

**First Regular Session
Seventy-third General Assembly
STATE OF COLORADO**

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 21-0624.01 Kristen Forrestal x4217

HOUSE BILL 21-1169

HOUSE SPONSORSHIP

Van Beber and Ortiz,

SENATE SPONSORSHIP

(None),

House Committees
Health & Insurance

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE PROHIBITION OF DISCRIMINATION AGAINST A**
102 **POTENTIAL ORGAN TRANSPLANT RECIPIENT BASED SOLELY ON**
103 **THE PERSON'S DISABILITY.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill prohibits a health-care provider, hospital, or other entity involved in making a decision regarding a person's eligibility to receive an anatomical gift, organ transplant, or any related treatment or services from discriminating against that person solely on the basis of a disability. The bill authorizes an aggrieved person to commence a civil action for

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

HOUSE
2nd Reading Unamended
March 26, 2021

1 ENSURE COMPLIANCE WITH POST-TRANSPLANT MEDICAL REQUIREMENTS;
2 AND

3 (d) ALTHOUGH ORGAN TRANSPLANT CENTERS MUST CONSIDER
4 MEDICAL AND PSYCHOLOGICAL CRITERIA WHEN DETERMINING WHETHER
5 A PATIENT IS SUITABLE TO RECEIVE AN ORGAN TRANSPLANT, TRANSPLANT
6 CENTERS THAT PARTICIPATE IN MEDICARE, MEDICAID, AND OTHER
7 FEDERALLY FUNDED PROGRAMS ARE REQUIRED TO USE PATIENT SELECTION
8 CRITERIA THAT RESULT IN THE FAIR AND NONDISCRIMINATORY
9 DISTRIBUTION OF ORGANS.

10 (2) THEREFORE, THE GENERAL ASSEMBLY DECLARES THAT THE
11 LIFE OF A PERSON WITH A DISABILITY WHO NEEDS AN ORGAN TRANSPLANT
12 IS AS WORTHY AND VALUABLE AS THE LIFE OF A PERSON WITHOUT A
13 DISABILITY WHO NEEDS THE SAME MEDICAL SERVICE, AND COLORADO
14 RESIDENTS IN NEED OF ORGAN TRANSPLANTS ARE ENTITLED TO
15 ASSURANCES THAT THEY WILL NOT ENCOUNTER DISCRIMINATION ON THE
16 BASIS OF A DISABILITY.

17 **25-56-103. Definitions.** AS USED IN THIS ARTICLE 56, UNLESS THE
18 CONTEXT OTHERWISE REQUIRES:

19 (1) "ANATOMICAL GIFT" MEANS THE DONATION OF PART OF A
20 HUMAN BODY FOR THE PURPOSE OF TRANSPLANTATION TO ANOTHER
21 PERSON.

22 (2) "AUXILIARY AIDS OR SERVICES" MEANS AN AID OR SERVICE
23 THAT IS USED TO PROVIDE INFORMATION TO AN INDIVIDUAL WITH A
24 COGNITIVE, DEVELOPMENTAL, INTELLECTUAL, NEUROLOGICAL, OR
25 PHYSICAL DISABILITY, AND IS AVAILABLE IN A FORMAT OR MANNER THAT
26 ALLOWS THE INDIVIDUAL TO BETTER UNDERSTAND THE INFORMATION.

27 (3) "COVERED ENTITY" MEANS A HEALTH-CARE PRACTITIONER, AS

1 DEFINED IN SECTION 12-30-103 (4)(a); A HEALTH FACILITY LICENSED
2 PURSUANT TO SECTION 25-1.5-103; AND A CORRECTIONAL FACILITY, AS
3 DEFINED IN SECTION 24-4.1-302 (1.3).

4 (4) "DISABILITY" HAS THE SAME MEANING AS SET FORTH IN THE
5 FEDERAL "AMERICANS WITH DISABILITIES ACT OF 1990", 42 U.S.C. SEC.
6 12102 (1), AS AMENDED.

7 (5) "ORGAN TRANSPLANT" MEANS THE TRANSPLANTATION OR
8 TRANSFUSION OF AN ANATOMICAL GIFT INTO THE BODY OF ANOTHER
9 PERSON FOR THE PURPOSE OF TREATING OR CURING A MEDICAL CONDITION.

