

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: Senator Cruz

SUBJECT: Living Organ Donors in Insurance Policies

DATE: January 14, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Schrader	Knudson	BI	Pre-meeting
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 health insurance; group,³ blanket,⁴ and franchise health insurance;⁵ credit

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 Group life insurance is a type of health insurance policy insuring the health of more than one individual. Pursuant to s. 627.551, F.S., groups eligible for such coverage include employee; labor union, association and small employer health alliance; debtor; and teacher and student groups, among others.

⁴ Blanket health insurance is a type of health insurance covering special groups as identified in 627.659, F.S. Generally, such coverage is more limited than group health insurance and covers a group of individuals engaged in a specific activity.

⁵ Section 627.663, F.S., defines franchise health insurance as a form of insurance issued to:

- Two or more employees of any corporation, professional association, copartnership, or individual employer or of any governmental corporation, agency, or department; or
- Ten or more individuals who are members of any trade association or labor union or any other association having had an active existence for at least 2 years and meeting certain other specified conditions.

life insurance and credit disability insurance;⁶ long-term care insurance;⁷ health maintenance contracts⁸ provided by health maintenance organizations; and prepaid health clinic contracts.⁹

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-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.¹⁰

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.¹¹ 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

⁶ 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.

⁷ 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.

⁸ Section 641.19, F.S., defines a "health maintenance contract" as contract entered into by a health maintenance organization (also commonly known as HMOs) with a subscriber or group of subscribers to provide coverage for comprehensive health care services in exchange for a prepaid per capita or prepaid aggregate fixed sum. A health maintenance organization generally will utilize or cover care from doctors who work for or under contract with the health maintenance organization. See Healthcare.gov, *Health Maintenance Organization (HMO)*, <https://www.healthcare.gov/glossary/health-maintenance-organization-hmo/> (last visited Jan. 13, 2021).

⁹ Section 641.402 defines a "prepaid health clinic contract" as a contract entered into by a prepaid health clinic with a subscriber or group of subscribers to provide any of the basic services in exchange for a prepaid per capita or prepaid aggregate fixed sum. The section also defines a prepaid health clinic as an organization which provides, either directly or through arrangements with other persons, basic services to persons enrolled with such organization, on a prepaid per capita or prepaid aggregate fixed-sum basis, including those basic services which subscribers might reasonably require to maintain good health.

¹⁰ Section 20.121(3), F.S.

¹¹ Donate Life Florida, *Frequently Asked Questions*, available at <https://www.donateliflorida.org/categories/donation/> (last visited Jan. 13, 2022).

sight; and bone used in orthopedic surgery to facilitate healing of fractures or prevent amputation.¹²

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.¹³ 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.¹⁴ 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.¹⁵ 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.¹⁶

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.¹⁷ The UNOS, a private, non-profit organization serves as the OPTN under contract with the U.S. Department of Health and Human Services.¹⁸ UNOS coordinates how donor organs are matched and allocated to patients on the waiting list.¹⁹ Non-profit, federally designated organ procurement organizations (OPOs) work closely with UNOS, hospitals, and transplant centers to facilitate the organ donation and transplantation process.²⁰

Potential Financial Impacts Relating to Organ Donation

The buying and selling of organs is unlawful under the National Organ Transplant Act of 1984.²¹ 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.²² Costs related to living or deceased donation are paid by the recipient, usually through insurance.²³ 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-

¹² *Id.*

¹³ *Id.*

¹⁴ 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).

¹⁵ *Id.*

¹⁶ UNOS, *Living Donation*, <https://unos.org/transplant/living-donation/> (Jan 13, 2022).

¹⁷ 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).

¹⁸ *Id.* and UNOS, *Who we are*, available at: <https://unos.org/about/> (last visited Jan 13, 2022).

¹⁹ 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).

²⁰ Donate Life Florida, *Organ Procurement Organizations and Transplant Centers*, available at <https://www.donateliflorida.org/local-resources/transplant-centers/> (last visited Jan 13, 2022).

²¹ National Organ Transplant Act, 42 U.S.C. s. 274.

²² Health Resources Services Administration, *Organ Donation Frequently Asked Questions*, available at <https://www.organdonor.gov/learn/faq> (last visited Jan. 13, 2022).

²³ *Id.*

medical expenses, is borne by the living donor or recipient.²⁴ 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.”²⁵

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.²⁶

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.”²⁷ This same study also found that these insurability issues are not isolated to kidney donors.²⁸ 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.²⁹ 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.”³⁰ 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.³¹

²⁴ UNOS, *Living Donation Costs*, available at <https://transplantliving.org/financing-a-transplant/living-donation-costs/> (last visited Mar. 23, 2021).

²⁵ *Id.*

²⁶ B.J. Boyarsky, et al, *Experiences Obtaining Insurance After Live Kidney Donation*, 14(9) AM J TRANSPLANT. 2168-72 (2014).

²⁷ R.C. Yang, et al, *Insurability of Living Organ Donors: A Systematic Review*, 7(6) AM J TRANSPLANT. 1547-48 (2007).

²⁸ *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).

²⁹ K.L. Lentine & A. Patel, *Risks and outcomes of living donation*, 19(4) ADV CHRONIC KIDNEY DIS. 220-8 (2012).

³⁰ Y. Kim, et al, *Long-term Mortality Risks Among Living Kidney Donors in Korea*. 75(6) Am J Kidney Dis. 925 (2019).

³¹ 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).

