

SENATE BILL REPORT

SSB 5003

As Amended by House, April 10, 2021

Title: An act relating to enacting the living donor act.

Brief Description: Enacting the living donor act.

Sponsors: Senate Committee on Health & Long Term Care (originally sponsored by Senators Keiser, Conway, Kuderer, Randall, Saldaña, Stanford and Wilson, C.).

Brief History:

Committee Activity: Health & Long Term Care: 1/15/21, 1/20/21 [DPS].

Floor Activity: Passed Senate: 2/26/21, 46-0.

Passed House: 4/10/21, 97-0.

Brief Summary of First Substitute Bill

- Prohibits life, disability, health, and long-term care insurance policies from discriminating against living organ donors.
- Requires the insurance commissioner to make educational materials available on the access of living organ donors to insurance.

SENATE COMMITTEE ON HEALTH & LONG TERM CARE

Majority Report: That Substitute Senate Bill No. 5003 be substituted therefor, and the substitute bill do pass.

Signed by Senators Cleveland, Chair; Frockt, Vice Chair; Muzzall, Ranking Member; Conway, Holy, Keiser, Padden, Randall, Rivers, Robinson and Van De Wege.

Staff: Greg Attanasio (786-7410)

Background: There are over 108,000 people in the United States on the waiting list for an organ transplant. In 2020, of 39,034 organ donors in the United States, 5725 were living

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donors. Those who are living can donate one kidney, a lung, or a portion of the liver, pancreas, or intestine.

No insurer may make or permit any unfair discrimination between enrollees having substantially alike insuring, risk, and exposure factors, and expense elements, in the terms or conditions of an insurance contract, or in the rate of premium charged or benefits provided, except that life insurers may fairly discriminate between individuals who have unequal life expectancies.

Long-term care insurance policies in Washington may not:

- limit or reduce coverage or benefits with riders or waivers;
- be canceled, not renewed, or segregated at the time of rating solely on the grounds of the age or the deterioration of the mental or physical health of the covered person; or
- exclude or limit coverage for preexisting conditions for a period of more than one year prior to the effective date of the policy or more than six months after the effective date of the policy.

The Affordable Care Act (ACA) requires health plans to permit individuals to enroll in the plan regardless of health status, age, gender, or other factors that might predict the use of health services. The ACA also prohibits the extent of coverage offered to an individual from being limited due to the individual's health status. The ACA prohibits variation in rates for a given plan except based on four factors, age, location, tobacco use, and whether the plan covers an individual or family. The insurance commissioner, using an analysis of various health status, claims, and utilization factors, sets the geographic rating areas and permissible age bands. The ACA prohibits group and individual health plans from rescinding coverage once an individual is covered under the plan, unless the individual performs an act, practice, or omission that constitutes fraud or makes an intentional misrepresentation of material fact.

Summary of First Substitute Bill: Insurers, fraternal benefit societies, and health carriers offering life, disability, health, or long-term care insurance may not:

- decline or limit coverage of a person under a policy, solely due to the status of the person as a living organ donor;
- prevent a person from donating all or part of an organ as a condition of receiving a policy; or
- otherwise discriminate in the offering, issuance, cancellation, amount of coverage, price, or other condition of a policy for a person based solely upon the status of the person as a living organ donor.

The insurance commissioner must make educational materials available to health plans and the public on the access of living organ donors to insurance.

The insurance commissioner may adopt rules to implement the act.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill takes effect on January 1, 2022.

Staff Summary of Public Testimony on Proposed Substitute: *The committee recommended a different version of the bill than what was heard.* PRO: Those willing to donate an organ should not be discriminated against when obtaining an insurance policy. There are 86,000 patients in Washington with kidney disease and a transplant is the only life saving treatment. Many patients die waiting for a transplant, and more should be done to support transplantation. Living donors undergo a thorough health screening and donation does not reduce life expectancy or cause health problems. Donors should not be penalized for an altruistic act. Fourteen other states have a similar law in place.

Persons Testifying: PRO: Senator Karen Keiser, Prime Sponsor; Lindsay Gill, American Kidney Fund; Adrian Miller, citizen; Duane Sunwold, National Kidney Foundation.

Persons Signed In To Testify But Not Testifying: No one.

EFFECT OF HOUSE AMENDMENT(S):

- Makes the requirements of the bill applicable to all types of insurance by recodifying the requirements in an RCW chapter applicable to all insurers and removing references to specific types of insurance.
- Adds an exception to the ability for insurers to engage in "fair discrimination" based on bona fide statistical differences in risk or exposure when such discrimination is barred by specified statutory provisions prohibiting discrimination by health carriers.