

115TH CONGRESS
2D SESSION

H. R. 6448

To amend the National Organ Transplant Act to clarify the definition of valuable consideration, to clarify that pilot programs that honor and reward organ donation do not violate that Act, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 19, 2018

Mr. CARTWRIGHT (for himself, Mr. LEWIS of Minnesota, Mr. COHEN, Mr. GRIJALVA, Ms. JENKINS of Kansas, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. KHANNA, Mr. MARINO, Mr. POLIS, Mr. YOUNG of Alaska, Mr. BISHOP of Georgia, Mr. FITZPATRICK, Mr. POSEY, Mr. KELLY of Pennsylvania, Mr. MCGOVERN, and Mr. CARSON of Indiana) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To amend the National Organ Transplant Act to clarify the definition of valuable consideration, to clarify that pilot programs that honor and reward organ donation do not violate that Act, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Organ Donation Clari-
5 fication Act of 2018”.

1 **SEC. 2. FINDINGS.**

2 Congress finds the following:

3 (1) As of June 2018, 115,000 people await an
4 organ transplant, with 95,000 of those people wait-
5 ing for a kidney, and average wait times are ap-
6 proaching five years for a kidney, with twice as
7 many people being added to waiting lists as getting
8 a transplant.

9 (2) Living donor kidney transplants peaked in
10 2004 and have declined since due to a scarcity of liv-
11 ing donors.

12 (3) Of the roughly two million Americans who
13 die annually, only 10,500 to 13,800, representing
14 less than one percent of all deaths each year, possess
15 major organs healthy enough for transplanting.

16 (4) On average, 20 people a day died while
17 waiting for an organ in 2017, with the majority of
18 those people waiting for a kidney.

19 (5) In 2017, 4,700 people were permanently re-
20 moved from kidney waiting lists and 1,800 from
21 liver, heart, and lungs waiting lists because they be-
22 came permanently too sick to receive a transplant.

23 (6) Ninety percent of dialysis patients are not
24 employed because dialysis requires multiple treat-
25 ments per week which last several hours and leave
26 patients drained, thus creating a huge financial bur-

1 den on the patients, their families, and the govern-
2 ment which is not included in the cost estimates
3 above, and which can help lead to as few as ten per-
4 cent of dialysis patients being employed.

5 (7) A patient receiving a kidney transplant on
6 average can go 10–15 years living without dialysis
7 while enjoying a much higher quality of life.

8 (8) As medical advances extend people’s lives on
9 dialysis, the number of patients on dialysis will in-
10 crease significantly, as will the costs for individuals
11 and the Federal Government.

12 (9) Roughly seven percent of the Medicare
13 budget goes to the End Stage Renal Disease Pro-
14 gram, with dialysis costing Medicare over \$87,000
15 per patient per year, as Federal law dictates that
16 Medicare will cover dialysis for everyone who has
17 made minimal Social Security tax payments.

18 (10) A kidney transplant pays for itself in less
19 than two years, with each transplant saving an aver-
20 age of over \$700,000 in medical costs over a 10-year
21 period, 85 percent of which is savings to the tax-
22 payers.

23 (11) Experts project that if the supply of trans-
24 plant kidneys could be increased to meet the de-

1 mand, taxpayers would save more than
2 \$12,000,000,000 per year in medical costs.

3 (12) The World Health Organization estimates
4 that 10 percent of all transplants take place on the
5 international black market, the last choice for des-
6 perate patients facing an alternative of death, how-
7 ever recipients often face infected kidneys and have
8 poor health outcomes and donors are often victim-
9 ized.

10 (13) Present policy on domestic donation, which
11 is not evidence based and has never been subject to
12 studies or pilots to determine effectiveness in in-
13 creasing the availability of donated organs and the
14 effectiveness of safeguards that prevent coercion or
15 exploitation, precludes all but altruistic donation,
16 prohibiting any form of incentive or benefit for do-
17 nors.

18 (14) Experts are arriving at a consensus that
19 trials are necessary to find new methods of pro-
20 moting additional organ donation which will save
21 lives and reduce organ trafficking.

1 **SEC. 3. CLARIFICATION OF CERTAIN PROVISIONS OF THE**
2 **NATIONAL ORGAN TRANSPLANT ACT.**

3 (a) **RELATION TO OTHER LAWS.**—Section 301 of the
4 National Organ Transplant Act (42 U.S.C. 274e) is
5 amended by adding at the end the following:

6 “(d) **RELATION TO OTHER LAWS.**—

7 “(1) **GOVERNMENTS ENCOURAGING ORGAN DO-**
8 **NATION.**—This section shall not—

9 “(A) apply to actions taken by the Govern-
10 ment of the United States or any State, terri-
11 tory, tribe, or local government of the United
12 States to carry out a covered pilot program; or

13 “(B) prohibit acceptance of any noncash
14 benefits provided by the pilot program under
15 subparagraph (A).

16 “(2) **NO PROHIBITION ON OTHER BENEFITS**
17 **PROGRAMS.**—Nothing in this subsection shall be con-
18 strued to prohibit actions, other than actions de-
19 scribed in this section, taken by any State, territory,
20 tribe, or unit of local government in the United
21 States to provide benefits for human organ donation.

22 “(3) **COVERED PILOT PROGRAM.**—For purposes
23 of this subsection, the term ‘covered pilot program’
24 means a pilot program approved by the Secretary of
25 Health and Human Services, subject to an ethical
26 review board process, with a term of not more than

1 5 fiscal years, for the purpose of measuring the ef-
2 fect of removing disincentives or providing a noncash
3 benefit that may increase the organ pool. Distribu-
4 tions of organs from deceased donors under the pilot
5 program shall be conducted only through the Organ
6 Procurement and Transplantation Network at a
7 transplant center approved by the United Network
8 for Organ Sharing or any other entity designated by
9 the Secretary of Health and Human Services.”.

10 (b) VALUABLE CONSIDERATION.—Section 301(c)(2)
11 of the National Organ Transplant Act (42 U.S.C.
12 274e(c)(2)) is amended to read as follows:

13 “(2) The term ‘valuable consideration’ does not
14 include the following:

15 “(A) Reasonable payments associated with
16 the removal, transportation, implantation, proc-
17 essing, preservation, quality control, and stor-
18 age of a human organ.

19 “(B) Reimbursement for travel, lodging,
20 food during travel, and other logistical expenses
21 related to donation.

22 “(C) Provision of advanced payments or
23 reimbursement for dependent care needs for
24 pre-transplant appointments in addition to dur-
25 ing the period of donation and post-transplant

1 follow up care related to the donation for up to
2 a 10-year period.

3 “(D) Reimbursement for lost wages related
4 to donation.

5 “(E) Medical expenses related to donation
6 and all related follow-up care including prevent-
7 ative follow-up care and medication for up to a
8 10-year period.

9 “(F) Paperwork or legal costs related to
10 donation.

11 “(G) Any term life insurance policy against
12 the risk of death or disability as a result of do-
13 nating an organ or the longer term health ef-
14 fects of having donated an organ, that—

15 “(i) in the case of a life insurance pol-
16 icy, provides for payments in amounts
17 greater than \$2,000,000, adjusted annu-
18 ally for inflation; and

19 “(ii) in the case of a disability insur-
20 ance policy, provides for payments beyond
21 the reasonable earnings expectations of the
22 donor.”.

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