

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 705

(Senator Feldman, *et al.*)

Finance

Health and Government Operations and
Economic Matters

Organ Donation – Prohibition on Discrimination by Insurer and Unpaid Leave

This bill entitles an eligible employee to unpaid organ donation leave for (1) up to 60 business days in any 12-month period to serve as an organ donor and (2) up to 30 business days in any 12-month period to donate bone marrow. This only applies to employers with at least 15 employees, and the Commissioner of Labor and Industry within the Department of Labor, Licensing, and Regulation must enforce the organ donation leave provisions. The bill prohibits an insurer of life, disability, or long-term care insurance from taking specified actions based solely on an applicant or individual's status as an organ donor. Further, an insurer may not prohibit an applicant or individual from donating all or part of an organ as a condition of insurance. **Provisions of the bill relating to insurance take effect January 1, 2020, and apply to all life, disability, and long-term care insurance policies issued, delivered, or renewed in the State on or after that date; otherwise, the bill takes effect October 1, 2019.**

Fiscal Summary

State Effect: Since it is assumed that this bill applies in a limited number of cases, State finances are not materially affected. The bill does not apply to the State as an employer.

Local Effect: None. The bill does not apply to local governments as employers. The bill does not materially increase the workload of circuit courts.

Small Business Effect: Minimal.

Analysis

Bill Summary:

Insurance Provisions

Based solely on an applicant or individual's status as an organ donor, an insurer of life, disability, or long-term care insurance may not (1) cancel, refuse to underwrite or renew, or refuse to issue an insurance policy; (2) refuse to pay a claim, cancel or otherwise terminate an insurance policy; (3) increase premium rates; or (4) add a surcharge, apply a rating factor, or use any other underwriting practice that adversely takes the information into account. With respect to all other medical conditions, an applicant or individual who is an organ donor must be subject to the same standards of sound actuarial principles or actual or reasonably anticipated experience as an applicant or individual who is not an organ donor.

Organ Donation Leave

An "eligible employee" is one who has requested leave from an employer and who has been employed by that employer for at least a 12-month period and 1,250 hours during the previous 12 months. To receive organ donation leave, an employee must provide written physician verification to his or her employer. Organ donation leave may not be taken concurrently with any leave taken under the federal Family and Medical Leave Act (FMLA).

An employer may not consider an employee's approved organ donation leave to be a break in the eligible employee's continuous service for purposes of specified employee rights. Further, an employee who returns to work after taking organ donation leave is entitled to be restored by the employer (1) to the employee's same position or (2) to an equivalent position with equivalent employment benefits, pay, and other terms of employment. However, an employer may deny restoration of the employee's position of employment due to conditions unrelated to the employee's organ donation leave. The employer is also required to maintain coverage of a group health plan for the duration of the employee's organ donation leave. To the extent that an employee on organ donation leave earns commission, the employer must pay the eligible employee any commission that becomes due because of work the employee performed before leave.

The bill's provisions may not be construed to discourage employers from adopting leave policies that are more generous than the policies that comply with the bill. The Commissioner of Labor and Industry must adopt regulations and may investigate possible violations upon receiving a written complaint from an employee.

An employer may not (1) violate any provisions of the organ donation leave program; (2) hinder, delay, or otherwise interfere with the enforcement of the program; or (3) discharge or otherwise discriminate against an employee for specified actions.

Whenever the commissioner determines that a violation of unpaid organ donation leave has occurred, the commissioner must try to resolve it informally or ask the Attorney General to bring an action on behalf of the eligible employee. The Attorney General may bring an action for injunctive relief, damages, or other relief. The commissioner may also bring an action for injunctive relief and damages for specified violations.

Provisions of the bill may not be construed to diminish the obligation of an employer to comply with a collective bargaining agreement or an employee benefit program or plan that provides greater organ donation leave rights to employees than the rights established by the bill. A collective bargaining agreement or employee benefit program or plan may not diminish the rights established by the bill.

Current Law: Maryland law does not require private-sector employers to provide employees with organ donation leave.

