

Chapter 402

(House Bill 1284)

AN ACT concerning

Organ Donation – Prohibition on Discrimination by Insurer and Unpaid Leave

FOR the purpose of prohibiting certain insurers, based solely on the status of an applicant or individual as an organ donor, from taking certain actions relating to certain insurance policies; prohibiting certain insurers from prohibiting an applicant or individual from donating an organ as a condition of insurance; providing that, with respect to all other medical conditions, a certain applicant or individual is subject to certain standards as an applicant or individual who is not an organ donor; providing that certain employees are entitled to a certain number of business days of unpaid organ donation leave in a certain period; requiring an eligible employee to provide certain written physician verification to the employer to receive organ donation leave; prohibiting organ donation leave from being taken concurrently with any leave taken under the federal Family and Medical Leave Act; prohibiting an employer from considering any period of organ donation leave to be a break in the eligible employee's continuous service for certain purposes; requiring, except under certain circumstances, that an eligible employee returning to work after taking organ donation leave be restored to a certain position of employment; requiring an employer to maintain in a certain manner certain health coverage for the duration of the eligible employee's organ donation leave; requiring an employer to pay certain commissions to certain employees during any period of organ donation leave; requiring the Commissioner of Labor and Industry to adopt certain regulations; requiring the Commissioner to take certain actions regarding certain violations of certain provisions of law; authorizing the Attorney General to bring a certain action; prohibiting an employer from committing certain acts; authorizing the Commissioner to conduct, under certain circumstances, an investigation regarding whether a certain provision of law has been violated; providing for the construction of certain provisions of this Act; prohibiting certain rights for employees from being diminished by a collective bargaining agreement or an employment benefit program or plan; providing for a delayed effective date for certain provisions of this Act; providing for the application of certain provisions of this Act; and generally relating to organ donation.

BY adding to

Article – Insurance

Section 27–501(s)

Annotated Code of Maryland

(2017 Replacement Volume and 2018 Supplement)

BY adding to

Article – Labor and Employment

Section 3–103(l); and 3–1401 through 3–1409 to be under the new subtitle “Subtitle 14. Organ Donation Leave”

Annotated Code of Maryland

(2016 Replacement Volume and 2018 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Insurance

27–501.

(S) (1) THIS SUBSECTION APPLIES ONLY TO LIFE INSURANCE, DISABILITY INSURANCE, OR LONG–TERM CARE INSURANCE.

(2) AN INSURER MAY NOT, BASED SOLELY ON THE STATUS OF AN APPLICANT OR INDIVIDUAL AS AN ORGAN DONOR:

(I) CANCEL, REFUSE TO UNDERWRITE OR RENEW, OR REFUSE TO ISSUE AN INSURANCE POLICY;

(II) REFUSE TO PAY A CLAIM, CANCEL, OR OTHERWISE TERMINATE AN INSURANCE POLICY;

(III) INCREASE PREMIUM RATES FOR AN INSURANCE POLICY; OR

(IV) ADD A SURCHARGE, APPLY A RATING FACTOR, OR USE ANY OTHER UNDERWRITING PRACTICE THAT ADVERSELY TAKES THE INFORMATION INTO ACCOUNT.

(3) WITH RESPECT TO ALL OTHER MEDICAL CONDITIONS, AN APPLICANT OR INDIVIDUAL WHO IS AN ORGAN DONOR SHALL 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.

~~(3)~~ (4) AN INSURER MAY NOT PROHIBIT AN APPLICANT OR INDIVIDUAL FROM DONATING ALL OR PART OF AN ORGAN AS A CONDITION OF INSURANCE.

SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article – Labor and Employment

3-103.

(L) THE COMMISSIONER MAY CONDUCT AN INVESTIGATION TO DETERMINE WHETHER SUBTITLE 14 OF THIS TITLE HAS BEEN VIOLATED ON RECEIPT OF A WRITTEN COMPLAINT OF AN EMPLOYEE.

SUBTITLE 14. ORGAN DONATION LEAVE.

3-1401.