10 (6) "QUALIFIED RECIPIENT" MEANS AN INDIVIDUAL WHO HAS A
11 DISABILITY AND MEETS THE ESSENTIAL ELIGIBILITY REQUIREMENTS FOR
12 THE RECEIPT OF AN ANATOMICAL GIFT WITH OR WITHOUT ANY OF THE
13 FOLLOWING:

14 (a) INDIVIDUALS OR ENTITIES AVAILABLE TO SUPPORT AND ASSIST
15 THE INDIVIDUAL WITH AN ANATOMICAL GIFT OR TRANSPLANTATION;

16 (b) AUXILIARY AIDS OR SERVICES;

17 (c) REASONABLE MODIFICATIONS TO THE POLICIES, PRACTICES, OR
18 PROCEDURES OF A COVERED ENTITY, INCLUDING MODIFICATIONS TO
19 ALLOW FOR:

20 (I) COMMUNICATION WITH ONE OR MORE INDIVIDUALS OR ENTITIES
21 AVAILABLE TO SUPPORT OR ASSIST WITH THE RECIPIENT'S CARE AND
22 MEDICATION AFTER SURGERY OR TRANSPLANTATION; OR

23 (II) CONSIDERATION OF SUPPORT NETWORKS AVAILABLE TO THE
24 INDIVIDUAL, INCLUDING FAMILY MEMBERS, FRIENDS, HOME AND
25 COMMUNITY-BASED SERVICES THE INDIVIDUAL IS ENROLLED IN, OR ANY
26 PROGRAM OR SOURCE OF FUNDING AVAILABLE TO THE INDIVIDUAL WHEN
27 DETERMINING WHETHER THE INDIVIDUAL IS ABLE TO COMPLY WITH

1 POST-TRANSPLANT MEDICAL REQUIREMENTS.

2 **25-56-104. Prohibition on discrimination for organ transplants**
3 **based solely on disability - applicability.** (1) THIS ARTICLE 56 APPLIES
4 TO ALL STAGES OF THE ORGAN TRANSPLANT PROCESS.

5 (2) A COVERED ENTITY SHALL NOT, SOLELY ON THE BASIS OF AN
6 INDIVIDUAL'S DISABILITY:

7 (a) CONSIDER THE INDIVIDUAL INELIGIBLE TO RECEIVE AN
8 ANATOMICAL GIFT OR ORGAN TRANSPLANT;

9 (b) DENY MEDICAL SERVICES OR OTHER SERVICES RELATED TO
10 ORGAN TRANSPLANTATION, INCLUDING DIAGNOSTIC SERVICES,
11 EVALUATION, SURGERY, COUNSELING, AND POST-OPERATIVE TREATMENT
12 AND SERVICES;

13 (c) REFUSE TO REFER THE INDIVIDUAL TO A TRANSPLANT CENTER
14 OR OTHER RELATED SPECIALIST FOR THE PURPOSE OF BEING EVALUATED
15 FOR OR RECEIVING AN ORGAN TRANSPLANT;

16 (d) REFUSE TO PLACE A QUALIFIED RECIPIENT ON AN ORGAN
17 TRANSPLANT WAITING LIST; OR

18 (e) PLACE A QUALIFIED RECIPIENT ON AN ORGAN TRANSPLANT
19 WAITING LIST AT A LOWER PRIORITY POSITION THAN THE POSITION AT
20 WHICH THE INDIVIDUAL WOULD HAVE BEEN PLACED IF THE INDIVIDUAL DID
21 NOT HAVE A DISABILITY.

22 (3) NOTWITHSTANDING SUBSECTION (2) OF THIS SECTION, A
23 COVERED ENTITY MAY TAKE AN INDIVIDUAL'S DISABILITY INTO ACCOUNT
24 WHEN MAKING TREATMENT OR COVERAGE RECOMMENDATIONS OR
25 DECISIONS, SOLELY TO THE EXTENT THAT THE DISABILITY HAS BEEN FOUND
26 BY A PHYSICIAN OR SURGEON, FOLLOWING AN INDIVIDUALIZED
27 EVALUATION OF THE INDIVIDUAL, TO BE MEDICALLY SIGNIFICANT TO THE

1 PROVISION OF THE ANATOMICAL GIFT OR ORGAN TRANSPLANT.

2 (4) IF AN INDIVIDUAL HAS THE NECESSARY SUPPORT SYSTEM TO
3 ASSIST THE INDIVIDUAL IN COMPLYING WITH POST-TRANSPLANT MEDICAL
4 REQUIREMENTS, A COVERED ENTITY MAY NOT CONSIDER THE INDIVIDUAL'S
5 INABILITY TO INDEPENDENTLY COMPLY WITH POST-TRANSPLANT MEDICAL
6 REQUIREMENTS TO BE MEDICALLY SIGNIFICANT FOR THE PURPOSES OF
7 SUBSECTION (3) OF THIS SECTION.

