CHAPTER 70

HOUSE BILL 2659

AN ACT

AMENDING SECTION 36-841, ARIZONA REVISED STATUTES; AMENDING TITLE 36, CHAPTER 7, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 36-850.01 AND 36-850.02; AMENDING SECTION 36-851.01, ARIZONA REVISED STATUTES; RELATING TO ORGAN TRANSPLANTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)
Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 36-841, Arizona Revised Statutes, is amended to read:

36-841. Definitions
In this article, unless the context otherwise requires:

1. "Adult" means an individual who is at least eighteen years of age.

2. "Agent" means an individual who is either:
   (a) Authorized to make health care decisions on the principal's behalf pursuant to a health care power of attorney.
   (b) Expressly authorized to make an anatomical gift on the principal's behalf pursuant to any other record signed by the principal.

3. "Anatomical gift" means a donation of all or part of a human body to take effect after the donor's death for the purpose of transplantation, therapy, research or education.

4. "AUXILIARY AIDS AND SERVICES" MEANS ALL OF THE FOLLOWING:
   (a) QUALIFIED INTERPRETERS OR OTHER EFFECTIVE METHODS OF MAKING AURALLY DELIVERED MATERIALS AVAILABLE TO INDIVIDUALS WITH A HEARING IMPAIRMENT.
   (b) QUALIFIED READERS, TAPED TEXTS OR OTHER EFFECTIVE METHODS OF MAKING VISUALLY DELIVERED MATERIALS AVAILABLE TO INDIVIDUALS WITH A VISUAL IMPAIRMENT.
   (c) INFORMATION IN A FORMAT THAT IS READILY ACCESSIBLE AND UNDERSTANDABLE TO INDIVIDUALS WITH A COGNITIVE, NEUROLOGICAL, DEVELOPMENTAL OR INTELLECTUAL DISABILITY.
   (d) ACQUISITION OR MODIFICATION OF EQUIPMENT OR DEVICES.
   (e) SUPPORTED DECISION-MAKING SERVICES.
   (f) OTHER SERVICES AND ACTIONS SIMILAR TO THOSE DESCRIBED IN SUBDIVISIONS (a), (b), (c), (d) AND (e) OF THIS PARAGRAPH.

5. "Decedent" means a deceased individual whose body or part is or may be the source of an anatomical gift. Decedent includes a stillborn infant and, subject to restrictions imposed by any other law, a fetus.


7. "Disinterested witness" means a witness other than the spouse, child, parent, sibling, grandchild, grandparent or guardian of the individual who makes, amends, revokes or refuses to make an anatomical gift, or another adult who exhibited special care and concern for the individual. Disinterested witness does not include a person to which an anatomical gift could pass pursuant to section 36-850.

8. "Document of gift" means a donor card or other record that is used to make an anatomical gift. Document of gift includes a statement or symbol on a driver license, identification card or donor registry.
"Donor" means an individual whose body or part is the subject of an anatomical gift.

"Donor registry" means a database that contains records of anatomical gifts.

"Driver license" means a license or permit that is issued pursuant to title 28 to operate a vehicle, whether or not conditions are attached to the license or permit.

"Eye bank" means a person that is licensed or regulated under federal or state law or is accredited by a nationally recognized accrediting agency to engage in the recovery, screening, testing, processing, storage or distribution of human eyes or portions of human eyes.

"Guardian" means a person who is appointed by a court to make decisions regarding the support, care, education, health or welfare of an individual. Guardian does not include a guardian ad litem.

"Health care facility":

(a) MEANS A FACILITY THAT IS LICENSED, CERTIFIED OR OTHERWISE AUTHORIZED TO PROVIDE HEALTH CARE IN THE ORDINARY COURSE OF BUSINESS.

(b) INCLUDES A HOSPITAL, NURSING FACILITY, LABORATORY, INTERMEDIATE CARE FACILITY, MENTAL HEALTH FACILITY, TRANSPLANT CENTER AND ANY OTHER FACILITY FOR INDIVIDUALS WITH INTELLECTUAL OR DEVELOPMENTAL DISABILITIES.