(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) "ELIGIBLE EMPLOYEE" MEANS AN INDIVIDUAL WHO HAS REQUESTED THAT AN EMPLOYER PROVIDE ORGAN DONATION LEAVE AND WHO, AS OF THE DATE THAT THE REQUESTED ORGAN DONATION LEAVE BEGINS, WILL HAVE BEEN EMPLOYED BY THAT EMPLOYER FOR AT LEAST:

(1) A 12-MONTH PERIOD; AND

(2) 1,250 HOURS DURING THE PREVIOUS 12 MONTHS.

(C) "EMPLOYER" MEANS A PERSON THAT EMPLOYS AT LEAST 15 INDIVIDUALS IN THE STATE.

(D) "ORGAN DONATION LEAVE" MEANS LEAVE DESCRIBED IN § 3-1402(A) OF THIS SUBTITLE.

3-1402.

(A) SUBJECT TO SUBSECTION (B) OF THIS SECTION, AN ELIGIBLE EMPLOYEE IS ENTITLED TO THE FOLLOWING UNPAID ORGAN DONATION LEAVE:

(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 SERVE AS A BONE MARROW DONOR.

(B) TO RECEIVE ORGAN DONATION LEAVE, THE ELIGIBLE EMPLOYEE SHALL PROVIDE WRITTEN PHYSICIAN VERIFICATION TO THE EMPLOYER THAT:

(1) THE ELIGIBLE EMPLOYEE IS AN ORGAN DONOR OR A BONE MARROW DONOR; AND

(2) THERE IS A MEDICAL NECESSITY FOR THE DONATION OF THE ORGAN OR BONE MARROW.

(C) ORGAN DONATION LEAVE MAY NOT BE TAKEN CONCURRENTLY WITH ANY LEAVE TAKEN UNDER THE FEDERAL FAMILY AND MEDICAL LEAVE ACT.

3-1403.

(A) AN EMPLOYER MAY NOT CONSIDER ANY PERIOD OF TIME DURING WHICH AN ELIGIBLE EMPLOYEE TAKES ORGAN DONATION LEAVE TO BE A BREAK IN THE ELIGIBLE EMPLOYEE'S CONTINUOUS SERVICE FOR THE PURPOSE OF THE ELIGIBLE EMPLOYEE'S RIGHT TO SALARY ADJUSTMENTS, SICK LEAVE, VACATION, PAID TIME OFF, ANNUAL LEAVE, OR SENIORITY.

(B) AN ELIGIBLE EMPLOYEE WHO RETURNS TO WORK AFTER TAKING ORGAN DONATION LEAVE IS ENTITLED TO BE RESTORED BY AN EMPLOYER:

(1) TO THE POSITION OF EMPLOYMENT HELD BY THE ELIGIBLE EMPLOYEE WHEN THE ORGAN DONATION LEAVE BEGAN; OR

(2) TO AN EQUIVALENT POSITION WITH EQUIVALENT EMPLOYMENT BENEFITS, PAY, AND OTHER TERMS AND CONDITIONS OF EMPLOYMENT.

(C) AN EMPLOYER MAY DENY RESTORATION OF THE ELIGIBLE EMPLOYEE'S POSITION OF EMPLOYMENT UNDER SUBSECTION (B) OF THIS SECTION BECAUSE OF CONDITIONS UNRELATED TO THE EXERCISE OF RIGHTS ESTABLISHED UNDER THIS SUBTITLE.

3-1404.

(A) DURING ANY PERIOD THAT AN ELIGIBLE EMPLOYEE TAKES ORGAN DONATION LEAVE, AN EMPLOYER SHALL MAINTAIN COVERAGE OF A GROUP HEALTH PLAN FOR THE DURATION OF THE ORGAN DONATION LEAVE AND IN THE SAME MANNER THAT COVERAGE WOULD HAVE BEEN PROVIDED IF THE ELIGIBLE EMPLOYEE HAD CONTINUED IN EMPLOYMENT CONTINUOUSLY FOR THE DURATION OF THE ORGAN DONATION LEAVE.

