

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Banking and Insurance

BILL: SB 1026

INTRODUCER: Banking and Insurance Committee and Senator Cruz

SUBJECT: Living Organ Donors in Insurance Policies

DATE: January 19, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Schrader	Knudson	BI	FAV/CS
2.			HP	
3.			RC	

I. Summary:

SB 1026 revises Florida’s Unfair Insurance Trade Practices law (part IX of ch. 626, F.S.) and several parts of Florida’s Insurance Rates and Contracts law (ch. 627, F.S.) to make unlawful the discrimination against living organ donors in insurance coverage. The insurance types specifically included in SB 1026 are: life insurance, including industrial life insurance¹ and group life insurance;² credit life insurance and credit disability insurance;³ and long-term care insurance.⁴

The bill has an effective date of July 1, 2022.

II. Present Situation:

The Florida Office of Insurance Regulation

The Office of Insurance Regulation (OIR) licenses and regulates the activities of life, health, property, and casualty insurers, health maintenance organizations (HMOs), and other risk-

¹ Section 627.502, F.S. defines industrial life insurance as that form of life insurance written under policies under which premiums are payable monthly or more often, bearing the words “industrial policy” or “weekly premium policy” or words of similar import imprinted upon the policies as part of the descriptive matter, and issued by an insurer that, as to such industrial life insurance, is operating under a system of collecting a debit by its agent.

² Group life insurance is a type of life insurance policy insuring the lives of more than one individual. Pursuant to s. 627.551, F.S., groups eligible for such coverage include employee, debtor, labor union, and trustee groups, among others.

³ Section 627.677, F.S., defines “credit life insurance” as insurance on the life of a debtor pursuant to or in connection with a specific loan or other credit transaction and defines “credit disability insurance as: insurance under which a borrower of money or a purchaser or a lessee of goods is insured in connection with a specific loan or credit transaction against loss of time resulting from accident or sickness.

⁴ Section 627.9404, F.S., defines a “long-term care insurance policy” as an insurance policy or rider advertised, marketed, offered, or designed to provide coverage on an expense-incurred, indemnity, prepaid, or other basis for one or more necessary or medically necessary diagnostic, preventive, therapeutic, curing, treating, mitigating, rehabilitative, maintenance, or personal care services provided in a setting other than an acute care unit of a hospital.

bearing entities. The OIR is an office within the Financial Services Commission (FSC). The FSC is composed of the Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture. The FSC members serve as the agency head for purposes of rulemaking under ss. 120.536-120.565, F.S.⁵

Organ Donation

Organ and tissue donation is the process of surgically removing an organ or tissue from one person (the donor) and transplanting it into another person (the recipient) to save the life of, or enhance the life of, the organ recipient. Transplantation is generally necessary because the recipient's organ has failed or has been damaged by disease or injury. Transplantable organs include the kidneys, liver, heart, lungs, pancreas and intestine.⁶ Certain tissue is also transplantable and includes skin used as a temporary dressing for burns, serious abrasions and other exposed areas; heart valves used to replace defective valves; tendons used to repair torn ligaments on knees or other joints; veins used in cardiac bypass surgery; corneas used to restore sight; and bone used in orthopedic surgery to facilitate healing of fractures or prevent amputation.⁷

A single person can save up to eight lives through organ donation, and dozens more lives may be improved through tissue donation. Nearly 120,000 children and adults are presently awaiting potentially life-saving organ transplants and every day 22 people die awaiting organ transplant.⁸ While most organ and tissue donations occur after the donor has died, some organs and tissues can be donated while the donor is alive, such as a kidney or part of a liver or lung.⁹ There are approximately as many living donors every year as there are deceased donors and only about three in every 1,000 people actually become donors—despite 169 million in the United States being registered.¹⁰ According to United Network for Organ Sharing (UNOS), between 2017 and 2021, there were an average of 6,539 living donor transplants per year in the United States.¹¹

Organ Donation, Procurement, and Transplant Process

Established by the National Organ Transplant Act (NOTA) of 1984, the Organ Procurement and Transplantation Network (OPTN) is a public-private partnership that links all professionals involved in the nation's donation and transplant system.¹² The UNOS, a private, non-profit organization serves as the OPTN under contract with the U.S. Department of Health and Human Services.¹³ UNOS coordinates how donor organs are matched and allocated to patients on the

⁵ Section 20.121(3), F.S.

