

117TH CONGRESS  
1ST SESSION

# H. R. 3569

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

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## IN THE HOUSE OF REPRESENTATIVES

MAY 28, 2021

Mr. CARTWRIGHT (for himself, Mr. WILSON of South Carolina, Mr. COHEN, Mr. FITZPATRICK, Mr. KELLY of Pennsylvania, Mr. MCKINLEY, Mr. SAN NICOLAS, Ms. SCHAKOWSKY, Mr. SCHIFF, Ms. SPEIER, Mr. TIMMONS, and Mr. YOUNG) introduced the following bill; which was referred to the Committee on Energy and Commerce

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## A BILL

To amend the National Organ Transplant Act to clarify the definition of valuable consideration, to clarify that pilot programs that honor and promote 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 2021”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1           (1) As of March 2021, 108,000 people await an  
2 organ transplant, with 91,000 of those people wait-  
3 ing for a kidney, and average wait times are ap-  
4 proaching five years for a kidney, with over one-and-  
5 a-half times as many people being added to the wait-  
6 ing lists as getting a transplant.

7           (2) Of the nearly three million Americans who  
8 die annually, under 30,000, representing about one  
9 percent of all deaths each year, possess major or-  
10 gans healthy enough for transplanting.

11           (3) On average, 17 people a day died while  
12 waiting for an organ in 2020, with the majority of  
13 those people waiting for a kidney.

14           (4) In 2020, approximately 3,800 people were  
15 removed from kidney waiting lists and approximately  
16 1,600 from liver, heart, and lungs waiting lists be-  
17 cause they became permanently too sick to receive a  
18 transplant.

19           (5) Over 75 percent of dialysis patients are not  
20 employed because dialysis requires multiple treat-  
21 ments per week which last several hours and leave  
22 patients drained, thus creating a huge financial bur-  
23 den on the patients, their families, and the govern-  
24 ment; moreover, lost tax revenue from these individ-  
25 uals is not included in the cost estimates above.

1           (6) A patient receiving a kidney transplant, and  
2           thus no longer needing dialysis, can enjoy a much  
3           higher quality of life for another 10–15 years on av-  
4           erage.

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

9           (8) Roughly seven percent of the Medicare  
10          budget goes to the End Stage Renal Disease Pro-  
11          gram, with dialysis costing Medicare over \$90,000  
12          per patient per year, as Federal law dictates that  
13          Medicare will cover dialysis for everyone who has  
14          made minimal Social Security tax payments.

15          (9) A kidney transplant pays for itself in less  
16          than two years, with each transplant saving an aver-  
17          age of \$146,000 in medical costs over a 10-year pe-  
18          riod, 75 percent of which is savings to the taxpayers.

19          (10) Experts project that if the supply of trans-  
20          plant kidneys could be increased to meet the de-  
21          mand, taxpayers would save more than  
22          \$14,000,000,000 per year in medical costs.

23          (11) The World Health Organization estimates  
24          that 10 percent of all transplants take place on the  
25          international black market, the last choice for des-

1       perate patients facing an alternative of death, how-  
2       ever recipients often receive infected kidneys and  
3       suffer poor health outcomes and donors are often  
4       victimized.

5               (12) Present policy on domestic donation has  
6       never been subject to studies or pilots to determine  
7       effectiveness in increasing the availability of donated  
8       organs and the effectiveness of safeguards that pre-  
9       vent coercion or exploitation, precludes all but altru-  
10      istic donation, prohibiting any form of incentive or  
11      benefit for donors.

12              (13) In 2010, Israel implemented sweeping  
13      changes to its national organ donation program in-  
14      cluding reducing financial burdens on donors, giving  
15      future transplantation priority to registered organ  
16      donors and their families, and promoting donation  
17      by reimbursing the donor's medical costs, 40 days of  
18      lost wages, and five years of medical and life insur-  
19      ance costs, and as a result saw organ donation ap-  
20      proximately triple over a 10-year period.

21              (14) Experts are arriving at a consensus that  
22      trials are necessary to find new methods of pro-  
23      moting additional organ donation which will save  
24      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—

24 “(A) the term ‘covered pilot program’  
25 means a pilot program approved by the Sec-  
26 retary of Health and Human Services, subject

1 to an ethical review board process, with a term  
2 of not more than 5 fiscal years, for the purpose  
3 of measuring the effect of removing disincen-  
4 tives or providing a noncash benefit that may  
5 increase the organ pool. Distributions of organs  
6 from deceased donors under the pilot program  
7 shall be conducted only through the Organ Pro-  
8 curement and Transplantation Network at a  
9 transplant center approved by the United Net-  
10 work for Organ Sharing or any other entity  
11 designated by the Secretary of Health and  
12 Human Services; and

13 “(B) the term ‘noncash benefit’ means any  
14 benefit or thing of value received by an organ  
15 donor that is impossible to sell, trade, or other-  
16 wise transfer to another individual.”.

17 (b) VALUABLE CONSIDERATION.—Section 301(c)(2)  
18 of the National Organ Transplant Act (42 U.S.C.  
19 274e(c)(2)) is amended to read as follows:

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

22 “(A) Reasonable payments associated with  
23 the removal, transportation, implantation, proc-  
24 essing, preservation, quality control, and stor-  
25 age of a human organ.

1           “(B) Reimbursement for travel, lodging,  
2 food during travel, and other logistical expenses  
3 related to donation.

4           “(C) Provision of advanced payments or  
5 reimbursement for dependent care needs for  
6 pre-transplant appointments in addition to dur-  
7 ing the period of donation and post-transplant  
8 follow-up care related to the donation for up to  
9 a 10-year period.

10           “(D) Reimbursement for lost wages related  
11 to donation.

12           “(E) Medical expenses related to donation  
13 and all related follow-up care including prevent-  
14 ative follow-up care and medication for up to a  
15 10-year period.

16           “(F) Paperwork or legal costs related to  
17 donation.

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

22                   “(i) in the case of a life insurance pol-  
23 icy, provides for payments in amounts less  
24 than \$2,000,000, adjusted annually for in-  
25 flation; and

1                   “(ii) in the case of a disability insur-  
2                   ance policy, provides for payments equal to  
3                   or less than the reasonable earnings expect-  
4                   tations of the donor.”.

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