

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 203 Session of 2021

INTRODUCED BY TOOHL, SCHLEGEL CULVER, MILLARD, ISAACSON, CIRESI, HILL-EVANS, MOUL, WEBSTER, WHEELAND, SIMS, ROZZI AND WARREN, JANUARY 21, 2021

AS REPORTED FROM COMMITTEE ON INSURANCE, HOUSE OF REPRESENTATIVES, AS AMENDED, JANUARY 26, 2021

AN ACT

1 Providing for living donor protection; and imposing duties on
2 the Department of Health and the Insurance Department.

3 The General Assembly of the Commonwealth of Pennsylvania
4 hereby enacts as follows:

5 Section 1. Short title.

6 This act shall be known and may be cited as the Living Donor
7 Protection Act.

8 Section 2. Definitions.

9 The following words and phrases when used in this act shall
10 have the meanings given to them in this section unless the
11 context clearly indicates otherwise:

12 "Eligible employee." As defined in the FMLA.

13 "FMLA." Family and Medical Leave Act of 1993 (Public Law
14 103-3, 29 U.S.C. § 2601 et seq.).

15 ~~"Insurance policy." A policy, subscriber contract,~~ <--

16 "INSURANCE POLICY." AS FOLLOWS: <--

17 (1) A POLICY, SUBSCRIBER CONTRACT, certificate or plan

1 which provides health care, ~~life or accident~~ OR LIFE coverage <--
2 and which is offered, issued or renewed by an insurer.

3 (2) THE TERM DOES NOT INCLUDE ACCIDENT ONLY, FIXED <--
4 INDEMNITY, HOSPITAL INDEMNITY, LIMITED BENEFIT, CREDIT,
5 DENTAL, VISION, SPECIFIED DISEASE, MEDICARE SUPPLEMENT,
6 CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES
7 (CHAMPUS) SUPPLEMENT, LONG-TERM CARE OR DISABILITY INCOME,
8 WORKERS' COMPENSATION OR AUTOMOBILE MEDICAL PAYMENT
9 INSURANCE.

10 "Insurer." As follows:

11 (1) An entity licensed by the Insurance Department with
12 authority to issue insurance policies or governed under any
13 of the following:

14 (i) The act of May 17, 1921 (P.L.682, No.284), known
15 as The Insurance Company Law of 1921, including section
16 630 and Article XXIV of The Insurance Company Law of
17 1921.

18 (ii) The act of December 29, 1972 (P.L.1701,
19 No.364), known as the Health Maintenance Organization
20 Act.

21 (iii) 40 Pa.C.S. Ch. 61 (relating to hospital plan
22 corporations) or 63 (relating to professional health
23 services plan corporations).

24 ~~(2) The term does not include accident only, fixed <--~~
25 ~~indemnity, hospital indemnity, limited benefit, credit,~~
26 ~~dental, vision, specified disease, Medicare supplement,~~
27 ~~Civilian Health and Medical Program of the Uniformed Services~~
28 ~~(CHAMPUS) supplement, long term care or disability income,~~
29 ~~workers' compensation or automobile medical payment~~
30 ~~insurance.~~ (RESERVED). <--

1 "Living donor." An individual who:

2 (1) has donated all or part of an organ or tissue; and

3 (2) is not deceased.

4 "Organ." As follows:

5 (1) A human kidney, liver, heart, lung, pancreas,
6 esophagus, stomach, small or large intestine or portion of
7 the gastrointestinal tract or another part of the human body
8 designated by the Department of Health by regulation.

9 (2) The term includes blood vessels recovered during the
10 recovery of an organ under paragraph (1) if the blood vessels
11 are intended for use in organ transplantation.

12 "Tissue." As follows:

13 (1) A portion of the human body other than an organ,
14 including, but not limited to, a human eye, skin, bone, bone
15 marrow, heart valve, spermatozoon, ova, artery, vein, tendon,
16 ligament, pituitary gland or fluid.

17 (2) The term does not include blood or a blood
18 derivative, unless the blood or blood derivative is donated
19 for the purpose of research or education.

20 Section 3. Informational materials.

21 (a) Authorization.--The Department of Health shall develop
22 informational materials relating to living donors and the live
23 donation of organs and tissue.

24 (b) Contents.--The informational materials shall include,
25 but not be limited to, the following:

26 (1) The benefits of live organ and tissue donation.

27 (2) The impact of the donation of organs or tissue on a
28 living donor's access to insurance and assistance.

29 (3) The reduction in Federal adjusted gross income, for
30 State personal income tax purposes, granted to a living

1 donor.

2 (4) The protections granted to a living donor under this
3 act, including a living donor's rights under the FMLA and
4 information on filing a complaint with the United States
5 Department of Labor's Wage and Hour Division if the living
6 donor believes that the living donor's employer is not in
7 compliance with the FMLA.

8 (c) Distribution.--The informational materials shall be:

9 (1) distributed in printed form, upon request; and

10 (2) posted on the publicly accessible Internet website
11 of the Department of Health.

12 (d) Update.--The Department of Health shall periodically
13 update the informational materials.

14 Section 4. Prohibited practices.

15 (a) Prohibitions.--Subject to subsection (b), an insurer may
16 not:

17 (1) Engage in any of the following actions against an
18 individual based solely upon the individual's status as a
19 living donor without additional risk based on sound actuarial
20 principles reasonably related to actual or anticipated loss
21 experience:

22 (i) Decline to provide an insurance policy to the
23 individual.

24 (ii) Limit coverage under an insurance policy of the
25 individual.

26 (iii) Otherwise discriminate against the individual
27 regarding the premium rating, offering, issuance,
28 cancellation, amount of coverage or any other condition
29 of an insurance policy.

30 (2) Preclude an insured from donating all or part of an

1 organ or tissue as a condition for receiving or continuing to
2 receive coverage under an insurance policy, except that an
3 insurer may decline to issue ~~an~~ A LIFE insurance policy to an <--
4 applicant with a scheduled donation until the applicant is
5 released without complication by the surgeon to the care of
6 the applicant's primary care physician.

7 (b) Construction.--Subsection (a)(2) shall not be construed
8 to require an insurance policy form to include coverage of organ
9 donation.

10 Section 5. Family and medical leave.

11 (a) Entitlement.--An employer subject to the FMLA shall
12 provide the same leave to which an eligible employee is entitled
13 under the FMLA, when the eligible employee is unable to work
14 because of a serious health condition or when the eligible
15 employee must care for the eligible employee's spouse, child or
16 parent with a serious medical condition, for the preparation and
17 recovery necessary for surgery related to organ or tissue
18 donation by or for the eligible employee or the eligible
19 employee's spouse, child or parent.

20 (b) Documentation.--An employer may require an eligible
21 employee to submit written documentation regarding the
22 preparation and recovery necessary for surgery described under
23 subsection (a).

24 Section 6. Enforcement.

25 A violation of section 4 is an unfair or deceptive act or
26 practice under the act of July 22, 1974 (P.L.589, No.205), known
27 as the Unfair Insurance Practices Act.

28 Section 7. Rules and regulations.

29 The Department of Health and the Insurance Department may
30 each promulgate rules or regulations as may be necessary to

1 carry out the provisions of this act.

2 Section 8. Effect of act.

3 Unless specifically provided otherwise under this act,
4 nothing in this act shall be construed to interfere with other
5 State law regarding organ or tissue donation.

6 Section 9. Effective date.

7 This act shall take effect in 60 days.