⁶ Donate Life Florida, *Frequently Asked Questions*, available at <https://www.donateliflorida.org/categories/donation/> (last visited Jan. 13, 2022).

⁷ *Id.*

⁸ *Id.*

⁹ U.S. Government Information on Organ Donation and Transplantation, U.S. Department of Health & Human Services, *How Organ Donation Works*, available at <https://organdonor.gov/about/process.html> (last visited Jan. 13, 2022).

¹⁰ *Id.*

¹¹ UNOS, *Living Donation*, <https://unos.org/transplant/living-donation/> (Jan 13, 2022).

¹² U.S. Department of Health and Human Services, *Organ Procurement and Transplantation Network – About the OPTN*, available at <https://optn.transplant.hrsa.gov/governance/about-the-optn/> (last visited Jan. 13, 2022).

¹³ *Id.* and UNOS, *Who we are*, available at: <https://unos.org/about/> (last visited Jan 13, 2022).

waiting list.¹⁴ Non-profit, federally designated organ procurement organizations (OPOs) work closely with UNOS, hospitals, and transplant centers to facilitate the organ donation and transplantation process.¹⁵

Potential Financial Impacts Relating to Organ Donation

The buying and selling of organs is unlawful under the National Organ Transplant Act of 1984.¹⁶ However, certain organ donor expenses relating to transplant may be paid for by the recipient (or their insurer). Generally, an organ donor and their family are not charged for the medical care required to donate an organ.¹⁷ Costs related to living or deceased donation are paid by the recipient, usually through insurance.¹⁸ Typically, any cost that falls outside of the transplant center's donor evaluation or actual surgery, such as travel, lodging, lost wages, and other non-medical expenses, is borne by the living donor or recipient.¹⁹ In addition, treatment for conditions discovered during the evaluation portion of the donation process and some post-donation follow-up expenses are not covered. UNOS also warns potential donors that "living donation may have a negative impact on the ability to obtain, maintain, or afford health, disability and life insurance."²⁰

Obtaining and Affording Insurance

In 2014, the *American Journal of Transplantation* published a study of 1,046 donors who underwent living kidney donation at Johns Hopkins Hospital. Of these donors, 25 percent of those who reporting attempting to obtain new or revise life insurance policies post-procedure reported difficulty in doing so. The difficulties reported included outright denials in obtaining coverage, higher premiums, and the notation of a pre-existing condition relating to the kidney donation. The same survey also noted that of the surveyed donors who reported attempting to obtain new or revise health insurance policies post-procedure, 7 percent reported difficulties in doing so.²¹

Another study, also published in the *American Journal of Transplantation* (in 2007), which reviewed 23 different studies over a 35-year period, concluded that a significant number of living kidney donors do encounter difficulties in obtaining or maintaining insurance (with anywhere between 3 to 11 percent of those surveyed reporting difficulties). That same study also found that insurability issues caused significant stress for between 11 and 13 percent of kidney donors and that "insurability may negatively influence one's decision to become a living organ donor."²²

¹⁴ U.S. Government Information on Organ Donation and Transplantation, U.S. Department of Health & Human Services, *The Organ Transplant Process*, available at <https://organdonor.gov/about/process/transplant-process.html> (last visited Jan. 13, 2022).

¹⁵ Donate Life Florida, *Organ Procurement Organizations and Transplant Centers*, available at <https://www.donateliflorida.org/local-resources/transplant-centers/> (last visited Jan 13, 2022).

¹⁶ National Organ Transplant Act, 42 U.S.C. s. 274.

¹⁷ Health Resources Services Administration, *Organ Donation Frequently Asked Questions*, available at <https://www.organdonor.gov/learn/faq> (last visited Jan. 13, 2022).

¹⁸ *Id.*

¹⁹ UNOS, *Living Donation Costs*, available at <https://transplantliving.org/financing-a-transplant/living-donation-costs/> (last visited Mar. 23, 2021).

