

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/HB 1099 Living Organ Donors in Insurance Policies

SPONSOR(S): Finance & Facilities Subcommittee, Latvala and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1026

FINAL HOUSE FLOOR ACTION: 113 Y's 0 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

HB 1099 passed the House on February 24, 2022 and subsequently passed the Senate on March 02, 2022.

Organ donation is the process of surgically removing an organ or tissue from one person (the donor) and transplanting it into another person (the recipient). Transplanting in such cases is necessary because the recipient's organ has failed or has been damaged by disease or injury. Transplantable organs include the liver, kidneys, pancreas, heart, lung, and intestine. Transplantable tissues include skin, bone, heart valves, tendons, veins, and corneas.

Although most organ donations occur after death of the donor, some donations come from living organ donors. A living-donor transplant is a surgical procedure to remove an organ or portion of an organ from a living person and place it another person whose organ is no longer functioning. Some living organ donors have difficulty obtaining various types of insurances.

The Unfair Insurance Trade Practices Act regulates and defines unfair methods of competition and unfair or deceptive trade practices in the business of insurance, including unfair discrimination. Currently, the Act does not expressly prohibit discrimination on the basis of the insured's status as a living organ donor.

The bill prohibits insurers of life insurance policies, industrial life insurance policies, group life insurance policies, credit life and credit disability insurance policies, and long-term care insurance policies from discriminating against living organ donors, or prospective donors, in coverage or eligibility solely on their status as a living organ donor. The bill makes such discrimination a violation of the Unfair Insurance Trade Practices Act, subject to existing penalties within the Act.

The bill has an insignificant negative fiscal impact on the Office of Insurance Regulation, and no fiscal impact on local government.

The bill was approved by the Governor on April 6, 2022, ch. 2022-59, L.O.F., and will become effective on July 1, 2022.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

Organ and Tissue 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). Transplanting in such cases is necessary because the recipient's organ has failed or has been damaged by disease or injury.¹ Transplantable organs include the liver, kidneys, pancreas, heart, lung, intestine.² Transplantable tissue include skin used as a temporary dressing for burns, serious abrasions and other exposed areas; bone is used in orthopedic surgery to facilitate healing of fractures or prevent amputation; heart valves are used to replace defective valves; tendons are used to repair torn ligaments on knees or other joints; veins are used in cardiac by-pass surgery; and corneas can restore sight.³ A single organ donor can save up to eight lives and over seventy-five more can be improved through organ donation.⁴

Despite advances in medicine and technology, and increased awareness of organ donation and transplantation, more donors are needed to meet the demand for transplants.⁵ As of January 2022, 120,000 children and adults are waiting for a life-saving organ transplant, including 5,000 Floridians.⁶ In 2021, 41,354 organ transplants were performed in the United States, reflecting an increase of 5.9 percent from 2020.⁷ Living donor transplants on the other hand significantly decreased in 2020 due to COVID-19. While they increased in 2021, the numbers remain lower than in previous years. In 2021, a total of 6,541 living donor transplants were performed nationwide.

Living Organ Donation

Although most organ donations occur after the death of the donor, some donations come from living organ donors. A living-donor transplant is a surgical procedure to remove an organ or portion of an organ from a living person and place it in another person whose organ is no longer functioning properly.⁸ Kidney and liver transplants are the most common living-organ procedures, though a living organ donor can also donate tissues for transplants such as skin, bone marrow, and stem cells to replace organs or tissue that have been damaged or destroyed by disease, drugs or radiation.⁹

Based on the limited data available on the long-term risks of living organ donors currently available, the overall risks are considered to be low and differ among donors depending on the organ donated.¹⁰ Short-term risks of living organ donation involve risks associated with anesthesia and major surgeries, including pain, infection, blood loss, blood clots, allergic reactions to anesthesia, pneumonia, injury to surrounding tissue or organs, and death.¹¹

¹ Cleveland Clinic, *Organ Donation and Transplantation*, <https://my.clevelandclinic.org/health/articles/11750-organ-donation-and-transplantation#:~:text=Organ%20donation%20is%20the%20process%20of%20surgically%20removing,one%20of%20the%20great%20advances%20in%20modern%20medicine> (last visited Jan. 4, 2022).

² *Id.*

³ Donate Life Florida, *Frequently Asked Questions*, <https://www.donateliflorida.org/categories/donation/> (last visited Jan. 14, 2022).