The Maryland Healthy Working Families Act requires an employer with 15 or more employees to have a sick and safe leave policy under which an employee earns at least 1 hour of *paid* sick and safe leave, at the same rate as the employee normally earns, for every 30 hours an employee works. An employer with 14 or fewer employees, based on the average monthly number of employees during the preceding year, must at least have a sick and safe leave policy that provides an employee with at least 1 hour of *unpaid* sick and safe leave for every 30 hours an employee works. An employer is not required to allow an employee to earn or carry over more than 40 hours of earned sick and safe leave in a year, use more than 64 hours of earned leave in a year, accrue more than 64 hours at any time, or use earned sick and safe leave during the first 106 calendar days the employee works for the employer.

All State employees, including temporary employees, may request up to 30 days of paid organ donation leave in any 12-month period to serve as an organ donor (7 days if a bone marrow donor). An employee may use organ donation leave only after obtaining approval from the employee's appointing authority.

An individual who donates all or part of the individual's liver, kidney, intestine, pancreas, lung, or bone marrow for transplant in another individual is eligible to claim a subtraction modification against the State income tax for up to \$7,500 of the qualified expenses. Eligible expenses include the unreimbursed travel and lodging expenses and lost wages that are attributable to the organ donation.

Federal Family and Medical Leave Act of 1993

FMLA requires covered employers to provide eligible employees with up to 12 work weeks of unpaid leave during any 12-month period under the following conditions:

- the birth and care of an employee’s newborn child;
- the adoption or placement of a child with an employee for foster care;
- to care for an immediate family member (spouse, child, or parent) with a serious health condition;
- medical leave when the employee is unable to work due to a serious health condition; or
- any qualifying circumstance arising out of the fact that the employee’s spouse, son, daughter, or parent is a covered military member on “covered active duty.”

Generally, an FMLA-covered employer is an entity engaged in commerce that employs at least 50 employees. Public agencies and public or private elementary or secondary schools are considered to be covered employers regardless of the number of individuals they employ.

An eligible employee is an individual employed by a covered employer who has been employed for at least 12 months; however, these may be nonconsecutive months. Among other criteria, the individual must have been employed for at least 1,250 hours of service during the 12-month period.

Insurance

Generally, an insurer or insurance producer may not cancel or refuse to underwrite or renew a particular insurance risk or class of risk unless the insurer is applying standards that are reasonably related to the insurer’s economic and business purposes. Even so, an insurer or insurance producer is required to meet other requirements and prohibitions of Insurance Law. For example, an insurer may not require special conditions, facts, or situations as a condition to its acceptance or renewal of a particular insurance risk or class of risks in an arbitrary, capricious, unfair, or discriminatory manner based wholly or partly on race, creed, color, sex, religion, national origin, place of residency, blindness, or other physical handicap or disability.

Background: In 2018, 379 organs were donated in Maryland, of which 171 were from living donors and 208 were from deceased individuals. More than half of Maryland candidates have been on the waiting list for more than two years. As shown in **Exhibit 1**, a total of 3,399 candidates are currently waiting for an organ donation. In 2016, 136 bone marrow transplants were performed in Maryland.

Most state governments and the federal government grant employees who donate an organ up to 30 days of leave time. Twelve states (Arkansas, California, Connecticut, Hawaii, Louisiana, Maine, Minnesota, Nebraska, New York, Oregon, South Carolina, and West Virginia) and the District of Columbia require private-sector employers to provide either unpaid or paid organ donation leave.

Exhibit 1
Maryland Candidate Organ Donor Waiting List*

| | |
|-----------------|--------------|
| Kidney | 2,503 |
| Liver | 783 |
| Pancreas | 15 |
| Kidney/Pancreas | 35 |
| Heart | 97 |
| Lung | 23 |
| Heart/Lung | 2 |
| Total | 3,399 |

*Reflects the waiting list as of February 18, 2019.

Note: Total is less than the sum due to candidates who are included in multiple categories.

Source: U.S. Department of Health and Human Services Organ Procurement and Transplantation Network

Additional Information

Prior Introductions: None.

Cross File: HB 1284 (Delegate Luedtke) - Health and Government Operations and Economic Matters.

Information Source(s): Office of the Attorney General; Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Maryland Insurance Administration; National Kidney Foundation; U.S. Department of Health and Human Services; Department of Legislative Services

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