²⁰ *Id.*

²¹ B.J. Boyarsky, et al, *Experiences Obtaining Insurance After Live Kidney Donation*, 14(9) AM J TRANSPLANT. 2168-72 (2014).

²² R.C. Yang, et al, *Insurability of Living Organ Donors: A Systematic Review*, 7(6) AM J TRANSPLANT. 1547-48 (2007).

This same study also found that these insurability issues are not isolated to kidney donors.²³ The National Kidney Foundation also advises potential donors, in accessing the risk of donation, that “some donors have reported difficulty in getting, affording, or keeping disability or life insurance.”

There is some evidence that these increased difficulties and costs in obtaining life insurance is not always based on the actual additional loss risk that organ donation presents. A 2015 study of living kidney donors found that such donation “does not appear to increase long-term mortality compared with controls;” however, the study did advise that it was limited in scope and more research was needed.²⁴ A study of living kidney donors in Korea, published in 2019, found that, “the risk of all-cause mortality was comparable between live kidney donors and matched non-donor healthy controls with similar health status.”²⁵ A 2012 study of live liver donors found that while 90-day mortality rates were elevated for such donors, the rates of long-term mortality were essentially the same for live liver donors, for live kidney donors, and for healthy controls.²⁶

III. Effect of Proposed Changes:

Bill Provisions

Section 1 creates s. 626.97075, F.S. within Florida’s Unfair Trade Practices law (part IX of ch. 626). The section creates a definition of “policy” as a life insurance policy, including those for industrial life insurance and group life insurance; a credit life insurance and credit disability insurance policy; and a long-term care insurance policy. The section specifies that an insurer may not, in a policy, as defined by the section:

- Decline or limit coverage of a person solely due to that person’s status as a living organ donor;
- Preclude an insured person from donating all, or part of, an organ as a condition to continuing to receive coverage under that person’s insurance policy; or
- Otherwise discriminate in the offering, issuance, cancellation, coverage, premium, or any other condition of a person’s policy without any additional actuarial risk, and based solely on that person’s status as a living organ donor.

This section also grants the Financial Services Commission the authority to adopt rules and enforce these prohibitions.

Pursuant to s. 626.9521, F.S., which specifies penalties for violations of part IX of ch. 626, F.S., a violation of proposed s. 626.97075, F.S., would subject a person a fine of up to \$5,000 for each nonwillful violation and up to \$40,000 for each willful violation. Insurers violating the proposed section may be fined an aggregate amount of up to \$20,000 for all nonwillful violations arising out of the same action or an aggregate amount of up to \$200,000 for all willful violations arising

²³ *Id.* and Nissing MH & Hayashi PH, *Right hepatic lobe donation adversely affects donor life insurability up to one year after donation*, 11 LIVER TRANSPL 843–847 (2005).

²⁴ K.L. Lentine & A. Patel, *Risks and outcomes of living donation*, 19(4) ADV CHRONIC KIDNEY DIS. 220-8 (2012).

²⁵ Y. Kim, et al, *Long-term Mortality Risks Among Living Kidney Donors in Korea*. 75(6) Am J Kidney Dis. 925 (2019).

²⁶ A.D. Muzaale, et al, *Estimates of early death, acute liver failure, and long-term mortality among live liver donors*, 142(2) Gastroenterology 273-80 (2012).

out of the same action. These specified fines may be imposed in addition to any specified penalty elsewhere in law.

Section 2 provides an effective date of the bill of July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Passage of this bill should have minimal fiscal impact on insurers. Given the apparent minimal to no impact on long term mortality for the living donation of organs, the passage of this bill should have little impact on risk carried by insurers.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates the section 626.97075 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Banking and Insurance on January 18, 2022:

The committee substitute deleted all provisions in SB 1026 relating to health insurance; group, blanket, and franchise health insurance; health maintenance contracts provided by health maintenance organizations; and prepaid health contracts. The amended bill also deletes redundant portions of the bill which placed into individual insurance chapters the prohibitions specified in Section 1 of the bill (which creates a new section under Florida's Unfair Insurance Trade Practices law).

- B. **Amendments:**

None.