

By: Representative Currie

To: Public Health and Human Services

HOUSE BILL NO. 435

1 AN ACT TO ENACT COLE'S LAW TO PROHIBIT DISCRIMINATION AGAINST  
2 RECIPIENTS OF AN ANATOMICAL GIFT OR ORGAN TRANSPLANT BASED ON  
3 DISABILITY; TO DEFINE CERTAIN TERMS FOR THE ACT; TO PROVIDE  
4 REQUIREMENTS FOR COVERED ENTITIES; TO PROVIDE FOR THE RELIEF  
5 PROVIDED BY THE ACT; TO PROVIDE CERTAIN REQUIREMENTS OF INSURERS;  
6 AND FOR RELATED PURPOSES.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

8 **SECTION 1.** This act shall be known and may be cited as  
9 "Cole's Law."

10 **SECTION 2.** The Legislature finds that:

11 (a) A mental or physical disability does not diminish a  
12 person's right to health care;

13 (b) The "Americans with Disabilities Act of 1990," 42  
14 USC Section 12101, prohibits discrimination against persons with  
15 disabilities, yet many individuals with disabilities still  
16 experience discrimination in accessing critical health care  
17 services;

18 (c) In other states nationwide, individuals with mental  
19 and physical disabilities have been denied lifesaving organ  
20 transplants based on assumptions that their lives are less worthy,



21 that they are incapable of complying with post-transplant medical  
22 requirements, or that they lack adequate support systems to ensure  
23 compliance with post-transplant medical requirements;

24 (d) Although organ transplant centers must consider  
25 medical and psychosocial criteria when determining if a patient is  
26 suitable to receive an organ transplant, transplant centers that  
27 participate in Medicare, Medicaid, and other federally funded  
28 programs are required to use patient selection criteria that  
29 results in a fair and nondiscriminatory distribution of organs;  
30 and

31 (e) Mississippi residents in need of organ transplants  
32 are entitled to assurances that they will not encounter  
33 discrimination on the basis of a disability.

34 **SECTION 3.** For purposes of this act, the following terms  
35 shall have the following meanings unless the context clearly  
36 indicates otherwise:

37 (a) "Disability" has the meaning stated in the  
38 Americans with Disabilities Act of 1990 (ADA), as amended by the  
39 ADA Amendments Act of 2008, at 42 USC Section 12102.

40 (b) "Auxiliary aids or services" means an aid or  
41 service that is used to provide information to an individual with  
42 a cognitive, developmental, intellectual, neurological or physical  
43 disability and is available in a format or manner that allows the  
44 individual to better understand the information. An auxiliary aid  
45 or service may include:



46 (i) Qualified interpreters or other effective  
47 methods of making aurally delivered materials available to persons  
48 with hearing impairments;

49 (ii) Qualified readers, taped texts, texts in  
50 accessible electronic format, or other effective methods of making  
51 visually delivered materials available to persons with visual  
52 impairments;

53 (iii) Supported decision-making services,  
54 including:

55 1. The use of a support individual to  
56 communicate information to the individual with a disability,  
57 ascertain the wishes of the individual, or assist the individual  
58 in making decisions;

59 2. The disclosure of information to a legal  
60 guardian, authorized representative, or another individual  
61 designated by the individual with a disability for such purpose,  
62 as long as the disclosure is consistent with state and federal  
63 law, including the federal "Health Insurance Portability and  
64 Accountability Act of 1996," 42 USC 1320d et seq. and any  
65 regulations promulgated by the United States Department of Health  
66 and Human Services to implement the act;

67 3. If an individual has a court-appointed  
68 guardian or other individual responsible for making medical  
69 decisions on behalf of the individual, any measures used to ensure  
70 that the individual is included in decisions involving the



71 individual's health care and that medical decisions are in  
72 accordance with the individual's own expressed interests; and

73 4. Any other aid or service that is used to  
74 provide information in a format that is easily understandable and  
75 accessible to individuals with cognitive, neurological,  
76 developmental or intellectual disabilities, including assistive  
77 communication technology.