⁴ Health Resources and Services Administration, *What Can Be Donated*, <https://www.organdonor.gov/learn/what-can-be-donated> (last visited January 14, 2022). <https://optn.transplant.hrsa.gov/data/> (last visited Jan. 14, 2022).

⁵ U.S. Department of Health and Human Services, Organ Procurement and Transplantation Network, [All-time records again set in 2021 for organ transplants, organ donation from deceased donors - OPTN \(hrsa.gov\)](https://www.optn.org/press-releases/all-time-records-again-set-in-2021-for-organ-transplants-organ-donation-from-deceased-donors-optn-hrsa.gov) (last visited Jan. 18, 2022).

⁶ *Supra*, note 3.

⁷ *Supra*, note 5.

⁸ Mayo Clinic, *Living-donor transplant*, <https://www.mayoclinic.org/tests-procedures/living-donor-transplant/about/pac-20384787> (last visited Jan. 14, 2022).

⁹ *Id.*

¹⁰ UNOS, *How do I become a living donor?*, <https://unos.org/transplant/living-donation/> (last visited Jan. 14, 2022).

¹¹ *Id.*

National Organ Transplant Act of 1984

The National Organ Transplant Act of 1984, which regulates organ donations including living organ donors, prohibits the buying and selling of organs.¹² Living donation of an organ must be voluntary, and the donor cannot receive payment. While, the organ recipient's health insurance covers medical expenses such as evaluation, surgery, and limited follow-up test and medical appointments depending on the particular insurance, the recipient's insurance will not cover transportation, lodging, childcare, or lost wages.¹³ In addition, treatment for conditions discovered during the evaluation portion of the donation process and some post-donation follow-up expenses are not covered.¹⁴

The United Network for Organ Sharing (UNOS), is a non-profit organization under contract with the federal government to manage the national transplant waiting list and maintaining the databases containing all organ transplant data for every transplant event occurring in the U.S.¹⁵, UNOS warns prospective donors that some donors report, "difficulty in getting, affording, or keeping health, disability, or life insurance."¹⁶

Living Organ Donors and Insurance

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.¹⁷ Chapter 627 of the Florida Statutes regulates insurance rates and contracts,¹⁸ including life insurance policies¹⁹, industrial life insurance policies²⁰, group life insurance policies²¹, credit life and credit disability policies²², and long-term-care insurance policies.²³ The chapter further provides that, "the rates for all classes of insurance to which the provisions of this part are applicable may not be excessive, inadequate, or unfairly discriminatory."²⁴

Unfair Insurance Trade Practice

The Unfair Insurance Trade Practices Act,²⁵ regulates and defines, unfair methods of competition and unfair or deceptive trade practices in the business of insurance²⁶, including unfair discrimination.²⁷ OIR identifies unfair insurance trade practices by a number of means, including: consumer complaints, competitor complaints, reports from the National Association of Insurance Commissioners about issues of national concern, results of another state's investigation on the subject, and issues identified by OIR during review of required form filings. They investigate insurers under their market conduct review authority granted under s. 624.3161, F.S. OIR can conduct a market conduct review as often as it deems necessary to ascertain the insurer's compliance with statutory requirements.²⁸

¹² National Organ Transplant Act, 42 U.S.C. s. 274.

¹³ UNOS, *Financial and Insurance Factors to Consider*, <https://unos.org/transplant/living-donation/> (last visited Jan.17, 2022).

¹⁴ *Id.*

¹⁵ *Id.*, About UNOS.

¹⁶ *Id.*

¹⁷ S. 20.232(3), F.S.

¹⁸ Ch. 627, Fla. Stat. (2021).

¹⁹ Fla. Stat. §§ 627.451- 482 (2021).

²⁰ Fla. Stat. §§ 627.501- 522 (2021).

²¹ Fla. Stat. §§ 627.551- 575 (2021).

²² Fla. Stat. §§ 627.676- 6845 (2021).

²³ Fla. Stat. §§ 627.9401- 9408 (2021).

²⁴ Fla. Stat. §§ 627.062 (1) (2021).

²⁵ Part IX, Ch. 626, F.S.

²⁶ Fla. Stat. § 626.9541 (2021).

²⁷ Fla. Stat. 626.9541 (1) (g) (2021).

