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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 203 Session of  
2021

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

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REFERRED TO COMMITTEE ON INSURANCE, JANUARY 21, 2021

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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 certificate or plan which provides health care, life or accident  
17 coverage and which is offered, issued or renewed by an insurer.

1 "Insurer." As follows:

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

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

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

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

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

22 "Living donor." An individual who:

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

24 (2) is not deceased.

25 "Organ." As follows:

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

30 (2) The term includes blood vessels recovered during the

1 recovery of an organ under paragraph (1) if the blood vessels  
2 are intended for use in organ transplantation.

3 "Tissue." As follows:

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

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

11 Section 3. Informational materials.

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

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

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

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

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

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

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

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

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

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

5 Section 4. Prohibited practices.

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

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

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

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

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

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

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

1 Section 5. Family and medical leave.

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

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

15 Section 6. Enforcement.

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

19 Section 7. Rules and regulations.

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

23 Section 8. Effect of act.

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

27 Section 9. Effective date.

28 This act shall take effect in 60 days.