8 (5) A COVERED ENTITY SHALL:

9 (a) MAKE REASONABLE MODIFICATIONS TO ITS POLICIES,
10 PRACTICES, AND PROCEDURES TO ALLOW INDIVIDUALS WITH DISABILITIES
11 ACCESS TO TRANSPLANTATION-RELATED SERVICES, INCLUDING
12 DIAGNOSTIC SERVICES, SURGERY, COVERAGE, POST-OPERATIVE
13 TREATMENT, AND COUNSELING, UNLESS THE COVERED ENTITY
14 DEMONSTRATES THAT MAKING SUCH MODIFICATIONS WOULD
15 FUNDAMENTALLY ALTER THE NATURE OF THE SERVICES PROVIDED; AND

16 (b) TAKE STEPS REASONABLE AND NECESSARY TO ENSURE THAT AN
17 INDIVIDUAL WITH A DISABILITY IS NOT DENIED MEDICAL SERVICES OR
18 OTHER SERVICES RELATED TO ORGAN TRANSPLANTATION, INCLUDING
19 DIAGNOSTIC SERVICES, SURGERY, POST-OPERATIVE TREATMENT, OR
20 COUNSELING, DUE TO THE ABSENCE OF AUXILIARY AIDS OR SERVICES,
21 UNLESS THE COVERED ENTITY DEMONSTRATES THAT TAKING SUCH STEPS
22 WOULD FUNDAMENTALLY ALTER THE NATURE OF THE MEDICAL SERVICES
23 OR OTHER SERVICES RELATED TO ORGAN TRANSPLANTATION OR WOULD
24 RESULT IN AN UNDUE BURDEN FOR THE COVERED ENTITY.

25 (6) NOTHING IN THIS ARTICLE 56 REQUIRES A COVERED ENTITY TO
26 MAKE A REFERRAL OR RECOMMENDATION FOR OR PERFORM A MEDICALLY
27 INAPPROPRIATE ORGAN TRANSPLANT.

1 **25-56-105. Injunctive and equitable relief - expedited judicial**

2 **review - limitations.** (1) WHENEVER IT APPEARS THAT A COVERED
3 ENTITY HAS VIOLATED OR IS VIOLATING ANY OF THE PROVISIONS OF THIS
4 ARTICLE 56, THE AFFECTED INDIVIDUAL MAY COMMENCE A CIVIL ACTION
5 FOR INJUNCTIVE OR EQUITABLE RELIEF AGAINST THE COVERED ENTITY FOR
6 PURPOSES OF ENFORCING COMPLIANCE. THE ACTION MAY BE BROUGHT IN
7 DISTRICT COURT FOR THE COUNTY WHERE THE AFFECTED INDIVIDUAL
8 RESIDES OR RESIDED OR THE DISTRICT COURT FOR THE COUNTY WHERE THE
9 AFFECTED INDIVIDUAL WAS DENIED THE ORGAN TRANSPLANT OR
10 REFERRAL.

11 (2) IN AN ACTION BROUGHT UNDER THIS ARTICLE 56, THE COURT
12 MUST GIVE PRIORITY ON ITS DOCKET AND EXPEDITED REVIEW AND MAY
13 GRANT INJUNCTIVE OR OTHER EQUITABLE RELIEF, INCLUDING:

14 (a) REQUIRING AUXILIARY AIDS OR SERVICES TO BE MADE
15 AVAILABLE FOR A QUALIFIED RECIPIENT;

16 (b) REQUIRING THE MODIFICATION OF A POLICY, PRACTICE, OR
17 PROCEDURE OF A COVERED ENTITY; OR

18 (c) REQUIRING HEALTH-CARE FACILITIES BE MADE READILY
19 ACCESSIBLE TO AND USABLE BY A QUALIFIED RECIPIENT.