(B) IF AN ELIGIBLE EMPLOYEE WORKS ON A COMMISSION BASIS, AN EMPLOYER SHALL PAY TO THE ELIGIBLE EMPLOYEE DURING ANY PERIOD OF ORGAN

DONATION LEAVE ANY COMMISSION THAT BECOMES DUE BECAUSE OF WORK THE ELIGIBLE EMPLOYEE PERFORMED BEFORE TAKING ORGAN DONATION LEAVE.

3-1405.

THE COMMISSIONER SHALL ADOPT REGULATIONS TO IMPLEMENT THE PROVISIONS OF THIS SUBTITLE.

3-1406.

(A) WHENEVER THE COMMISSIONER DETERMINES THAT THIS SUBTITLE HAS BEEN VIOLATED, THE COMMISSIONER SHALL:

(1) TRY TO RESOLVE INFORMALLY BY MEDIATION ANY ISSUE INVOLVED IN THE VIOLATION; OR

(2) ASK THE ATTORNEY GENERAL TO BRING AN ACTION ON BEHALF OF THE ELIGIBLE EMPLOYEE.

(B) THE ATTORNEY GENERAL MAY BRING AN ACTION UNDER THIS SECTION FOR INJUNCTIVE RELIEF, DAMAGES, OR OTHER RELIEF IN THE COUNTY WHERE THE VIOLATION ALLEGEDLY OCCURRED.

3-1407.

(A) AN EMPLOYER MAY NOT:

(1) VIOLATE ANY PROVISION OF THIS SUBTITLE;

(2) HINDER, DELAY, OR OTHERWISE INTERFERE WITH THE COMMISSIONER OR AN AUTHORIZED REPRESENTATIVE OF THE COMMISSIONER IN THE ENFORCEMENT OF THIS SUBTITLE; OR

(3) DISCHARGE OR OTHERWISE DISCRIMINATE AGAINST AN EMPLOYEE BECAUSE THE EMPLOYEE HAS:

(I) REQUESTED OR TAKEN ORGAN DONATION LEAVE AUTHORIZED UNDER THIS SUBTITLE;

(II) MADE A COMPLAINT TO THE EMPLOYER, THE COMMISSIONER, OR ANOTHER PERSON; OR

(III) TESTIFIED OR WILL TESTIFY IN AN ACTION UNDER THIS SUBTITLE OR A PROCEEDING THAT RELATES TO THE SUBJECT OF THIS SUBTITLE.

(B) THE COMMISSIONER MAY BRING AN ACTION FOR INJUNCTIVE RELIEF AND DAMAGES AGAINST A PERSON WHO VIOLATES SUBSECTION (A)(1) OR (3) OF THIS SECTION.

3-1408.

(A) THIS SUBTITLE MAY NOT BE CONSTRUED TO DIMINISH THE OBLIGATION OF AN EMPLOYER TO COMPLY WITH A COLLECTIVE BARGAINING AGREEMENT OR AN EMPLOYMENT BENEFIT PROGRAM OR PLAN THAT PROVIDES GREATER ORGAN DONATION LEAVE RIGHTS TO EMPLOYEES THAN THE RIGHTS ESTABLISHED UNDER THIS SUBTITLE.

(B) THE RIGHTS ESTABLISHED FOR EMPLOYEES UNDER THIS SUBTITLE MAY NOT BE DIMINISHED BY A COLLECTIVE BARGAINING AGREEMENT OR AN EMPLOYMENT BENEFIT PROGRAM OR PLAN.

3-1409.

THIS SUBTITLE MAY NOT BE CONSTRUED TO DISCOURAGE EMPLOYERS FROM ADOPTING OR RETAINING LEAVE POLICIES MORE GENEROUS THAN POLICIES THAT COMPLY WITH THIS SUBTITLE.

SECTION 3. AND BE IT FURTHER ENACTED, That Section 1 of this Act shall take effect January 1, 2020, and shall apply to all life insurance, disability insurance, and long-term care insurance policies issued, delivered, or renewed in the State on or after January 1, 2020.

SECTION 4. AND BE IT FURTHER ENACTED, That, except as provided in Section 3 of this Act, this Act shall take effect October 1, 2019.

Approved by the Governor, May 13, 2019.