

[DISCUSSION DRAFT]114TH CONGRESS
2^D SESSION**H. R.** _____

To clarify that pilot programs that honor and reward organ donation are not preempted by Federal criminal law and that offering and accepting such benefits in accordance with a pilot program are not criminal acts.

IN THE HOUSE OF REPRESENTATIVES

Mr. CARTWRIGHT introduced the following bill; which was referred to the Committee on _____

A BILL

To clarify that pilot programs that honor and reward organ donation are not preempted by Federal criminal law and that offering and accepting such benefits in accordance with a pilot program are not criminal acts.

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 2016”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1 (1) As of January 2016, 121,000 people await
2 an organ transplant, with 100,000 of those people
3 waiting for a kidney, and average wait times are ap-
4 proaching five years for a kidney, with twice as
5 many people being added to waiting lists as getting
6 a transplant.

7 (2) Kidney transplants peaked in 2006 and
8 have declined since due to a scarcity of both living
9 and deceased donors.

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

14 (4) On average, 22 people a day died while
15 waiting for an organ, with the majority of those peo-
16 ple waiting on a kidney.

17 (5) In 2013 nearly 3,000 people were perma-
18 nently removed from kidney waiting lists and 2,000
19 from liver, heart, and lungs waiting lists because
20 they became permanently too sick to receive a trans-
21 plant.

22 (6) 90% of dialysis patients are not employed
23 because dialysis requires multiple treatments per
24 week which last several hours and leave patients
25 drained, thus creating a huge financial burden on

1 the patients, their families, and the government
2 which is not included in the cost estimates above.

3 (7) A patient receiving a kidney transplant on
4 average has an additional 10-15 years of life at a
5 much more enjoyable and productive level as com-
6 pared with remaining on dialysis, while receiving a
7 kidney from a living donors providing 4-8 years of
8 additional life as compared to receiving a kidney
9 from a deceased donor.

10 (8) As medical advances extend people's lives as
11 they wait for an organ transplant, waiting lists will
12 get longer and the costs for individuals and the Fed-
13 eral Government will increase significantly.

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

20 (10) A kidney transplant pays for itself in less
21 than two years, with each transplant saving an aver-
22 age of over \$745,000 in medical costs over a 10-year
23 period, 75 percent of which is savings to the tax-
24 payers.

1 (11) Experts project that if the supply of trans-
2 plant kidneys could be increased to meet the de-
3 mand, taxpayers would save more than
4 \$5,500,000,000 per year in medical costs.

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

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

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

4 (1) GOVERNMENTS ENCOURAGING ORGAN DO-
5 NATION.—Section 301 of the National Organ Trans-
6 plant Act (42 U.S.C. 274e) shall not—

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

11 (B) prohibit acceptance of any non cash
12 benefits provided by the pilot program under
13 subparagraph (A).

14 (2) NO PROHIBITION ON OTHER BENEFITS PRO-
15 GRAMS.—Nothing in this section shall be construed
16 to prohibit actions, other than actions described in
17 this section, taken by any State, territory, tribe, or
18 unit of local government in the United States to pro-
19 vide benefits for organ donation, including pursuant
20 to section 301 of the National Organ Transplant Act
21 (42 U.S.C. 274e).

22 (3) CLARIFICATION OF MEANING OF BEN-
23 EFIT.—For purposes of the National Organ Trans-
24 plant Act, valuable consideration does not include
25 the following:

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

4 (B) Provision of or reimbursement for de-
5 pendent care needs related to donation.

6 (C) Reimbursement for lost wages related
7 to donation.

8 (D) Medical expenses related to donation
9 and all related follow up care including prevent-
10 ative follow up care and medication.

11 (E) Paperwork or legal costs related to do-
12 nation.

13 (F) Any insurance policy against the risk
14 of death or disability as a result of donating an
15 organ or the longer-term health effects of hav-
16 ing donated an organ.

17 (b) DEFINITION.—In this section:

18 (1) The term “organ” means the human kid-
19 ney, liver, heart, lung, pancreas, bone marrow ob-
20 tained by aspirate, cornea, eye, bone and other mus-
21 culoskeletal tissue, skin, and heart valves and other
22 cardio and vascular tissue.

23 (2) The term “covered pilot program” means a
24 pilot program approved by the Secretary of Health
25 and Human Services, subject to an ethical review

1 board process, with a term of not more than 5 fiscal
2 years, for the purpose of measuring the effect of re-
3 moving disincentives or providing a non cash benefit
4 that may increase the organ pool. Distributions of
5 organs from deceased donors under the pilot pro-
6 gram shall be conducted only through the Organ
7 Procurement and Transplantation Network at a
8 transplant center approved by the United Network
9 for Organ Sharing or any other entity designated by
10 the Secretary of Health and Human Services.