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SYNOPSIS:

This bill would prohibit discrimination against an individual from receiving an organ transplant based on the individual having a disability.

This bill would require health care practitioners, hospitals and other health care facilities, and organ transplant centers to provide reasonable accommodations to an individual with a disability in medical need of an anatomical gift or organ transplant.

A disabled person who is seeking an organ transplant is also given the right to seek an injunction to enforce the anti-discriminatory purpose of this bill.

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



29 individuals with a disability in medical need of an anatomical  
30 gift or organ transplant; and to provide disabled individuals  
31 the right to equitable relief.

32 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

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

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

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

48 (4) Although organ transplant centers must consider  
49 medical and psychosocial criteria when determining if a  
50 patient is suitable to receive an organ transplant, transplant  
51 centers that participate in Medicare, Medicaid, and other  
52 federal funding programs are required to use patient selection  
53 criteria that result in a fair and nondiscriminatory  
54 distribution of organs.

55 (5) Alabama residents in need of organ transplants are  
56 entitled to assurances that they will not encounter



57 discrimination on the basis of a disability.

58 Section 3. As used in this act, the following terms  
59 have the following meanings:

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

63 (2) AUXILIARY AIDS AND SERVICES. Reasonable  
64 accommodations that include the following:

65 a. Qualified interpreters or other effective methods of  
66 making aurally delivered materials available to individuals  
67 with hearing impairments.

68 b. Qualified readers, taped texts, or other effective  
69 methods of making visually delivered material available to  
70 individuals with visual impairments.

71 c. Acquisition or modification of equipment or devices.

72 d. Any other aid or service that is used to provide  
73 information in a format that is easily understandable and  
74 accessible to individuals with cognitive, neurological,  
75 developmental, or intellectual disabilities.

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

77 a. A health care provider licensed under Title 34, Code  
78 of Alabama 1975.

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

81 c. An entity responsible for matching anatomical gift  
82 donors to potential recipients.

83 (4) DISABILITY. The definition as provided in 42 U.S.C.  
84 § 12102.



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

88 (6) QUALIFIED INDIVIDUAL. An individual with a  
89 disability who meets the essential eligibility requirements  
90 for the receipt of an anatomical gift, with or without any of  
91 the following:

- 92 a. A support network available to the individual.
- 93 b. The provision of auxiliary aids and services.
- 94 c. Access to a covered entity that has made reasonable  
95 modifications to its policies or practices, including  
96 modifications to allow both of the following:

- 97 1. Communication with individuals responsible for  
98 supporting the individual with post-surgical and  
99 post-transplantation care, including medication.

- 100 2. The consideration of a support network available to  
101 the individual, including family, friends, and home-based and  
102 community-based services funded through Medicaid, Medicare, or  
103 another health plan in which the individual is enrolled, or  
104 any program or source of funding available to the individual  
105 in determining whether the individual is able to comply with  
106 post-transplantation medical requirements.

107 (7) SUPPORTED DECISION-MAKING. The reasonable  
108 accommodation of a support person or persons to assist an  
109 individual in making medical decisions, communicate  
110 information to the individual, or ascertain an individual's  
111 wishes, including the following:

- 112 a. The individual's parent, court-appointed guardian,



113 legal custodian, attorney-in-fact, or designated health care  
114 proxy.

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

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

118 (1) Consider an individual ineligible to receive an  
119 anatomical gift or organ transplant.

120 (2) Deny medical and other services related to  
121 transplantation, including evaluation, surgery, counseling,  
122 and post-transplantation treatment and services.

123 (3) Refuse to refer the individual to a transplant  
124 center or other related specialist for the purpose of  
125 evaluation or receipt of an anatomical gift or organ  
126 transplant.

127 (4) Refuse to place an individual on an organ  
128 transplant waiting list.

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

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

135 (b)(1) Notwithstanding subsection (a), a covered entity  
136 may take a qualified individual's disability into account when  
137 making treatment or coverage recommendations or decisions,  
138 solely to the extent that the disability has been found by a  
139 physician, following an individualized evaluation of the  
140 individual, to be medically significant to the provision of



141 the anatomical gift or organ transplant.

142 (2) If a qualified individual has the necessary support  
143 system to assist the individual in complying with  
144 post-transplantation medical requirements, a covered entity  
145 may not consider the individual's inability to independently  
146 comply with the post-transplantation medical requirements to  
147 be medically significant for the purposes of subdivision (1).

148 (c) A covered entity shall make reasonable  
149 modifications in policies, practices, or procedures when the  
150 modifications are necessary to allow a qualified individual  
151 access to services, including transplantation-related  
152 counseling, information, coverage, or treatment, unless the  
153 covered entity can demonstrate that making the modifications  
154 would fundamentally alter the nature of the services being  
155 offered or result in an undue burden.

156 (d) A covered entity shall implement auxiliary aids and  
157 services and supported decision-making services as necessary  
158 to ensure that a qualified individual is not denied services,  
159 including transplantation-related counseling, information,  
160 coverage, or treatment, unless the covered entity can  
161 demonstrate that implementation of the accommodations would  
162 fundamentally alter the nature of the services being offered  
163 or would result in an undue burden.

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

167 Section 5. (a) When it appears that a covered entity  
168 has violated or is violating this act, the affected individual



169 may commence a civil action for injunctive and other equitable  
170 relief against the covered entity for purposes of enforcing  
171 compliance with this act. The action shall be brought in the  
172 circuit court for the county in which the individual resides  
173 or was denied the organ transplant or referral.

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

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

180 (d) Nothing in this act shall be construed as creating  
181 a right to compensatory or punitive damages against a covered  
182 entity.

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