

House Bill 522

By: Representatives Gullett of the 19th, Scoggins of the 14th, Mathiak of the 82nd, and Gambill of the 15th

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 1 of Title 31 of the Official Code of Georgia Annotated, relating to
2 general provisions regarding health, so as to prohibit certain healthcare providers and
3 facilities from discriminating against potential organ transplant recipients due solely to the
4 vaccine status of the potential recipient; to provide for definitions; to provide for related
5 matters; to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Chapter 1 of Title 31 of the Official Code of Georgia Annotated, relating to general
9 provisions regarding health, is amended by revising Code Section 31-1-24, relating to organ
10 transplant protections for individuals with disabilities and civil relief for violations, as
11 follows:

12 "31-1-24.

13 (a) As used in this Code section, the term:

14 (1) 'Anatomical gift' means a donation of any part or all of a human body conditioned
15 upon the donor's death for the purpose of transplantation or transfusion.

16 (2) 'Auxiliary aids or services' means an aid or service that is used to provide information
17 to an individual with a cognitive, developmental, intellectual, neurological, or physical
18 disability and is available in a format or manner that allows such individual to better
19 understand such information. An auxiliary aid or service may include:

20 (A) Qualified interpreters or other effective methods of making aurally delivered
21 materials available to individuals with hearing impairments;

22 (B) Qualified readers, taped texts, texts in accessible electronic format, or other
23 effective methods of making visually delivered materials available to individuals with
24 visual impairments; or

25 (C) Supported decision-making services, including:

26 (i) The use of a support personnel to communicate information to the individual with
27 a disability, ascertain the wishes of such individual, or assist such individual in
28 making decisions;

29 (ii) The disclosure of information to a legal guardian, authorized representative, or
30 another individual designated by the individual with a disability for such purpose, so
31 long as the disclosure is consistent with state and federal law, including the federal
32 Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. Section
33 1320d, et seq., and any regulations promulgated by the United States Department of
34 Health and Human Services to implement such ~~Act~~ act;

35 (iii) When an individual with a disability has a court appointed guardian or other
36 person responsible for making medical decisions on behalf of such individual, any
37 measures used to ensure that the individual is included in decisions involving the
38 individual's ~~health care~~ healthcare and that medical decisions are in accord with the
39 individual's own expressed interests; and

40 (iv) Any other aid or service that is used to provide information in a format that is
41 easily understandable and accessible to individuals with cognitive, neurological,

42 developmental, or intellectual disabilities, including any form of communication
43 technology.

44 (3) 'Covered entity' means:

45 (A) Any licensed provider of ~~health care~~ healthcare services, including licensed ~~health~~
46 ~~care~~ healthcare practitioners, hospitals, nursing facilities, laboratories, intermediate care
47 facilities, psychiatric residential treatment facilities, institutions for individuals with
48 intellectual or developmental disabilities, and such licensed individuals or facilities
49 providing ~~health care~~ healthcare services to incarcerated persons with disabilities; and

50 (B) Any entity responsible for matching anatomical gift donors to potential recipients.

51 (4) 'COVID-19' means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2),
52 and any mutation or viral fragments thereof, or any disease or condition caused by severe
53 acute respiratory syndrome coronavirus 2 (SARS-CoV-2), which was the subject of the
54 public health state of emergency declared by the Governor on March 14, 2020.

55 ~~(4)~~(5) 'Disability' has the same meaning as provided for in the Americans with
56 Disabilities Act of 1990, as amended by the ADA Amendments Act of 2008, 42 U.S.C.
57 Section 12102.

58 ~~(5)~~(6) 'Organ transplant' means the transplantation or transfusion of a part of a human
59 body into the body of another human for the purpose of treating or curing a medical
60 condition.

61 ~~(6)~~(7) 'Qualified recipient' means an individual who has a disability and meets the
62 essential eligibility requirements for the receipt of an anatomical gift with or without any
63 of the following:

64 (A) Individuals or entities available to support and assist the recipient with an
65 anatomical gift or transplantation;

66 (B) Auxiliary aids or services; or

67 (C) Reasonable modifications to the policies, practices, or procedures of a covered
68 entity, including modifications to allow for either or both of the following:

- 69 (i) Communication with one or more individuals or entities available to support or
70 assist with the recipient's care and medication after surgery or transplantation; or
71 (ii) Consideration of support networks available to the recipient, including family,
72 friends, and home and community based services, including home and community
73 based services funded through Medicaid, Medicare, another health plan in which the
74 recipient is enrolled, or any program or source of funding available to the recipient,
75 when determining whether the recipient is able to comply with posttransplant medical
76 requirements.

