICAL, DEVELOPMENTAL, OR
2 INTELLECTUAL DISABILITIES.

3 (D) "COVERED ENTITY" MEANS:

4 (1) A LICENSED HEALTH CARE PROVIDER;

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

7 (3) A LABORATORY;

8 (4) A STATE PSYCHIATRIC HOSPITAL;

9 (5) A STATE RESIDENTIAL CENTER AS DEFINED IN § 7-101 OF THIS
10 ARTICLE;

11 (6) AN ALTERNATIVE LIVING UNIT AS DEFINED IN § 7-101 OF THIS
12 ARTICLE;

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

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

15 (9) A HEALTH INSURANCE CARRIER; OR

16 (10) ANY ENTITY RESPONSIBLE FOR MATCHING AN ANATOMICAL GIFT
17 DONOR WITH POTENTIAL RECIPIENTS OF THE ANATOMICAL GIFT.

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

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

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

24 (1) HAS A DISABILITY; AND

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

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

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

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

5 1. COMMUNICATION WITH INDIVIDUALS RESPONSIBLE
6 FOR SUPPORTING THE INDIVIDUAL WITH POSTSURGICAL AND
7 POSTTRANSPLANTATION CARE, INCLUDING MEDICATION; AND

8 2. THE CONSIDERATION OF SUPPORT NETWORKS
9 AVAILABLE TO THE INDIVIDUAL, INCLUDING FAMILY, FRIENDS, AND HOME- AND
10 COMMUNITY-BASED SERVICES FUNDED THROUGH THE MARYLAND MEDICAL
11 ASSISTANCE PROGRAM, MEDICARE, OR ANOTHER HEALTH PLAN IN WHICH THE
12 INDIVIDUAL IS ENROLLED, OR ANY PROGRAM OR SOURCE OF FUNDING AVAILABLE
13 TO THE INDIVIDUAL, IN DETERMINING WHETHER THE INDIVIDUAL IS ABLE TO
14 COMPLY WITH POSTTRANSPLANTATION MEDICAL REQUIREMENTS.

15 **20-1602.**

16 THIS SUBTITLE MAY NOT BE CONSTRUED TO REQUIRE A COVERED ENTITY TO
17 MAKE A REFERRAL OR RECOMMENDATION FOR OR PERFORM A MEDICALLY
18 INAPPROPRIATE ORGAN TRANSPLANT.

19 **20-1603.**

20 THE GENERAL ASSEMBLY FINDS THAT:

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

23 (2) THE FEDERAL AMERICANS WITH DISABILITIES ACT PROHIBITS
24 DISCRIMINATION AGAINST INDIVIDUALS WITH DISABILITIES, YET MANY
25 INDIVIDUALS WITH DISABILITIES STILL EXPERIENCE DISCRIMINATION IN
26 ACCESSING CRITICAL HEALTH CARE SERVICES;

27 (3) INDIVIDUALS WITH MENTAL AND PHYSICAL DISABILITIES HAVE
28 HISTORICALLY BEEN DENIED LIFE-SAVING ORGAN TRANSPLANTS BASED ON
29 ASSUMPTIONS THAT THEIR LIVES ARE LESS WORTHY, THAT THEY ARE INCAPABLE
30 OF COMPLYING WITH POSTTRANSPLANTATION MEDICAL REQUIREMENTS, OR THAT
31 THEY LACK ADEQUATE SUPPORT SYSTEMS TO ENSURE COMPLIANCE WITH
32 POSTTRANSPLANTATION MEDICAL REQUIREMENTS;

1 **(4) ALTHOUGH ORGAN TRANSPLANT CENTERS MUST CONSIDER**
2 **MEDICAL AND PSYCHOSOCIAL CRITERIA WHEN DETERMINING IF A PATIENT IS**
3 **SUITABLE TO RECEIVE AN ORGAN TRANSPLANT, TRANSPLANT CENTERS THAT**
4 **PARTICIPATE IN MEDICARE, THE MARYLAND MEDICAL ASSISTANCE PROGRAM,**
5 **AND OTHER FEDERALLY FUNDED PROGRAMS ARE REQUIRED TO USE PATIENT**
6 **SELECTION CRITERIA THAT RESULT IN A FAIR AND NONDISCRIMINATORY**
7 **DISTRIBUTION OF ORGANS; AND**