78 (c) "Qualified recipient" means an individual who has a  
79 disability and meets the essential eligibility requirements for  
80 the receipt of an anatomical gift with or without any of the  
81 following:

82 (i) Individuals or entities available to support  
83 and assist the individual with an anatomical gift or  
84 transplantation;

85 (ii) Auxiliary aids or services;

86 (iii) Reasonable modifications to the policies,  
87 practices, or procedures of a covered entity, including  
88 modifications to allow for either or both of the following:

89 1. Communication with one or more individuals  
90 or entities available to support or assist with the recipient's  
91 care and medication after surgery or transplantation; and/or

92 2. Consideration of support networks  
93 available to the individual, including family, friends and home  
94 and community-based services, including home and community-based  
95 services funded through Medicaid, Medicare, another health plan in



96 which the individual is enrolled, or any program or source of  
97 funding available to the individual, when determining whether the  
98 individual is able to comply with post-transplant medical  
99 requirements.

100 (d) "Anatomical gift" means a donation of all or part  
101 of a human body, including but not limited to eye or tissue, to  
102 take effect after the donor's death for the purpose of  
103 transplantation or transfusion.

104 (e) "Organ transplant" means the transplantation or  
105 transfusion of a part of a human body into the body of another for  
106 the purpose of treating or curing a medical condition.

107 (f) "Covered entity" means:

108 (i) Any licensed provider of health care services,  
109 including licensed health care practitioners, hospitals, nursing  
110 facilities, laboratories, intermediate care facilities,  
111 psychiatric residential treatment facilities, institutions for  
112 individuals with intellectual or developmental disabilities, and  
113 prison health centers; or

114 (ii) Any entity responsible for matching  
115 anatomical gift donors to potential recipients.

116 **SECTION 4.** (1) The provisions of this section shall apply  
117 to all stages of the organ transplant process.

118 (2) A covered entity shall not, solely on the basis of an  
119 individual's disability:



120 (a) Consider the individual ineligible to receive an  
121 anatomical gift or organ transplant;

122 (b) Deny medical services or other services related to  
123 organ transplantation, including diagnostic services, evaluation,  
124 surgery, counseling, post-operative treatment and services;

125 (c) Refuse to refer the individual to a transplant  
126 center or other related specialist for the purpose of being  
127 evaluated for or receiving an organ transplant;

128 (d) Refuse to place a qualified recipient on an organ  
129 transplant waiting list;

130 (e) Place a qualified recipient on an organ transplant  
131 waiting list at a lower priority position than the position at  
132 which the individual would have been placed if the individual did  
133 not have a disability; or

134 (f) Refuse insurance coverage for any procedure  
135 associated with being evaluated for or receiving an anatomical  
136 gift or organ transplant, including post-transplantation and  
137 post-transfusion care.

138 (3) Notwithstanding subsection (2) of this section, a  
139 covered entity may take an individual's disability into account  
140 when making treatment or coverage recommendations or decisions,  
141 solely to the extent that the disability has been found by a  
142 physician or surgeon, following an individualized evaluation of  
143 the individual, to be medically significant to the provision of  
144 the anatomical gift.



145 (4) If an individual has the necessary support system to  
146 assist the individual in complying with post-transplant medical  
147 requirements, a covered entity may not consider the individual's  
148 inability to independently comply with post-transplant medical  
149 requirements to be medically significant for the purposes of  
150 subsection (3) of this section.

151 (5) A covered entity must make reasonable modifications to  
152 its policies, practices, or procedures to allow individuals with  
153 disabilities access to transplantation-related services, including  
154 diagnostic services, surgery, coverage, post-operative treatment,  
155 and counseling, unless the entity can demonstrate that making such  
156 modifications would fundamentally alter the nature of such  
157 services.

158 (6) A covered entity must take steps necessary to ensure  
159 that an individual with a disability is not denied medical  
160 services or other services related to organ transplantation,  
161 including diagnostic services, surgery, post-operative treatment,  
162 or counseling, due to the absence of auxiliary aids or services,  
163 unless the covered entity demonstrates that taking the steps would  
164 fundamentally alter the nature of the medical services or other  
165 services related to organ transplantation or would result in an  
166 undue burden for the covered entity.

