

116TH CONGRESS
2D SESSION

S. 3601

To prevent States from using or distributing resources during the COVID–19 national emergency in accordance with a State policy that discriminates on the basis of disability, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 5, 2020

Mr. SASSE introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To prevent States from using or distributing resources during the COVID–19 national emergency in accordance with a State policy that discriminates on the basis of disability, 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 “Ending Qualifications
5 that are Unjust for Access to Lifesaving Care Act” or the
6 “EQUAL Care Act”.

1 **SEC. 2. PROHIBITION ON DISCRIMINATION ON THE BASIS**
2 **OF DISABILITY WITH RESPECT TO THE DIS-**
3 **TRIBUTION OR USE OF RESOURCES DURING**
4 **COVID-19 NATIONAL EMERGENCY.**

5 (a) IN GENERAL.—No State shall receive a resource,
6 including a ventilator, from the Strategic National Stock-
7 pile, or through any defense production contract, during
8 the COVID-19 national emergency if the Secretary of
9 Health and Human Services, in coordination with the Sec-
10 retary of Homeland Security, determines under subsection
11 (b) that the State has in effect a policy that discriminates
12 on the basis of disability with respect to the use or dis-
13 tribution of such resource.

14 (b) DETERMINATIONS.—

15 (1) IN GENERAL.—Notwithstanding section
16 319F-2(a) of the Public Health Service Act (42
17 U.S.C. 247d-6b(a)) or any other provision of law,
18 the Secretary of Health and Human Services, in co-
19 ordination with the Secretary of Homeland Security,
20 shall, prior to the distribution of any resource from
21 the Strategic National Stockpile, or through any de-
22 fense production contract, to a State, certify that
23 the policy of that State in using or distributing that
24 resource is not discriminatory on the basis of dis-
25 ability.

1 (2) PERIOD FOR HOLDING RESOURCES.—If the
2 Secretary, in coordination with the Secretary of
3 Homeland Security, determines under paragraph (1)
4 that the policy of a State with respect to the use or
5 distribution of a resource described in such para-
6 graph is discriminatory on the basis of disability, the
7 Secretary, or Secretary of Homeland Security (as
8 applicable), shall ensure that such resource is with-
9 held from the State until the State modifies the pol-
10 icy so that it is no longer so discriminatory.

11 (3) RULE OF CONSTRUCTION.—A certification
12 under paragraph (1) shall—

13 (A) apply only with respect to the resource
14 in question, and the allocation of such resource
15 within the State; and

16 (B) shall not have any effect on the deter-
17 mination of whether the State is in violation of
18 any other Federal law or have any effect on en-
19 forcement under any other Federal law.

20 (c) DEFINITIONS.—In this section:

21 (1) COVID–19 NATIONAL EMERGENCY.—The
22 term “COVID–19 national emergency” means the
23 period in which the national emergency declared by
24 the President under the National Emergencies Act

1 (50 U.S.C. 1601 et seq.) with respect to the
2 Coronavirus Disease 2019 (COVID–19), is in effect.

3 (2) DEFENSE PRODUCTION CONTRACT.—The
4 term “defense production contract” means a con-
5 tract that the Federal Government has entered into
6 under the Defense Production Act of 1950 (50
7 U.S.C. 4501 et seq.).

8 (3) DISABILITY.—The term “disability” has the
9 meaning given such term in section 3 of the Ameri-
10 cans with Disabilities Act of 1990 (42 U.S.C.
11 12102).

12 (4) STRATEGIC NATIONAL STOCKPILE.—The
13 term “Strategic National Stockpile” means the
14 stockpile established under section 319F–2(a) of the
15 Public Health Service Act (42 U.S.C. 247d–6b(a)).

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