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

11 **20-1604.**

12 **THIS SUBTITLE APPLIES TO EACH PART OF THE ORGAN TRANSPLANT**
13 **PROCESS.**

14 **20-1605.**

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

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

19 **(2) DENY MEDICAL AND OTHER SERVICES RELATED TO ORGAN**
20 **TRANSPLANTATION, INCLUDING EVALUATION, SURGERY, COUNSELING, AND**
21 **POSTTRANSPLANTATION TREATMENT AND SERVICES;**

22 **(3) REFUSE TO REFER THE INDIVIDUAL TO A TRANSPLANT CENTER**
23 **OR A RELATED SPECIALIST FOR THE PURPOSE OF EVALUATION OR RECEIPT OF AN**
24 **ORGAN TRANSPLANT;**

25 **(4) REFUSE TO PLACE A QUALIFIED INDIVIDUAL ON AN ORGAN**
26 **TRANSPLANT WAITING LIST;**

27 **(5) PLACE A QUALIFIED INDIVIDUAL AT A LOWER-PRIORITY**
28 **POSITION ON AN ORGAN TRANSPLANT WAITING LIST THAN THE POSITION AT WHICH**
29 **THE QUALIFIED INDIVIDUAL WOULD HAVE BEEN PLACED IF NOT FOR THE**
30 **DISABILITY; OR**

1 **(6) DECLINE HEALTH INSURANCE COVERAGE FOR ANY PROCEDURE**
2 **ASSOCIATED WITH THE RECEIPT OF AN ANATOMICAL GIFT, INCLUDING**
3 **POSTTRANSPLANTATION CARE.**

4 **(B) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, A COVERED**
5 **ENTITY MAY TAKE AN INDIVIDUAL'S DISABILITY INTO ACCOUNT WHEN MAKING**
6 **TREATMENT OR COVERAGE RECOMMENDATIONS OR DECISIONS, SOLELY TO THE**
7 **EXTENT THAT THE DISABILITY HAS BEEN FOUND BY A PHYSICIAN, FOLLOWING AN**
8 **INDIVIDUALIZED EVALUATION OF THE INDIVIDUAL, TO BE MEDICALLY SIGNIFICANT**
9 **TO THE PROVISION OF THE ANATOMICAL GIFT.**

10 **(2) IF AN INDIVIDUAL HAS THE NECESSARY SUPPORT SYSTEM TO**
11 **ASSIST THE INDIVIDUAL IN COMPLYING WITH POSTTRANSPLANTATION MEDICAL**
12 **REQUIREMENTS, A COVERED ENTITY MAY NOT CONSIDER THE INDIVIDUAL'S**
13 **INABILITY TO INDEPENDENTLY COMPLY WITH THE POSTTRANSPLANTATION**
14 **MEDICAL REQUIREMENTS TO BE MEDICALLY SIGNIFICANT FOR THE PURPOSES OF**
15 **PARAGRAPH (1) OF THIS SUBSECTION.**

16 **(C) A COVERED ENTITY SHALL MAKE REASONABLE MODIFICATIONS IN**
17 **POLICIES, PRACTICES, OR PROCEDURES, WHEN THE MODIFICATIONS ARE**
18 **NECESSARY TO MAKE SERVICES, INCLUDING TRANSPLANTATION-RELATED**
19 **COUNSELING, INFORMATION, COVERAGE, OR TREATMENT, AVAILABLE TO AN**
20 **INDIVIDUAL WITH A DISABILITY, UNLESS THE COVERED ENTITY CAN DEMONSTRATE**
21 **THAT MAKING THE MODIFICATIONS FUNDAMENTALLY WOULD ALTER THE NATURE**
22 **OF THE SERVICES.**

23 **(D) A COVERED ENTITY SHALL TAKE ANY STEPS NECESSARY TO ENSURE**
24 **THAT AN INDIVIDUAL WITH A DISABILITY IS NOT DENIED SERVICES, INCLUDING**
25 **TRANSPLANTATION-RELATED COUNSELING, INFORMATION, COVERAGE, OR**
26 **TREATMENT, DUE TO THE ABSENCE OF AUXILIARY AIDS AND SERVICES, UNLESS THE**
27 **COVERED ENTITY CAN DEMONSTRATE THAT TAKING THE STEPS FUNDAMENTALLY**
28 **WOULD ALTER THE NATURE OF THE SERVICES BEING OFFERED OR WOULD RESULT**
29 **IN AN UNDUE BURDEN.**

30 **20-1606.**

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

34 **(B) IN AN ACTION BROUGHT UNDER SUBSECTION (A) OF THIS SECTION, THE**
35 **CIRCUIT COURT SHALL:**

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

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

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