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



170 (8) A covered entity shall otherwise comply with the  
171 requirements of Titles II and III of the Americans with  
172 Disabilities Act of 1990, as amended by the ADA Amendments Act of  
173 2008.

174 **SECTION 5.** (1) Whenever it appears that a covered entity  
175 has violated or is violating any of the provisions of  
176 this act, the affected individual may bring a civil action for  
177 injunctive and other equitable relief against the covered entity  
178 for purposes of enforcing compliance with this act. The action  
179 may be brought in the circuit or county court for the county where  
180 the affected individual resides or resided or was denied the organ  
181 transplant or referral.

182 (2) In an action brought under this act, the court must give  
183 priority on its docket and expedited review, and may grant  
184 injunctive or other equitable relief, including:

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

187 (b) Requiring the modification of a policy, practice or  
188 procedure of a covered entity; or

189 (c) Requiring facilities be made readily accessible to  
190 and usable by a qualified recipient.

191 (3) Nothing in this act is intended to limit or replace  
192 available remedies under the ADA or any other applicable law.

193 (4) This act does not create a right to compensatory or  
194 punitive damages against a covered entity.





195           **SECTION 6.** (1) For purposes of this section, the following  
196 terms shall have the following meanings unless the context clearly  
197 indicates otherwise:

198           (a) "Covered person" means a policyholder, subscriber,  
199 enrollee, member or individual covered by a health benefit plan.

200           (b) "Health benefit plan" means a policy, contract,  
201 certificate or agreement entered into, offered or issued by a  
202 health insurance issuer to provide, deliver, arrange for, pay for  
203 or reimburse any of the costs of health care services. "Health  
204 benefit plan" shall not include a plan providing coverage for  
205 excepted benefits and short-term policies that have a term of less  
206 than twelve (12) months.

207           (c) "Health insurance issuer" means an entity subject  
208 to the insurance laws and regulations of this state, or subject to  
209 the jurisdiction of the Commissioner of Insurance, that contracts  
210 or offers to contract to provide, deliver, arrange for, pay for or  
211 reimburse any of the costs of health care services, including  
212 through a health benefit plan as defined in this section, and  
213 shall include a sickness and accident insurance company, a health  
214 maintenance organization, a preferred provider organization, or  
215 any similar entity, or any other entity providing a plan of health  
216 insurance or health benefits.

217           (2) A health insurance issuer that provides coverage for  
218 anatomical gifts, organ transplants, or related treatment and  
219 services shall not:



220 (a) Deny coverage to a covered person solely on the  
221 basis of the person's disability;

222 (b) Deny to a patient eligibility, or continued  
223 eligibility, to enroll or to renew coverage under the terms of the  
224 health benefit plan, solely for the purpose of avoiding the  
225 requirements of this section;

226 (c) Penalize or otherwise reduce or limit the  
227 reimbursement of an attending provider, or provide monetary or  
228 nonmonetary incentives to an attending provider, to induce such  
229 provider to provide care to an insured or enrollee in a manner  
230 inconsistent with this section; or

231 (d) Reduce or limit coverage benefits to a patient for  
232 the medical services or other services related to organ  
233 transplantation performed pursuant to this section as determined  
234 in consultation with the attending physician and patient.

235 (3) In the case of a health benefit plan maintained pursuant  
236 to one or more collective bargaining agreements between employee  
237 representatives and one or more employers, any plan amendment made  
238 pursuant to a collective bargaining agreement relating to the plan  
239 that amends the plan solely to conform to any requirement imposed  
240 pursuant to this section shall not be treated as a termination of  
241 the collective bargaining agreement.

242 (4) Nothing in this section shall be deemed to require a  
243 health insurance issuer to provide coverage for a medically  
244 inappropriate organ transplant.



245           **SECTION 7.** The Legislature declares that the life of a  
246 person with a disability who needs an organ transplant is as  
247 worthy and valuable as the life of a person with no disability who  
248 needs the same medical service.

249           **SECTION 8.** This act shall take effect and be in force from  
250 and after its passage.

