

**HB122 ENGROSSED**



1 5L2V66-2

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

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9 2023 Regular Session



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A BILL  
TO BE ENTITLED  
AN ACT

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

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

Section 2. The Legislature finds all of the following:

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

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



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

34           (4) Although organ transplant centers must consider  
35 medical and psychosocial criteria when determining if a  
36 patient is suitable to receive an organ transplant, transplant  
37 centers that participate in Medicare, Medicaid, and other  
38 federal funding programs are required to use patient selection  
39 criteria that result in a fair and nondiscriminatory  
40 distribution of organs.

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

44           Section 3. As used in this act, the following terms  
45 have the following meanings:

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

49           (2) AUXILIARY AIDS AND SERVICES. Reasonable  
50 accommodations that include the following:

51           a. Qualified interpreters or other effective methods of  
52 making aurally delivered materials available to individuals  
53 with hearing impairments.

54           b. Qualified readers, taped texts, or other effective  
55 methods of making visually delivered material available to  
56 individuals with visual impairments.



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57 c. Acquisition or modification of equipment or devices.

58 d. Any other aid or service that is used to provide  
59 information in a format that is easily understandable and  
60 accessible to individuals with cognitive, neurological,  
61 developmental, or intellectual disabilities.

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

63 a. A health care provider licensed under Title 34, Code  
64 of Alabama 1975.

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

67 c. An entity responsible for matching anatomical gift  
68 donors to potential recipients.

69 (4) DISABILITY. The definition as provided in 42 U.S.C.  
70 § 12102.

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

74 (6) QUALIFIED INDIVIDUAL. An individual with a  
75 disability who meets the essential eligibility requirements  
76 for the receipt of an anatomical gift, with or without any of  
77 the following:

78 a. A support network available to the individual.

79 b. The provision of auxiliary aids and services.

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

83 1. Communication with individuals responsible for  
84 supporting the individual with post-surgical and



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85 post-transplantation care, including medication.

86           2. The consideration of a support network available to  
87 the individual, including family, friends, and home-based and  
88 community-based services funded through Medicaid, Medicare, or  
89 another health plan in which the individual is enrolled, or  
90 any program or source of funding available to the individual  
91 in determining whether the individual is able to comply with  
92 post-transplantation medical requirements.

93           (7) SUPPORTED DECISION-MAKING. The reasonable  
94 accommodation of a support person or persons to assist an  
95 individual in making medical decisions, communicate  
96 information to the individual, or ascertain an individual's  
97 wishes, including the following:

98           a. The individual's parent, court-appointed guardian,  
99 legal custodian, attorney-in-fact, or designated health care  
100 proxy.

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

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

104           (1) Consider an individual ineligible to receive an  
105 anatomical gift or organ transplant.

106           (2) Deny medical and other services related to  
107 transplantation, including evaluation, surgery, counseling,  
108 and post-transplantation treatment and services.

109           (3) Refuse to refer the individual to a transplant  
110 center or other related specialist for the purpose of  
111 evaluation or receipt of an anatomical gift or organ  
112 transplant.



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113 (4) Refuse to place an individual on an organ  
114 transplant waiting list.

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

118 (6) Decline insurance coverage for any procedure  
119 associated with the receipt of the anatomical gift or organ  
120 transplant, including post-transplantation care.

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

128 (2) If a qualified individual has the necessary support  
129 system to assist the individual in complying with  
130 post-transplantation medical requirements, a covered entity  
131 may not consider the individual's inability to independently  
132 comply with the post-transplantation medical requirements to  
133 be medically significant for the purposes of subdivision (1).

134 (c) A covered entity shall make reasonable  
135 modifications in policies, practices, or procedures when the  
136 modifications are necessary to allow a qualified individual  
137 access to services, including transplantation-related  
138 counseling, information, coverage, or treatment, unless the  
139 covered entity can demonstrate that making the modifications  
140 would fundamentally alter the nature of the services being



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141 offered or result in an undue burden.

142 (d) A covered entity shall implement auxiliary aids and  
143 services and supported decision-making services as necessary  
144 to ensure that a qualified individual is not denied services,  
145 including transplantation-related counseling, information,  
146 coverage, or treatment, unless the covered entity can  
147 demonstrate that implementation of the accommodations would  
148 fundamentally alter the nature of the services being offered  
149 or would result in an undue burden.

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

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

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

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

166 (d) Nothing in this act shall be construed as creating  
167 a right to compensatory or punitive damages against a covered  
168 entity.

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





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House of Representatives

Read for the first time and referred .....21-Mar-23  
to the House of Representatives  
committee on Health  
  
Read for the second time and placed .....19-Apr-23  
on the calendar:  
0 amendments  
  
Read for the third time and passed .....09-May-23  
as amended  
Yeas 101  
Nays 0  
Abstains 1

John Treadwell  
Clerk