20 (3) NOTHING IN THIS ARTICLE 56 IS INTENDED TO LIMIT OR
21 REPLACE AVAILABLE REMEDIES UNDER THE FEDERAL "AMERICANS WITH
22 DISABILITIES ACT OF 1990", 42 U.S.C. SEC. 12101 ET SEQ., AS AMENDED,
23 OR ANY OTHER APPLICABLE LAW.

24 (4) THIS ARTICLE 56 DOES NOT CREATE A RIGHT TO
25 COMPENSATORY OR PUNITIVE DAMAGES AGAINST A COVERED ENTITY.

26 **25-56-106. Enforcement.** (1) AN AGGRIEVED PERSON MAY
27 COMMENCE A CIVIL ACTION IN THE APPROPRIATE DISTRICT COURT FOR

1 INJUNCTIVE OR EQUITABLE RELIEF AGAINST A COVERED ENTITY FOR THE
2 PURPOSE OF ENFORCING COMPLIANCE WITH THIS ARTICLE 56. THE
3 AGGRIEVED PERSON MAY COMMENCE THE CIVIL ACTION IN THE DISTRICT
4 COURT FOR THE COUNTY IN WHICH THE PERSON RESIDES OR RESIDED OR
5 THE DISTRICT COURT FOR THE COUNTY IN WHICH THE ORGAN TRANSPLANT
6 OR RELATED TREATMENT OR SERVICES WERE DENIED.

7 (2) THE DISTRICT COURT SHALL GIVE PRIORITY AND EXPEDITED
8 REVIEW TO THE CIVIL ACTION COMMENCED PURSUANT TO THIS SECTION
9 AND MAY GRANT INJUNCTIVE OR OTHER EQUITABLE RELIEF THAT:

10 (a) REQUIRES AUXILIARY AIDS OR SERVICES BE MADE AVAILABLE
11 TO THE AGGRIEVED PERSON;

12 (b) REQUIRES THE COVERED ENTITY TO MODIFY A POLICY,
13 PRACTICE, OR PROCEDURE;

14 (c) REQUIRES A COVERED ENTITY TO MAKE ITS HEALTH-CARE
15 FACILITY READILY ACCESSIBLE TO AND AVAILABLE TO THE AGGRIEVED
16 PERSON; AND

17 (d) IS DEEMED APPROPRIATE BY THE COURT.

18 **SECTION 2.** In Colorado Revised Statutes, **add** 10-16-104.1 as
19 follows:

20 **10-16-104.1. Prohibition on discrimination for organ**
21 **transplants based solely on disability - definition.** (1) A CARRIER THAT
22 OFFERS, ISSUES, OR RENEWS A HEALTH BENEFIT PLAN THAT PROVIDES
23 COVERAGE FOR ANATOMICAL GIFTS, ORGAN TRANSPLANTS, OR RELATED
24 TREATMENTS OR SERVICES SHALL NOT, SOLELY ON THE BASIS OF A
25 COVERED PERSON'S DISABILITY:

26 (a) DENY COVERAGE TO A COVERED PERSON FOR AN ORGAN
27 TRANSPLANT OR RELATED TREATMENT OR SERVICES;

1 (b) DECLINE OR LIMIT COVERAGE OF A COVERED PERSON SOLELY
2 FOR THE PURPOSE OF AVOIDING THE REQUIREMENTS OF THIS SECTION; OR

3 (c) PENALIZE A COVERED PERSON OR REDUCE OR LIMIT COVERAGE
4 FOR A COVERED PERSON FOR HEALTH-CARE SERVICES RELATED TO ORGAN
5 TRANSPLANTATION, AS DETERMINED IN CONSULTATION WITH THE
6 ATTENDING PHYSICIAN AND THE COVERED PERSON OR THE COVERED
7 PERSON'S REPRESENTATIVE.

8 (2) THIS SECTION DOES NOT REQUIRE A HEALTH BENEFIT PLAN TO
9 PROVIDE COVERAGE FOR THE DONATION OF AN ANATOMICAL GIFT, AN
10 ORGAN TRANSPLANT, OR RELATED TREATMENT OR SERVICES.

11 (3) FOR THE PURPOSES OF THIS SECTION, "ANATOMICAL GIFT"
12 MEANS THE DONATION OF PART OF A HUMAN BODY FOR THE PURPOSE OF
13 TRANSPLANTATION TO ANOTHER PERSON.

14 **SECTION 3. Safety clause.** The general assembly hereby finds,
15 determines, and declares that this act is necessary for the immediate
16 preservation of the public peace, health, or safety.