77 (8) 'Vaccine status' means whether or not an individual has received a specific
78 vaccination or series of vaccinations for COVID-19.

79 (b)(1) The provisions of this Code section shall apply to all stages of the organ transplant
80 process.

81 (2) A covered entity shall not, solely on the basis of an individual's disability or vaccine
82 status:

83 (A) Consider the individual ineligible to receive an anatomical gift or organ transplant;
84 (B) Deny medical services or other services related to organ transplantation, including
85 diagnostic services, evaluation, surgery, counseling, and postoperative treatment and
86 services;

87 (C) Refuse to refer the individual to a transplant center or other related specialist for
88 the purpose of being evaluated for or receiving an organ transplant;

89 (D) Refuse to place ~~a qualified recipient~~ such an individual on an organ transplant
90 waiting list;

91 (E) Place ~~a qualified recipient~~ such an individual on an organ transplant waiting list at
92 a lower priority position than the position at which the individual would have been
93 placed if such individual did not have a disability or if not for the individual's vaccine
94 status; or

95 (F) Refuse insurance coverage for any procedure associated with being evaluated for
96 or receiving an anatomical gift, including posttransplantation and posttransfusion care.

97 (3) Notwithstanding paragraph (2) of this subsection, a covered entity may take an
98 individual's disability into account when making treatment or coverage recommendations
99 or decisions, solely to the extent that the individual's disability has been found by a
100 physician, following an evaluation of such individual, to be medically significant to the
101 provision of the anatomical gift.

102 (4) If an individual has the necessary support system to assist such individual in
103 complying with posttransplant medical requirements, a covered entity may not consider
104 the individual's inability to independently comply with posttransplant medical
105 requirements to be medically significant for the purposes of paragraph (3) of this
106 subsection.

107 (5) A covered entity shall make reasonable modifications to its policies, practices, or
108 procedures to allow individuals with disabilities access to transplantation related services,
109 including diagnostic services, surgery, coverage, postoperative treatment, and counseling,
110 unless the entity can demonstrate that making such modifications would fundamentally
111 alter the nature of such services.

112 (6) A covered entity must take steps necessary to ensure that an individual with a
113 disability is not denied medical services or other services related to organ transplantation,
114 including diagnostic services, surgery, postoperative treatment, or counseling, due to the
115 absence of auxiliary aids or services, unless the covered entity demonstrates that taking
116 the steps would fundamentally alter the nature of the medical services or other services
117 related to organ transplantation or would result in an undue burden for the covered entity.

118 (7) Nothing in this Code section shall be deemed to require a covered entity to make a
119 referral or recommendation for or perform a medically inappropriate organ transplant.

120 (8) A covered entity shall comply with the requirements of Titles II and III of the
121 Americans with Disabilities Act of 1990, as amended by the ADA Amendments Act of
122 2008, 42 U.S.C. Section 12102.

123 (c)(1) When it appears that a covered entity has violated or is violating any provision of
124 this Code section, the affected individual may commence a civil action for injunctive and
125 other equitable relief against such covered entity for purposes of enforcing compliance
126 with this Code section. Such action may be brought in the district court for the county
127 where the affected individual resides or resided or was denied the organ transplant or
128 referral.

129 (2) In an action brought under paragraph (1) of this Code section, the court shall give
130 priority on its docket and expedited review, and may grant injunctive or other equitable
131 relief, including:

132 (A) Requiring auxiliary aids or services to be made available for a qualified recipient;

133 (B) Requiring the modification of a policy, practice, or procedure of a covered entity;

134 or

135 (C) Requiring facilities be made readily accessible to and usable by a qualified
136 recipient.

137 (3) Nothing in this Code section is intended to limit or replace available remedies under
138 the Americans with Disabilities Act of 1990, as amended, or any other applicable law.

139 (4) This Code section does not create a right to compensatory or punitive damages
140 against a covered entity."

141 **SECTION 2.**

142 All laws and parts of laws in conflict with this Act are repealed.