

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 AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, JUNE 4, 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 health care, life or accident

1 coverage and which is offered, issued or renewed by an insurer.

2 "Insurer." As follows:

3 (1) An entity licensed by the Insurance Department with
4 authority to issue insurance policies or governed under any
5 of the following:

6 (i) The act of May 17, 1921 (P.L.682, No.284), known
7 as The Insurance Company Law of 1921, including section
8 630 and Article XXIV of The Insurance Company Law of
9 1921.

10 (ii) The act of December 29, 1972 (P.L.1701,
11 No.364), known as the Health Maintenance Organization
12 Act.

13 (iii) 40 Pa.C.S. Ch. 61 (relating to hospital plan
14 corporations) or 63 (relating to professional health
15 services plan corporations).

16 (2) The term does not include accident only, fixed
17 indemnity, hospital indemnity, limited benefit, credit,
18 dental, vision, specified disease, Medicare supplement,
19 Civilian Health and Medical Program of the Uniformed Services
20 (CHAMPUS) supplement, long-term care or disability income,
21 worker's compensation or automobile medical payment
22 insurance.

23 "Living donor." An individual who:

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

25 (2) is not deceased.

26 "Organ." As follows:

27 (1) A human kidney, liver, heart, lung, pancreas,
28 esophagus, stomach, small or large intestine or portion of
29 the gastrointestinal tract or another part of the human body
30 designated by the Department of Health by regulation.

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

4 "Tissue." As follows:

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

9 (2) The term does not include blood or a blood
10 derivative, unless the blood or blood derivative is donated
11 for the purpose of research or education.

12 Section 3. Informational materials.

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

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

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

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

21 (3) The reduction in Federal adjusted gross income, for
22 State personal income tax purposes, granted to a living
23 donor.

24 (4) The protections granted to a living donor under this
25 act, including a living donor's rights under the FMLA and
26 information on filing a complaint with the United States
27 Department of Labor's Wage and Hour Division if the living
28 donor believes that the living donor's employer is not in
29 compliance with the FMLA.

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

1 (1) distributed in printed form, upon request; and
2 (2) posted on the publicly accessible Internet website
3 of the Department of Health.

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

6 Section 4. Prohibited practices.

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

9 (1) Engage in any of the following actions against an
10 individual based solely upon the individual's status as a
11 living donor without additional risk based on sound actuarial
12 principles reasonably related to actual or anticipated loss
13 experience:

14 (i) Decline to provide an insurance policy to the
15 individual.

16 (ii) Limit coverage under an insurance policy of the
17 individual.

18 (iii) Otherwise discriminate against the individual
19 regarding the premium rating, offering, issuance,
20 cancellation, amount of coverage or any other condition
21 of an insurance policy.

22 (2) Preclude an insured from donating all or part of an
23 organ or tissue as a condition for receiving or continuing to
24 receive coverage under an insurance policy, except that an
25 insurer may decline to issue an insurance policy to an
26 applicant with a scheduled donation until the applicant is
27 released without complication by the surgeon to the care of
28 the applicant's primary care physician.

29 (b) Construction.--Subsection (a)(2) shall not be construed
30 to require an insurance policy form to include coverage of organ

1 donation.

2 Section 5. Family and medical leave.

3 (a) Entitlement.--An employer subject to the FMLA shall
4 provide the same leave to which an eligible employee is entitled
5 under the FMLA, when the eligible employee is unable to work
6 because of a serious health condition or when the eligible
7 employee must care for the eligible employee's spouse, child or
8 parent with a serious medical condition, for the preparation and
9 recovery necessary for surgery related to organ or tissue
10 donation by or for the eligible employee or the eligible
11 employee's spouse, child or parent.

12 (b) Documentation.--An employer may require an eligible
13 employee to submit written documentation regarding the
14 preparation and recovery necessary for surgery described under
15 subsection (a).

16 Section 6. Enforcement.

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

20 Section 7. Rules and regulations.

21 The Department of Health and the Insurance Department may
22 each promulgate rules or regulations as may be necessary to
23 carry out the provisions of this act.

24 Section 8. Effect of act.

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

28 Section 9. Effective date.

29 This act shall take effect in 60 days.