



State of Wisconsin  
2021 - 2022 LEGISLATURE

LRB-4412/1  
JPC:cjs&amn

## 2021 SENATE BILL 538

September 2, 2021 - Introduced by Senators JAGLER, BRADLEY, DARLING, FEYEN and BALLWEG, cosponsored by Representatives BORN, THIESFELDT, ARMSTRONG, ALLEN, DITTRICH, GUNDRUM, JAMES, KUGLITSCH, LOUDENBECK, MAGNAFICI, NOVAK, OLDENBURG, PETRYK, PLUMER, ROZAR, STEFFEN, TITTL, TUSLER and EDMING. Referred to Committee on Health.

\*\*\*AUTHORS SUBJECT TO CHANGE\*\*\*

1     **AN ACT to create** 157.06 (2) (bm), 157.06 (2) (cm) and 157.06 (15) of the statutes;  
2             **relating to:** prohibiting discrimination in organ transplantation on the basis  
3             of disability.

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### *Analysis by the Legislative Reference Bureau*

This bill prohibits discrimination against any individual in the receipt of an anatomical gift or related services solely on the basis of the individual's disability. However, this bill specifies that a hospital or transplant hospital may consider an individual's disability in making treatment or coverage recommendations or decisions, but only if a physician finds that the disability is medically significant to the receipt of the anatomical gift following an individualized evaluation of the individual. Under the bill, an individual's independent ability to comply with posttransplantation medical requirements is not considered medically significant if the evaluating physician concludes that the individual has the necessary support system to assist the individual in complying with the posttransplantation medical requirements. Further, the bill provides that an individual may bring an action in circuit court for a violation of the bill. The bill requires the court to hold a hearing within 30 days of the filing of the action. In an action before the circuit court, the court may grant injunctive or equitable relief, including ordering necessary auxiliary aids and services. Under the bill, "auxiliary aids and services" includes supported decision-making services and methods to make delivered material available to individuals with hearing or visual impairments.

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For further information see the state fiscal estimate, which will be printed as an appendix to this bill.

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*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           **SECTION 1.** 157.06 (2) (bm) of the statutes is created to read:

2           157.06 (2) (bm) “Auxiliary aids and services” means any of the following:

3           1. Qualified interpreters or other effective methods of making aurally delivered  
4 material available to individuals with hearing impairments.

5           2. Qualified readers, audio recordings of texts, or other effective methods of  
6 making visually delivered material available to individuals with visual  
7 impairments.

8           3. Supported decision-making services.

9           **SECTION 2.** 157.06 (2) (cm) of the statutes is created to read:

10          157.06 (2) (cm) “Disability” has the meaning given in 42 USC 12102 (1).

11          **SECTION 3.** 157.06 (15) of the statutes is created to read:

12          157.06 (15) DISCRIMINATION IN USE OF ANATOMICAL GIFTS PROHIBITED. (a) Except  
13 as provided in pars. (c) and (d), no hospital or transplant hospital may, solely on the  
14 basis of an individual’s disability, do any of the following:

15           1. Consider an individual ineligible to receive an anatomical gift.

16           2. Deny an individual any medical services or other services related to organ  
17 transplantation, including diagnostic services, surgery, postoperative treatment,  
18 and counseling.

19           3. Refuse to refer an individual to a transplant hospital or an organ transplant  
20 specialist for the purpose of being evaluated for or receiving an anatomical gift.

21           4. Refuse to place the individual on an organ transplant waiting list.

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1           5. Place the individual on an organ transplant waiting list at a lower priority  
2 position than the position at which the individual would have been placed if the  
3 individual did not have a disability, unless the individual is placed at a lower priority  
4 position because the individual's disability relates directly to the medical need of the  
5 individual to receive the organ transplant and the individual's relative placement on  
6 the waiting list is reflective of the individual's medical need for the organ transplant.

7           (b) No person may refuse an individual insurance coverage for any procedure  
8 associated with being evaluated for or receiving an anatomical gift, including  
9 posttransplantation and posttransfusion care, solely on the basis of the individual's  
10 physical or mental disability.

11           (c) 1. A hospital or transplant hospital may consider an individual's disability  
12 when making treatment or coverage decisions or recommendations related to organ  
13 transplantation, but only if a physician finds that the disability is medically  
14 significant to the receipt of the anatomical gift following an individualized  
15 evaluation of the individual.

16           2. If the examining physician determines that the individual has the necessary  
17 support system to assist the individual in complying with posttransplantation  
18 medical requirements, an individual's inability to independently comply with those  
19 requirements may not be considered to be medically significant for purposes of subd.  
20 1.

21           (d) This subsection does not apply to eye transplants or services related to the  
22 provision of an eye transplant.

23           (e) An individual may bring an action for a violation of this subsection in the  
24 circuit court of the county where a violation occurs or the county where the individual  
25 resides. The circuit court shall give priority on its docket and expedited review to an

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1 action brought under this paragraph. The court shall hold a hearing within 30 days  
2 of the filing of the action. In an action brought under this paragraph, the court may  
3 grant injunctive or other equitable relief, including requiring that auxiliary aids and  
4 services be made available for the individual if and when necessary for the receipt  
5 of an organ transplant. In issuing any order for auxiliary aids and services under  
6 this subsection, the circuit court shall specify the party responsible for paying for the  
7 auxiliary aids and services and for how long the services are to be provided.

8

(END)