



# OHIO LEGISLATIVE SERVICE COMMISSION

---

## Bill Analysis

Lisa Musielewicz

### **Sub. H.B. 332\***

132nd General Assembly

(As Reported by S. Health, Human Services & Medicaid)

**Reps.** Antani, Leland, West, Ingram, Kent, Keller, Lipps, Zeltwanger, Vitale, Romanchuk, Riedel, Becker, Huffman, LaTourette, Anielski, Antonio, Arndt, Ashford, Barnes, Boccieri, Boyd, Brenner, Brown, Butler, Carfagna, Celebrezze, Craig, Dean, Edwards, Galonski, Gavarone, Ginter, Greenspan, Hagan, Hambley, Henne, Hill, Holmes, Hoops, Householder, Hughes, Johnson, Kick, Koehler, Landis, Lanese, Lepore-Hagan, McClain, Miller, O'Brien, Patterson, Patton, Perales, Rezabek, Rogers, Ryan, Schaffer, Sheehy, Slaby, R. Smith, Sprague, Stein, Strahorn, Thompson, Wiggam, Young

---

## **BILL SUMMARY**

- Prohibits certain entities, including hospitals, from discriminating against potential transplant recipients solely on the basis of disability.
- Generally requires each entity to make reasonable modifications to allow individuals with disabilities access to transplantation-related treatment and services.
- Authorizes an individual who has been adversely affected by a violation of the bill's provisions to seek an injunction to stop the violation, but prohibits a court from awarding compensatory or punitive damages.
- Prohibits a health plan issuer from denying coverage for anatomical gifts, transplantation, or related treatment and services solely on the basis of disability.
- Appropriates \$2.5 million in fiscal year 2019 for the Positive Education Program Connections.

---

\* This analysis was prepared before the report of the Senate Health, Human Services and Medicaid Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

---

## CONTENT AND OPERATION

Current Ohio law focuses on the donation of anatomical gifts, addressing matters like who may make an anatomical gift, the means by which a gift may be made, and how the gift may be revoked or amended.<sup>1</sup> In contrast, H.B. 332 involves the receipt of anatomical gifts, by prohibiting discrimination against a potential recipient of an organ or tissue transplant solely on the basis of the recipient's disability.<sup>2</sup>

### Discriminatory actions

The bill prohibits a "covered entity" from engaging in any of the following actions related to transplantation and anatomical gifts solely on the basis of an individual's disability:

(1) Considering a qualified recipient ineligible to receive a transplant or anatomical gift;

(2) Denying medical or other services related to transplantation, including evaluation, surgery, and counseling and treatment following a transplant;

(3) Refusing to refer an individual to a transplant center or specialist;

(4) Refusing to place a qualified recipient on an organ or tissue waiting list;

(5) Placing a qualified recipient at a position on an organ or tissue waiting list that is lower than the position at which the recipient would have been placed if not for the recipient's disability.<sup>3</sup>

### Types of entities affected

The following types of entities are subject to the bill: (1) licensed health professionals (e.g., physicians, nurses, physician assistants, social workers, and nursing home administrators),<sup>4</sup> (2) hospitals, (3) ambulatory surgical facilities, (4) hospice care programs, (5) nursing homes, (6) residential care facilities, (7) intermediate care facilities for individuals with intellectual disabilities, (8) residential facilities, (9) long-term care

---

<sup>1</sup> Sub. H.B. 529 of the 127th General Assembly enacted into law the Revised Uniform Anatomical Gift Act. See <https://www.lsc.ohio.gov/documents/gaDocuments/analyses127/08-hb529-127.pdf>. See also R.C. Chapter 2108.

<sup>2</sup> R.C. 2108.36(B) and 2108.38(B).

<sup>3</sup> R.C. 2108.36(B).

<sup>4</sup> R.C. 3721.21, not in the bill.



facilities, (10) correctional medical centers, and (11) entities responsible for matching anatomical gift donors to potential recipients.<sup>5</sup>

### **Medical significance**

A covered entity may consider a disability when making a treatment recommendation or decision involving an anatomical gift or transplantation if a physician determines the individual's disability to be medically significant. Such a determination may be made only after an examination of the individual.<sup>6</sup> Under the bill, the inability to comply with medical requirements following transplantation is not medically significant if others are available to assist the disabled individual in complying with those requirements.<sup>7</sup>

### **Access to transplantation-related treatment**

Each covered entity must make reasonable modifications to its policies, practices, or procedures to allow individuals with disabilities access to transplantation-related treatment and services. But an entity is not required to do so if it can demonstrate that modifications would fundamentally alter the nature of the treatment or services.<sup>8</sup>

### **Injunctive relief**

Whenever it appears that a covered entity has violated or is violating any provision of the bill, the affected individual may bring a civil action asking for a court order to stop the violation. The civil action must be brought in the court of common pleas in the county in which the violation occurred or is occurring. Under the bill, the court must schedule a hearing on the matter as soon as practicable and must apply the same standards when rendering judgment as would be applied in an action brought in federal court under the Americans with Disabilities Act.<sup>9</sup> The right to bring a civil action does not, however, create a right to compensatory or punitive damages against a covered entity.<sup>10</sup>

---

<sup>5</sup> R.C. 2108.36(A)(2).

<sup>6</sup> R.C. 2108.36(C)(1).

<sup>7</sup> R.C. 2108.36(C)(2).

<sup>8</sup> R.C. 2108.36(D).

<sup>9</sup> R.C. 2108.37.

<sup>10</sup> R.C. 2108.37(C).



## **Insurance coverage**

In the case of a health plan issuer that provides coverage for anatomical gifts, transplantation, or related treatment and services under a health benefit plan, the bill prohibits the issuer from denying that coverage to a person covered by the plan solely on the basis of the person's disability.<sup>11</sup>

## **Definitions**

### **Disability**

A "disability" means any of the following: (1) a physical or mental impairment that substantially limits one or more major life activities, (2) a record of such an impairment, or (3) being regarded as having such an impairment.<sup>12</sup> For purposes of the bill, the definition is the same as under the Americans with Disabilities Act.<sup>13</sup>

### **Qualified recipient**

A "qualified recipient" is a recipient who has a disability and meets the eligibility requirements for receipt of an anatomical gift with or without reasonable modifications, auxiliary aids or services, or individuals or entities available to assist the recipient with an anatomical gift or transplantation.<sup>14</sup>

### **Auxiliary aid or service**

An "auxiliary aid or service" is an aid or service that is used to provide information to an individual with a cognitive, developmental, intellectual, neurological, or physical disability and is available in a format or manner that allows the individual to easily understand the information.<sup>15</sup> Under the bill, it may include a qualified interpreter, qualified reader, taped text, text in an accessible electronic format, or supported decision-making service.

---

<sup>11</sup> R.C. 2108.38(B).

<sup>12</sup> R.C. 2108.36(A)(3).

<sup>13</sup> 42 United States Code 12102.

<sup>14</sup> R.C. 2108.36(A)(4).

<sup>15</sup> R.C. 2108.36(A)(1).



---

## HISTORY

ACTION	DATE
Introduced	08-30-17
Reported, H. Health	11-29-17
Passed House (96-0)	01-24-18
Reported, S. Health, Human Services & Medicaid	---

H0332-RS-132.docx/ts