"Health care provider":

(a) MEANS AN INDIVIDUAL OR FACILITY THAT IS LICENSED, CERTIFIED OR OTHERWISE AUTHORIZED TO PROVIDE HEALTH CARE IN THE ORDINARY COURSE OF BUSINESS OR PROFESSIONAL PRACTICE.

(b) INCLUDES A PHYSICIAN, HOSPITAL, NURSING FACILITY, LABORATORY, INTERMEDIATE CARE FACILITY, MENTAL HEALTH FACILITY, TRANSPLANT CENTER AND ANY OTHER FACILITY FOR INDIVIDUALS WITH INTELLECTUAL OR DEVELOPMENTAL DISABILITIES.

"Hospital" means a facility that is licensed as a hospital under the laws of any state or that is operated as a hospital by the United States, a state or a subdivision of a state.

"Identification card" means a nonoperating identification license that is issued by the motor vehicle division of the department of transportation.

"Know" means to have actual knowledge.

"Minor" means an individual who is under eighteen years of age.

"Nontransplant anatomical donation organization" means a tissue bank or other organization that facilitates nontransplant anatomical donations, including facilitation through referrals, obtaining informed consent or authorization and assessing donor acceptability and through the acquisition, traceability, transporting, preparation, packaging, labeling, storage, release, evaluating intended use, distribution and final disposition of nontransplant anatomical donations.
21. "Organ procurement organization" means a person that is designated by the secretary of the United States department of health and human services as an organ procurement organization. A QUALIFIED ORGAN PROCUREMENT ORGANIZATION UNDER 42 UNITED STATES CODE SECTION 273 THAT IS CURRENTLY CERTIFIED OR RECERTIFIED IN ACCORDANCE WITH THAT FEDERAL LAW.

22. "Parent" means a parent whose parental rights have not been terminated.

23. "Part" means an organ, eye or tissue of a human being. Part does not include the whole body.

24. "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency or instrumentality, or any other legal or commercial entity.

25. "Physician" means an individual who is licensed as a physician pursuant to title 32, chapter 13 or 17.

26. "Principal" means a person who is the subject of a health care power of attorney.

27. "Procurement organization" means any of the following:
   (a) An organ procurement organization.
   (b) A tissue bank.
   (c) An eye bank.
   (d) A storage facility that is licensed, accredited or approved under federal law or the laws of any state to engage in the recovery, screening, testing, processing or storage of human bodies or parts.
   (e) A nontransplant anatomical donation organization.

28. "Prospective donor" means an individual who is dead or near death and who has been determined by a procurement organization to have a part that could be medically suitable for transplantation, therapy, research or education. Prospective donor does not include an individual who has made a refusal.

29. "Reasonably available" means able to be contacted by a procurement organization without undue effort and willing and able to act in a timely manner consistent with existing medical criteria necessary for the making of an anatomical gift.

30. "Recipient" means an individual into whose body a decedent's part has been or is intended to be transplanted.

31. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

32. "Refusal" means a record created pursuant to section 36-846 that expressly states an intent to bar other persons from making an anatomical gift of an individual's body or part.

33. "Sign", with respect to the present intent to authenticate or adopt a record, means either:
   (a) To execute or adopt a tangible symbol.
(b) To attach to or logically associate with the record an electronic symbol, sound or process.

34. "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States.

35. "Technician" means an individual who is determined to be qualified to remove or process parts by an appropriate organization that is licensed or regulated under federal or state law or is accredited by a nationally recognized accrediting agency. Technician includes an enucleator.

36. "Tissue" means all or a portion of the human body other than blood, an organ or an eye unless the blood, organ or eye is donated for the purpose of research or education.

37. "Tissue bank" means a person that is licensed or regulated under federal or state law or is accredited as a tissue bank by a nationally recognized accrediting agency to engage in the recovery, screening, testing, processing, storage or distribution of tissue.

38. "Transplant hospital" means a hospital that furnishes organ transplants and other medical and surgical specialty services required for the care of transplant patients.

Sec. 2. Title 36, chapter 7, article 3, Arizona Revised Statutes, is amended by adding sections 36-850.01 and 36-850.02, to read:

A. A HEALTH CARE PROVIDER MAY NOT, SOLELY ON THE BASIS OF AN INDIVIDUAL’S DISABILITY, DO ANY OF THE FOLLOWING:

1. DETERMINE THAT THE INDIVIDUAL IS INELIGIBLE TO RECEIVE AN ORGAN TRANSPLANT.

2. DENY THE INDIVIDUAL MEDICAL OR OTHER SERVICES RELATED TO AN ORGAN TRANSPLANT, INCLUDING EVALUATION, SURGERY, COUNSELING AND POSTOPERATIVE TREATMENT.