²⁸ The Department of Financial Services (DFS) regulates individuals licensed as agents, adjusters, administrators and others. DFS may investigate its licensees for violations of statute, including the Unfair Insurance Trade Practices Act. S. 624.317, F.S. These individuals are subject to the same penalties that are applicable to insurers. S. 626.9521, F.S.

Persons who violate the Unfair Insurance Trade Practices Act are subject to monetary penalties.²⁹ Nonwillful violations are punishable by a fine up to \$5,000 per violation, with an aggregate limit of \$20,000 for all nonwillful violations coming from the same action. Willful violations are punishable by a fine up to \$40,000 per violation, subject to a limit of \$200,000 for all willful violations coming from the same action. These penalties are in addition to any other penalties OIR may levy for violations of statute.

Obtaining and Affording Insurance

A 2014 survey of 1,046 donors who underwent living kidney donation at Johns Hopkins Hospital found that, 25 percent of those who reported attempting to obtain new or revised 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 donors who reported attempting to obtain new or revised health insurance policies post-procedure, seven percent reported difficulties in doing so.³⁰

Another study, which reviewed different studies over a 35-year period concluded that a significant number of living kidney donors encounter difficulties in obtaining or maintaining insurance (with anywhere between three percent to eleven percent of those surveyed reporting difficulties).³¹ That same study also found that insurability issues caused significant stress for between 11 percent and 13 percent of kidney donors and that “insurability may negatively influence one’s decision to become a living organ donor.”³² This same study also found that these insurability issues are not isolated to kidney donors.³³ The National Kidney Foundation also advises potential donors, in assessing 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.³⁴ 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.”³⁵ 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.³⁶

Florida insurance law does not expressly address insurance discrimination against living organ donors.

The Patient Protection and Affordable Care Act

The federal Patient Protection and Affordable Care Act (PPACA), signed into law in 2010 made sweeping changes to the U.S. health insurance system.³⁷ The PPACA imposes extensive requirements

²⁹ S. 626.9521, F.S.

³⁰ B.j. Boyarsky, et al, *Experiences Obtaining Insurance After Live Kidney Donation*, 14(9) AM J Transplant. 2168-72 (2014).

³¹ R.C. Yang, et al, *Insurability of Living Organ Donors: A Systematic Review*, 7(6) AM J TRANSPLANT. 1547-48 (2007).

³² *Id.*

³³ *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).

³⁴ K.L. Lentine & A. Patel, *Risks and outcomes of living donation*, 19(4) ADV CHRONIC KIDNEY DIS. 220-8 (2012).

³⁵ Y. Kim, et al, *Long-term Mortality Risks Among Living Kidney Donors in Korea*. 75(6) Am J Kidney Dis. 925 (2019).

³⁶ 1 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).

³⁷ Patient Protection and Affordable Care Act (PPACA), Pub. L. No. 111-148, March 23, 2010, 124 Stat 119.

on health insurance and health insurance policies relating to required benefits, rating and underwriting standards, review of rate increase, and other requirements.³⁸

The PPACA prohibits health insurers from denying coverage or increasing health insurance premiums due to a pre-existing condition, such as a living organ donation.³⁹

Effect of the Bill

Living Organ Donor Unfair Insurance Trade Practice

HB 1099 prohibits insurers of life insurance, industrial life insurance, group life insurance, credit life insurance policies, group life insurance policies, credit life and credit disability insurance policies, and long-term care insurance policies from discriminating against an individual solely on their status of as a living organ donor. It makes living organ donor insurance discrimination an unfair insurance trade practice. Specifically, the bill prohibits an insurer from:

- Declining or limiting coverage of a person solely due to the individual's status as a living organ donor;
- Precluding 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 discriminating 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.

The bill provides the Financial Services Commission authority to adopt rules and to enforce these provisions. Violations will be subject to the existing penalties in the current Unfair Insurance Trade Practices Act, per the existing system of scaled fines.

The bill does not address living organ donor discrimination in health insurance policies; the federal PPACA already addresses that issue.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
None.
2. Expenditures:
3. OIR states that the fiscal impact of rulemaking required by the bill can be absorbed within current resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
None.
2. Expenditures:
None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

³⁸ Most of the insurance regulatory provisions in PPACA amend Title XXVII of the Public Health Service Act (PHSA), 42 U.S.C. 300 gg et seq.

³⁹ 42 U.S.C.A. § 18001.

None.

D. FISCAL COMMENTS:

None.