

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 924 Session of 2019

INTRODUCED BY TOOHL, ULLMAN, PETRARCA, PICKETT, KINSEY, ISAACSON, MILLARD, DeLUCA, SAYLOR, SCHWEYER, HILL-EVANS, WARREN, KAUFER, HEFFLEY, BROWN AND EVERETT, MARCH 20, 2019

AS REPORTED FROM COMMITTEE ON INSURANCE, HOUSE OF REPRESENTATIVES, AS AMENDED, MAY 13, 2019

AN ACT

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

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

6 Section 1. Short title.

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

9 Section 2. Definitions.

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

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

14 "FMLA." Family and Medical Leave Act of 1993 (Public Law
15 103-3, 29 U.S.C. § 2601 et seq.).

16 "Insurance policy." A policy, subscriber contract,
17 certificate or plan which provides ~~medical care~~, health care, <--

1 ~~life or accident insurance coverage and which is offered or~~ <--
2 ~~governed under any of the following:~~

3 ~~(1) The act of May 17, 1921 (P.L.682, No.284), known as~~
4 ~~The Insurance Company Law of 1921, including, but not limited~~
5 ~~to, section 630 and Article XXIV of The Insurance Company Law~~
6 ~~of 1921.~~

7 ~~(2) The act of December 29, 1972 (P.L.1701, No.364),~~
8 ~~known as the Health Maintenance Organization Act.~~

9 ~~(3) 40 Pa.C.S. Ch. 61 (relating to hospital plan~~
10 ~~corporations) or 63 (relating to professional health services~~
11 ~~plan corporations) COVERAGE AND WHICH IS OFFERED, ISSUED OR~~ <--
12 ~~RENEWED BY AN INSURER.~~

13 ~~"Insurer." An entity licensed by the Insurance Department~~ <--
14 ~~with authority to issue insurance policies.~~

15 "INSURER." AS FOLLOWS: <--

16 (1) AN ENTITY LICENSED BY THE INSURANCE DEPARTMENT WITH
17 AUTHORITY TO ISSUE INSURANCE POLICIES OR GOVERNED UNDER ANY
18 OF THE FOLLOWING:

19 (I) THE ACT OF MAY 17, 1921 (P.L.682, NO.284), KNOWN
20 AS THE INSURANCE COMPANY LAW OF 1921, INCLUDING SECTION
21 630 AND ARTICLE XXIV OF THE INSURANCE COMPANY LAW OF
22 1921.

23 (II) THE ACT OF DECEMBER 29, 1972 (P.L.1701,
24 NO.364), KNOWN AS THE HEALTH MAINTENANCE ORGANIZATION
25 ACT.

26 (III) 40 PA.C.S. CH. 61 (RELATING TO HOSPITAL PLAN
27 CORPORATIONS) OR 63 (RELATING TO PROFESSIONAL HEALTH
28 SERVICES PLAN CORPORATIONS).

29 (2) THE TERM DOES NOT INCLUDE ACCIDENT ONLY, FIXED
30 INDEMNITY, HOSPITAL INDEMNITY, LIMITED BENEFIT, CREDIT,

1 DENTAL, VISION, SPECIFIED DISEASE, MEDICARE SUPPLEMENT,
2 CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES
3 (CHAMPUS) SUPPLEMENT, LONG-TERM CARE OR DISABILITY INCOME,
4 WORKER'S COMPENSATION OR AUTOMOBILE MEDICAL PAYMENT
5 INSURANCE.

6 "Living donor." An individual who:

- 7 (1) has donated all or part of an organ or tissue; and
- 8 (2) is not deceased.

9 "Organ." As follows:

10 (1) A human kidney, liver, heart, lung, pancreas,
11 esophagus, stomach, small or large intestine or portion of
12 the gastrointestinal tract or another part of the human body
13 designated by the Department of Health by regulation.

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

17 "Tissue." As follows:

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

22 (2) The term does not include blood or a blood
23 derivative, unless the blood or blood derivative is donated
24 for the purpose of research or education.

25 Section 3. Informational materials.

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

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

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

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

4 (3) The reduction in Federal adjusted gross income, for
5 State personal income tax purposes, granted to a living
6 donor.

7 (4) The protections granted to a living donor under this
8 act~~-,~~ INCLUDING A LIVING DONOR'S RIGHTS UNDER THE FMLA AND <--
9 INFORMATION ON FILING A COMPLAINT WITH THE UNITED STATES
10 DEPARTMENT OF LABOR'S WAGE AND HOUR DIVISION IF THE LIVING
11 DONOR BELIEVES THAT THE LIVING DONOR'S EMPLOYER IS NOT IN
12 COMPLIANCE WITH THE FMLA.

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

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

15 (2) posted on the publicly accessible Internet website
16 of the Department of Health.

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

19 Section 4. Prohibited practices.

20 ~~An~~ (A) PROHIBITIONS.--SUBJECT TO SUBSECTION (B), AN insurer <--
21 may not:

22 (1) Engage in any of the following actions against an
23 individual based solely upon the individual's status as a
24 living donor without additional ~~actuarial risks~~ RISK BASED ON <--
25 SOUND ACTUARIAL PRINCIPLES REASONABLY RELATED TO ACTUAL OR
26 ANTICIPATED LOSS EXPERIENCE:

27 (i) Decline to provide an insurance policy to the
28 individual.

29 (ii) Limit coverage under an insurance policy of the
30 individual.

1 (iii) Otherwise discriminate against the individual
2 regarding the premium rating, offering, issuance,
3 cancellation, amount of coverage or any other condition
4 of an insurance policy.

5 (2) Preclude an insured from donating all or part of an
6 organ or tissue as a condition for receiving or continuing to
7 receive coverage under an insurance policy~~-,~~ EXCEPT THAT AN <--
8 INSURER MAY DECLINE TO ISSUE AN INSURANCE POLICY TO AN
9 APPLICANT WITH A SCHEDULED DONATION UNTIL THE APPLICANT IS
10 RELEASED WITHOUT COMPLICATION BY THE SURGEON TO THE CARE OF
11 THE APPLICANT'S PRIMARY CARE PHYSICIAN.

12 (B) CONSTRUCTION.--SUBSECTION (A) (2) SHALL NOT BE
13 CONSTRUED TO REQUIRE AN INSURANCE POLICY FORM TO INCLUDE
14 COVERAGE OF ORGAN DONATION.

15 Section 5. Family and medical leave.

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

25 (b) Documentation.--An employer may require an eligible
26 employee to submit written documentation regarding the
27 preparation and recovery necessary for surgery described under
28 subsection (a).

29 Section 6. Enforcement.

30 ~~(a) Insurance Department. The Insurance Department shall~~ <--

1 ~~ensure compliance with section 4 of this act.~~

2 ~~(b) Department of Labor and Industry. The Department of~~
3 ~~Labor and Industry shall ensure compliance with section 5 of~~
4 ~~this act.~~

5 A VIOLATION OF SECTION 4 IS AN UNFAIR OR DECEPTIVE ACT OR <--
6 PRACTICE UNDER THE ACT OF JULY 22, 1974 (P.L.589, NO.205), KNOWN
7 AS THE UNFAIR INSURANCE PRACTICES ACT.

8 Section 7. Rules and regulations.

9 The Department of Health, ~~the Department of Labor and~~ <--
10 ~~Industry~~ and the Insurance Department may EACH promulgate rules <--
11 ~~and~~ OR regulations as may be necessary to carry out the <--
12 provisions of this act.

13 Section 8. Effect of act.

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

17 Section 9. Effective date.

18 This act shall take effect in 60 days.