3. REFUSE TO REFER THE INDIVIDUAL TO A TRANSPLANT HOSPITAL OR OTHER RELATED SPECIALIST FOR EVALUATION OR RECEIPT OF AN ORGAN TRANSPLANT.

4. REFUSE TO PLACE THE INDIVIDUAL ON AN ORGAN TRANSPLANT WAITING LIST OR PLACE THE INDIVIDUAL AT A POSITION LOWER IN PRIORITY ON THE LIST THAN THE POSITION THE INDIVIDUAL WOULD BE PLACED IF NOT FOR THE INDIVIDUAL’S DISABILITY.

5. DECLINE INSURANCE COVERAGE FOR THE INDIVIDUAL FOR ANY PROCEDURE ASSOCIATED WITH THE RECEIPT OF AN ORGAN TRANSPLANT OR FOR RELATED SERVICES IF THE PROCEDURE OR SERVICES WOULD BE COVERED UNDER SUCH INSURANCE FOR THE INDIVIDUAL IF NOT FOR THE INDIVIDUAL'S DISABILITY.

B. NOTWITHSTANDING SUBSECTION A OF THIS SECTION, A HEALTH CARE PROVIDER MAY CONSIDER AN INDIVIDUAL’S DISABILITY WHEN MAKING A TREATMENT RECOMMENDATION OR DECISION SOLELY TO THE EXTENT THAT A PHYSICIAN, FOLLOWING AN INDIVIDUALIZED EVALUATION OF THE POTENTIAL TRANSPLANT
RECIPIENT, DETERMINES THAT THE DISABILITY IS MEDICALLY SIGNIFICANT TO THE
ORGAN TRANSPLANT. THIS SUBSECTION DOES NOT REQUIRE A REFERRAL OR
RECOMMENDATION FOR, OR THE PERFORMANCE OF, A MEDICALLY INAPPROPRIATE ORGAN
TRANSPLANT.

C. A HEALTH CARE PROVIDER MAY NOT CONSIDER AN INDIVIDUAL’S
INABILITY TO INDEPENDENTLY COMPLY WITH POSTTRANSPLANT MEDICAL REQUIREMENTS
AS MEDICALLY SIGNIFICANT FOR THE PURPOSES OF SUBSECTION B OF THIS SECTION
IF THE INDIVIDUAL HAS A KNOWN DISABILITY AND THE NECESSARY SUPPORT SYSTEM
TO ASSIST THE INDIVIDUAL IN REASONABLY COMPLYING WITH THE REQUIREMENTS.

D. A HEALTH CARE FACILITY SHALL MAKE REASONABLE MODIFICATIONS IN
ITS POLICIES, PRACTICES OR PROCEDURES AS NECESSARY TO ALLOW INDIVIDUALS
WITH A DISABILITY ACCESS TO ORGAN TRANSPLANT-RELATED SERVICES, INCLUDING
TRANSPLANT-RELATED COUNSELING, INFORMATION OR TREATMENT, UNLESS THE HEALTH
CARE FACILITY CAN DEMONSTRATE THAT MAKING THE MODIFICATIONS WOULD
FUNDAMENTALLY ALTER THE NATURE OF THE SERVICES OR WOULD IMPOSE AN UNDUE
HARDSHIP ON THE HEALTH CARE FACILITY. REASONABLE MODIFICATIONS IN
POLICIES, PRACTICES AND PROCEDURES MAY INCLUDE:

1. Communicating with persons supporting or assisting with the
individual’s postsurgical and posttransplant care, including medication.

2. Considering the support available to the individual in
determining whether the individual is able to reasonably comply with
posttransplant medical requirements, including support provided by any of
the following:

(a) Family.

(b) Friends.

(c) Home and community-based services, including home and
community-based services funded by any of the following:

(i) Medicaid.

(ii) Medicare.

(iii) A health plan in which the individual is enrolled.

(iv) Any other program or source of funding available to the
individual.