Affordable Care Act

The federal Affordable Care Act (ACA), formally known as the Patient Protection and Affordable Care Act, was signed into law in 2010, with its major provisions coming into force in 2014.³² Among its sweeping changes to the U.S. health insurance system are requirements for health insurers to make coverage available to all individuals and employers, without exclusions, for preexisting medical conditions and without basing premiums on any health-related factors. The ACA imposes many insurance requirements, including an individual mandate of coverage, required benefits, rating and underwriting standards, mandatory review of rate increases, reporting of medical loss ratios and payment of rebates, internal and external appeals of adverse benefit determinations, and other requirements.³³ The ACA preempts any state law that prevents the application of a provision of ACA.³⁴

Preexisting Condition Exclusions

The ACA prohibits health insurance policies from excluding coverage for any preexisting condition.³⁵ A health insurer that offers individual or group health insurance coverage may not impose any preexisting condition exclusion.³⁶ Rules define the term, “preexisting condition exclusion” to include a denial of coverage.³⁷ Individual (but not group) grandfathered health plans are exempt from this requirement.³⁸ This requirement of the ACA preempts state laws that allow such insurers to utilize preexisting condition exclusions.

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

³² PATIENT PROTECTION AND AFFORDABLE CARE ACT, PL 111-148, March 23, 2010, 124 Stat 119.

³³ Most of the insurance regulatory provisions in ACA amend Title XXVII of the Public Health Service Act (PHSA), (42 U.S.C. s. 300gg et seq.).

³⁴ The ACA preempts any state law that prevents the application of a provision of the ACA. The ACA effectively allows states to adopt and enforce laws that provide greater consumer protections than the ACA, but any state law that does not meet the federal minimum standards will be preempted. ACA s. 1321(d).

³⁵ ACA s. 1201; PHSA s. 2704 (42 U.S.C. 300gg-3).

³⁶ 45 CFR 144.108.

³⁷ *Preexisting condition exclusion* means a limitation or exclusion of benefits (including a denial of coverage) based on the fact that the condition was present before the effective date of coverage (or if coverage is denied, the date of the denial) under a group health plan or group or individual health insurance coverage...whether or not any medical advice, diagnosis, care, or treatment was recommended or received before that day. A preexisting condition exclusion includes any limitation or exclusion of benefits (including a denial of coverage) applicable to an individual as a result of information relating to an individual’s health status before the individual’s effective date of coverage (or if coverage is denied, the date of the denial) under a group health plan, or group or individual health insurance coverage...such as a condition identified as a result of a pre-enrollment questionnaire or physical examination given to the individual, or review of medical records relating to the pre-enrollment period. *See* 45 C.F.R. s. 144.013.

³⁸ A grandfathered health plan can be an individual or group health insurance policy purchased on or before March 23, 2010. Such plans are not subject to the ACA prohibition on pre-existing conditions (except individual health plans) and other specified ACA requirements. A plan can lose its grandfathered status if it is significantly changed. *See* Healthcare.gov, Grandfathered Health Insurance Plans, available at <https://www.healthcare.gov/health-care-law-protections/grandfathered-plans> (last viewed Jan. 13, 2022).

industrial life insurance and group life insurance; a health insurance policy; a group, blanket, and franchise health insurance policy; a credit life insurance and credit disability insurance policy; long-term care insurance policy; health maintenance contracts provided by health maintenance organizations; and prepaid health clinic contracts. The section specifies that an insurer, health maintenance organization, or prepaid health clinic 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 or subscriber 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 out of the same action. These specified fines may be imposed in addition to any specified penalty elsewhere in law.

Sections 2 through 8 create ss. 627.4795, 627.5215, 627.5585, 627.6443, 627.65624, 627.6813, and 627.94065, F.S. These sections set out a number of prohibitions relating to life insurance policies; industrial life insurance policies; group life insurance policies; health insurance policies; group, blanket, or franchise health insurance policies; credit life and credit disability insurance policies; and long-term care insurance policies, respectively. Specifically, these prohibit insurers under such policies, notwithstanding other state law to the contrary, from:

- Declining or limiting insurance coverage of a person solely due to that person's status as a living organ donor;
- Precluding 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 discriminating in the offering, issuance, cancellation, coverage, premium, or any other condition of a person's insurance without any additional actuarial risk, and based solely on that person's status as a living organ donor.

These sections also grant the Financial Services Commission the authority to adopt rules and enforce these prohibitions.

Sections 9 and 10 create 641.31065, and 641.4275, F.S. These sections prohibit health maintenance contracts by health maintenance organizations and prepaid health clinic contracts by prepaid health clinics from:

- Declining or limiting coverage of a person solely due to that person's status as a living organ donor;

- Precluding a subscriber from donating all, or part of, an organ as a condition to continuing to receive coverage under that person's insurance policy; or
- Otherwise discriminating in the offering, issuance, cancellation, coverage, premium, or any other condition of a person's contract without any additional actuarial risk, and based solely on that person's status as a living organ donor.

These sections also grant the Financial Services Commission the authority to adopt rules and enforce these prohibitions.

Section 11 provides an effective date of the bill of July 1, 2022.

Impact of the Affordable Care Act

As mentioned above, the ACA prohibits the denial of health insurance coverage, or the charging of higher premiums, due to pre-existing health conditions. Thus, unless there is a change to the ACA or other change to federal law impacting this prohibition, SB 1026 would not impact health coverage in Florida except for individual grandfathered health plans that are exempt from the preexisting condition requirements of the ACA.

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. As stated in the analysis, this bill would have no impact on most health insurance plans. Also, given the 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 other insurers.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 626.97075, 627.4795, 627.5215, 627.5585, 627.6443, 627.65624, 627.6813, 627.94065, 641.31065, and 641.4275.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.