

2022 South Dakota Legislature

House Bill 1129**AMENDMENT 1129B FOR THE INTRODUCED BILL**

1 **An Act to prohibit forms of discrimination in access to organ transplantation.**

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 **Section 1. That chapter 34-26 be amended with a NEW SECTION:**

4 No person may discriminate against an individual at any point in the organ
5 transplant process, solely on the basis of an individual's mental or physical disability,
6 unless the disability has been determined to be medically significant to the provision of an
7 anatomical gift.

8 A violation of this statute is an unfair or discriminatory practice under chapter 20-
9 13.

10 ~~**Section 1. That a NEW SECTION be added to title 20:**~~

11 ~~Terms used in this chapter mean:~~

12 ~~(1) "Auxiliary aids and services,":~~

13 ~~(a) Qualified interpreters or other effective methods of making aurally delivered materials~~
14 ~~available to individuals with hearing impairments;~~

15 ~~(b) Qualified readers, taped texts, or other effective methods of making visually delivered~~
16 ~~materials available to individuals with visual impairments;~~

17 ~~(c) Provision of information in a format that is accessible for individuals with cognitive,~~
18 ~~neurological, developmental, or intellectual disabilities;~~

19 ~~(d) Provision of supported decision making services;~~

20 ~~(e) Acquisition or modification of equipment or devices; and~~

1 ~~(f) Other similar services and actions;~~

2 ~~(2) "Anatomical gift," a donation of all or part of a human body, to take effect after the donor's~~
3 ~~death, for the purpose of transplantation or transfusion;~~

4 ~~(3) "Covered entity,":~~

5 ~~(a) Any licensed health care practitioners, hospitals, nursing facilities, laboratories,~~
6 ~~intermediate care facilities, psychiatric residential treatment facilities, institutions for~~
7 ~~individuals with intellectual or developmental disabilities, prison health centers, and any other~~
8 ~~licensed providers of health care services, as that term is defined in § 21-68-1; or~~

9 ~~(b) Any entity responsible for matching anatomical gift donors to potential recipients;~~

10 ~~(4) "Disability," as defined in 42 U.S.C. § 12102 (2021);~~

11 ~~(5) "Organ transplant," the transplantation or transfusion of a part of a human body into the~~
12 ~~body of another for the purpose of treating or curing a medical condition;~~

13 ~~(6) "Qualified individual," a person who, with or without a support network, provision of~~
14 ~~auxiliary aids and services, or reasonable modifications to policies or practices, meets the~~
15 ~~essential eligibility requirements for the receipt of an anatomical gift;~~

16 ~~(7) "Reasonable modification to policies or practices":~~

17 ~~(a) Communication with individuals responsible for supporting an individual with post-surgical~~
18 ~~and post-transplantation care, including medication; and~~

19 ~~(b) Consideration of support networks available to the individual in determining whether the~~
20 ~~individual can comply with post-transplant medical requirements;~~

21 ~~(8) "Supported decisionmaking," use of a support person to assist an individual in making~~
22 ~~medical decisions, communicate information to the individual, or ascertain an individual's~~
23 ~~wishes by:~~

24 ~~(a) Including the individual's attorney in fact, health care proxy, or any person of the~~
25 ~~individual's choice in communications about the individual's medical care;~~

26 ~~(b) Permitting the individual to assign a person of their choice for the purposes of supporting~~
27 ~~that individual in communicating, processing information, or making medical decisions;~~

1 ~~(c) Providing of auxiliary aids and services to facilitate the individual's ability to communicate~~
2 ~~and process health-related information, including use of assistive communication technology;~~

3 ~~(d) Providing information to persons designated by the individual, consistent with the~~
4 ~~provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42~~
5 ~~U.S.C. § 1301 et seq., as effective January 1, 2022, and other applicable laws and regulations~~
6 ~~governing disclosure of health information;~~

7 ~~(e) Providing health information in a format that is readily understandable by the individual;~~

8 ~~(f) If the individual has a court-appointed guardian or other individual responsible for making~~
9 ~~medical decisions on behalf of the individual, taking measures to ensure that the individual is~~
10 ~~included in decisions involving the individual's health care and that medical decisions are in~~
11 ~~accordance with the individual's own expressed interests.~~

12 **Section 2. That a NEW SECTION be added to title 20:**

13 ~~With the exception of section 3 of this Act, a covered entity may not, solely on the basis of a~~
14 ~~qualified individual's mental or physical disability:~~

15 ~~(1) Deem an individual ineligible to receive an anatomical gift or organ transplant;~~

16 ~~(2) Deny evaluation, surgery, counseling, post-operative treatment and services, or any other~~
17 ~~medical services related to organ transplantation;~~

18 ~~(3) Refuse to refer the individual to a transplant center or other related specialist for the~~
19 ~~purpose of evaluation or receipt of an organ transplant;~~

20 ~~(4) Refuse to place an individual on an organ transplant waiting list, or placement of the~~
21 ~~individual at a lower priority position on the list than the position at which he or she would~~
22 ~~have been placed if not for his or her disability; or~~

23 ~~(5) Decline insurance coverage for any procedure associated with the receipt of the anatomical~~
24 ~~gift, including post-transplantation care.~~

25 **Section 3. That a NEW SECTION be added to title 20:**

26 ~~Notwithstanding section 2 of this Act, a covered entity may take an individual's disability into~~
27 ~~account when making treatment or coverage recommendations or decisions, to the extent~~

1 ~~that the physical or mental disability has been found by a physician or surgeon, following an~~
2 ~~individualized evaluation of the potential recipient, to be medically significant to the provision~~
3 ~~of the anatomical gift. The provisions of this section may not be deemed to require referrals~~
4 ~~or recommendations for, or the performance of, medically inappropriate organ transplants.~~

5 ~~If an individual has the necessary support system to assist the individual in complying with~~
6 ~~post transplant medical requirements, an individual's inability to independently comply with~~
7 ~~those requirements is not medically significant for the purposes of this section.~~

8 **Section 4. That a NEW SECTION be added to title 20:**

9 A covered entity shall:

10 ~~(1) Make reasonable modifications in policies, practices, or procedures, when necessary to~~
11 ~~make services available to qualified individuals with disabilities, unless the entity can~~
12 ~~demonstrate that making the modifications would fundamentally alter the nature of such~~
13 ~~services; and~~

14 ~~(2) Ensure that no qualified individual with a disability is denied service, unless the entity can~~
15 ~~demonstrate that the qualified individual's request would fundamentally alter the nature of~~
16 ~~the services offered or would result in an undue burden.~~

17 **Section 5. That a NEW SECTION be added to title 20:**

18 ~~A violation of this chapter is an unfair or discriminatory practice and is enforced against under~~
19 ~~chapter 20-13. In addition to the relief provided in § 20-13-42, compensatory, punitive, and~~
20 ~~liquidated damages may be assessed against the respondent, in the manner remedies are~~
21 ~~authorized in 42 U.S.C. §§ 12131 et seq., effective January 1, 2022.~~

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