E. A HEALTH CARE PROVIDER SHALL MAKE REASONABLE EFFORTS TO COMPLY
WITH THE POLICIES, PRACTICES AND PROCEDURES, AS APPLICABLE, DEVELOPED BY A
HEALTH CARE FACILITY UNDER SUBSECTION D OF THIS SECTION AS NECESSARY TO
ALLOW AN INDIVIDUAL WITH A KNOWN DISABILITY ACCESS TO ORGAN
TRANSPLANT-RELATED SERVICES, INCLUDING TRANSPLANT-RELATED COUNSELING,
INFORMATION OR TREATMENT, UNLESS THE HEALTH CARE PROVIDER CAN DEMONSTRATE
THAT COMPLIANCE WOULD FUNDAMENTALLY ALTER THE NATURE OF THE SERVICES OR
WOULD IMPOSE AN UNDUE HARDSHIP ON THE HEALTH CARE PROVIDER.

F. A HEALTH CARE PROVIDER SHALL MAKE REASONABLE EFFORTS TO PROVIDE
AUXILIARY AIDS AND SERVICES TO AN INDIVIDUAL WITH A KNOWN DISABILITY
SEEKING ORGAN TRANSPLANT-RELATED SERVICES, INCLUDING ORGAN
TRANSPLANT-RELATED COUNSELING, INFORMATION OR TREATMENT, AS NECESSARY TO
ALLOW THE INDIVIDUAL ACCESS TO THOSE SERVICES, UNLESS THE HEALTH CARE
PROVIDER CAN DEMONSTRATE THAT PROVIDING THE TRANSPLANT-RELATED SERVICES WITH AUXILIARY AIDS AND SERVICES WOULD FUNDAMENTALLY ALTER THE TRANSPLANT-RELATED SERVICES PROVIDED OR WOULD IMPOSE AN UNDUE HARDSHIP ON THE HEALTH CARE PROVIDER.

G. A HEALTH CARE PROVIDER SHALL COMPLY WITH THE REQUIREMENTS OF THE AMERICANS WITH DISABILITIES ACT OF 1990 (42 UNITED STATES CODE SECTIONS 12101 THROUGH 12213) TO THE EXTENT THAT ACT APPLIES TO THE HEALTH CARE PROVIDER. THIS SUBSECTION DOES NOT REQUIRE A HEALTH CARE PROVIDER TO COMPLY WITH THAT ACT IF THE ACT DOES NOT OTHERWISE REQUIRE COMPLIANCE BY THE HEALTH CARE PROVIDER.

H. THIS SECTION APPLIES TO EACH STAGE OF THE ORGAN TRANSPLANT PROCESS AND RELATED SERVICES TO AN ORGAN TRANSPLANT, INCLUDING ALL OF THE FOLLOWING:
1. EVALUATION.
2. COUNSELING.
3. TREATMENT, INCLUDING POSTOPERATIVE TREATMENT AND CARE.
4. PROVIDING INFORMATION.
5. ANY OTHER SERVICE RECOMMENDED OR REQUIRED BY A PHYSICIAN.

I. A VIOLATION OF THIS SECTION BY A HEALTH CARE PROVIDER IS GROUNDS FOR DISCIPLINARY ACTION BY THE REGULATORY AGENCY OR BOARD THAT ISSUED THE LICENSE, CERTIFICATE OR OTHER AUTHORITY TO THE HEALTH CARE PROVIDER. BEFORE A REGULATORY AGENCY OR BOARD MAY TAKE DISCIPLINARY ACTION AGAINST A HEALTH CARE PROVIDER FOR A VIOLATION, THE APPLICABLE REGULATORY AGENCY OR BOARD SHALL BOTH:
1. NOTIFY THE HEALTH CARE PROVIDER OF THE AGENCY'S OR BOARD'S FINDING THAT THE HEALTH CARE PROVIDER VIOLATED OR IS VIOLATING THIS SECTION OR A RULE ADOPTED PURSUANT TO THIS SECTION.
2. PROVIDE THE HEALTH CARE PROVIDER WITH AN OPPORTUNITY TO CORRECT THE VIOLATION WITHOUT PENALTY OR REPRIMAND.

J. A PHYSICIAN WHO IN GOOD FAITH DETERMINES THAT AN INDIVIDUAL'S DISABILITY IS MEDICALLY SIGNIFICANT, AS DESCRIBED IN SUBSECTION B OF THIS SECTION, TO THE ORGAN TRANSPLANT DOES NOT VIOLATE THIS SECTION.

K. A HEALTH CARE PROVIDER WHO IN GOOD FAITH MAKES A TREATMENT RECOMMENDATION OR DECISION ON THE BASIS OF A PHYSICIAN'S DETERMINATION THAT AN INDIVIDUAL'S DISABILITY IS MEDICALLY SIGNIFICANT, AS DESCRIBED IN SUBSECTION B OF THIS SECTION, TO THE ORGAN TRANSPLANT DOES NOT VIOLATE THIS SECTION.

36-850.02. Organ transplant; discrimination; violation; civil action

A. IF AN INDIVIDUAL BELIEVES THAT A HEALTH CARE PROVIDER OR HEALTH CARE FACILITY HAS VIOLATED OR IS VIOLATING SECTION 36-850.01, THE AFFECTED INDIVIDUAL MAY COMMENCE A CIVIL ACTION FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF AGAINST THE HEALTH CARE PROVIDER OR HEALTH CARE FACILITY FOR THE PURPOSES OF ENFORCING COMPLIANCE WITH THAT SECTION. THE ACTION MAY BE
Brought in the superior court in the county where the affected individual resides or resided or was denied the organ transplant or referral.

B. In an action brought under this section, the court shall give the action priority on its docket and expedited review, and may grant injunctive or other equitable relief, including any of the following:

1. Requiring auxiliary aids or services to be made available for a qualified recipient.

2. Requiring the modification of a policy, practice or procedure of the health care provider or health care facility.

3. Requiring that health care facilities be made readily accessible to and usable by a qualified recipient.

C. This section does not limit or replace available remedies under the Americans with Disabilities Act of 1990, as amended (42 United States Code Sections 12101 through 12213), or any other applicable law.

D. This section does not create a right to compensatory or punitive damages against a health care provider or health care facility.

Sec. 3. Section 36-851.01, Arizona Revised Statutes, is amended to read:

36-851.01. Procurement organizations; licensure; renewal; fees; penalties; exceptions

A. A person may not act as a procurement organization in this state unless the person is licensed by the department of health services as a procurement organization. The person shall apply in writing to the director of the department on a form specified by the director, shall include all information requested in the application and shall pay the fees prescribed by the director.

B. The director shall grant a procurement organization license to a person if the organization either is accredited by a nationally recognized accrediting agency that is approved by the department of health services and maintains full accreditation with the accrediting agency or meets the requirements prescribed in section 36-851.03 and the rules adopted by the department.

C. A license under this section is valid for two years and must be renewed every two years. A person shall file an application for renewal at least thirty days before the expiration of the current license.

D. Each procurement organization applying for licensure or license renewal under this section shall pay all applicable fees as prescribed by the director. All fees collected pursuant to this section for the licensure and license renewal of procurement organizations shall be deposited in the health services licensing fund established by section 36-414.

E. The director may sanction, impose civil penalties on or, pursuant to title 41, chapter 6, article 10, suspend or revoke, in whole or in part, the license of any procurement organization if any person who is an owner, officer, agent or employee of the procurement organization is
in or continues to be in violation of this article or the rules of the
department of health services adopted pursuant to this article.

F. This section does not apply to any of the following:

1. An organ procurement organization as described by 42 United
States Code section 273 that is designated for this state by the secretary
of the United States department of health and human services pursuant to

2. A procurement organization that is regulated by the United
States food and drug administration in connection with the recovery of
human tissue intended for transplantation pursuant to 21 Code of Federal
Regulations part 1270.

3. A procurement organization as defined in section 36-841,
paragraph 23, subdivision (d).

4. A procurement organization that is affiliated with an accredited
educational institution in connection with the education of students
enrolled in a degree-granting program for health professionals.

5. A procurement organization that recovers anatomical gifts for
research or education, including for quality improvement or quality
assurance, and that is affiliated with a hospital that is licensed
pursuant to chapter 4 of this title.

6. A hospital that is licensed pursuant to chapter 4 of this title.