

[Second Reprint]
SENATE, No. 2315

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED APRIL 9, 2020

Sponsored by:

Senator JAMES BEACH

District 6 (Burlington and Camden)

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District 22 (Middlesex, Somerset and Union)

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SYNOPSIS

Prohibits discrimination against living organ donors in relation to life, health, and long-term care insurance.

CURRENT VERSION OF TEXT

As amended by the Senate on January 11, 2021.



(Sponsorship Updated As Of: 1/11/2021)

1 AN ACT concerning living organ donors and amending P.L.2003,
2 c.207, N.J.S.17B:30-12, and P.L.2008, c.48.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. Section 4 of P.L.2003, c.207 (C.17B:27E-4) is amended to
8 read as follows:

9 4. As used in this act, unless the context requires otherwise:

10 "Applicant" means:

11 (1) In the case of an individual long-term care insurance policy,
12 the person who seeks to contract for benefits; and

13 (2) In the case of a group long-term care insurance policy, the
14 proposed certificate holder.

15 "Certificate" means any certificate or evidence of coverage
16 issued under a group long-term care insurance policy, which has
17 been delivered or issued for delivery in this State.

18 "Commissioner" means the Commissioner of Banking and
19 Insurance.

20 "Group long-term care insurance" means a long-term care
21 insurance policy which is delivered or issued for delivery in this
22 State and issued to:

23 (1) a group conforming to one of the descriptions set forth at
24 N.J.S.17B:27-2 through 17B:27-8 inclusive, or N.J.S.17B:27-27; or

25 (2) any group not set forth in paragraph (1) of this definition,
26 which in the opinion of the commissioner may be insured for group
27 long-term care insurance in accordance with sound underwriting
28 principles.

29 "Living organ donor" means a person who has donated all or part
30 of an organ and is not deceased.

31 "Long-term care insurance" means any insurance policy,
32 certificate or rider advertised, marketed, offered or designed to
33 provide coverage for not less than 12 consecutive months for each
34 covered person on an expense incurred, indemnity, prepaid or other
35 basis, for one or more necessary or medically necessary diagnostic,
36 preventive, therapeutic, rehabilitative, maintenance or personal care
37 services, provided in a setting other than an acute care unit of a
38 hospital. The term includes group and individual annuities and life
39 insurance policies or riders which provide directly or which
40 supplement long-term care insurance. The term also includes a
41 policy or rider which provides for payment of benefits based upon
42 cognitive impairment or the loss of functional capacity. The term
43 shall also apply to qualified long-term care insurance contracts.
44 Long-term care insurance may be issued by insurers; fraternal
45 benefit societies; health, hospital, or medical service corporations;

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SHH committee amendments adopted December 7, 2020.

²Senate floor amendments adopted January 11, 2021.

1 prepaid health plans; or health maintenance organizations. Long-
2 term care insurance shall not include any insurance policy which is
3 offered primarily to provide basic Medicare supplement coverage,
4 basic hospital expense coverage, basic medical-surgical expense
5 coverage, hospital confinement indemnity coverage, major medical
6 expense coverage, disability income or related asset-protection
7 coverage, accident only coverage, or limited benefit health
8 coverage. With regard to life insurance, this term does not include
9 life insurance policies which accelerate the death benefit
10 specifically for one or more qualifying events, and which provide
11 the option of a lump-sum payment for those benefits and in which
12 neither the benefits nor the eligibility for the benefits is conditioned
13 upon the receipt of long-term care. Notwithstanding any other
14 provision contained herein, any product advertised, marketed or
15 offered as long-term care insurance shall be subject to the
16 provisions of this act.

17 "Policy" means any policy, contract, subscriber agreement, rider
18 or endorsement providing long-term care insurance coverage
19 delivered or issued for delivery in this State by an insurer; fraternal
20 benefit society; health, hospital, or medical service corporation;
21 prepaid health plan; health maintenance organization or any similar
22 organization.

23 "Qualified long-term care insurance contract" or "federally tax-
24 qualified long-term care insurance contract" means an individual or
25 group insurance contract that meets the requirements of 26 U.S.C.
26 s.7702B(b), as follows:

27 (1) The only insurance protection provided under the contract is
28 coverage of qualified long-term services. A contract shall not fail
29 to satisfy the requirements of this paragraph by reason of payments
30 being made on a per diem or other periodic basis without regard to
31 the expenses incurred during the period to which the payments
32 relate;

33 (2) The contract does not pay or reimburse expenses incurred
34 for services or items to the extent that the expenses are
35 reimbursable under Title XVIII of the Social Security Act (42
36 U.S.C. s.1395 et seq.) or would be so reimbursable but for the
37 application of a deductible or coinsurance amount. The
38 requirements of this paragraph do not apply to expenses that are
39 reimbursable under Title XVIII of the Social Security Act (42
40 U.S.C. s.1395 et seq.) only as a secondary payor. A contract shall
41 not fail to satisfy the requirements of this paragraph by reason of
42 payments being made on a per diem or other periodic basis without
43 regard to the expenses incurred during the period to which the
44 payments relate;

45 (3) The contract is guaranteed renewable, within the meaning of
46 26 U.S.C. s.7702B(b)(1)(C);

47 (4) The contract does not provide for a cash surrender value or
48 other money that can be paid, assigned, pledged as collateral for a

1 loan, or borrowed except as provided in paragraph (5) of this
2 definition;

3 (5) All refunds of premiums, and all policyholder dividends or
4 similar amounts, under the contract are to be applied as a reduction
5 in future premiums or to increase future benefits, except that a
6 refund on the event of death of the insured or a complete surrender
7 or cancellation of the contract shall not exceed the aggregate
8 premiums paid under the contract; and

9 (6) The contract meets the consumer protection provisions set
10 forth in 26 U.S.C. s.7702B(g).

11 "Qualified long-term care insurance contract" or "federally tax-
12 qualified long-term care insurance contract" also means the portion
13 of a life insurance contract that provides long-term care insurance
14 coverage by a rider or as part of the contract and that satisfies the
15 requirements of 26 U.S.C. s.7702B(b) and (e).

16 (cf: P.L.2003, c.207, s.4)

17

18 2. Section 6 of P.L.2003, c.207 (C.17B:27E-6) is amended to read
19 as follows:

20 6. a. No long-term care insurance policy or certificate shall:

21 (1) Be cancelled, nonrenewed or otherwise terminated on the
22 grounds of the age or the deterioration of the mental or physical health
23 of the insured individual or certificate holder; **[or]**

24 (2) Contain a provision establishing a new waiting period in the
25 event existing coverage is converted to or replaced by a new or other
26 form within the same company or affiliated company, except with
27 respect to an increase in benefits voluntarily selected by the insured
28 individual or group policyholder; **[or]**

29 (3) Provide coverage for skilled nursing care only or provide
30 significantly more coverage for skilled nursing care in a facility than
31 coverage for lower levels of care; or

32 (4) Decline or limit coverage based ¹solely¹ on the ¹status of the¹
33 insured individual ¹[being] as¹ a living organ donor; preclude an
34 insured person from donating all or part of an organ ¹as a condition of
35 continuing to receive coverage¹ ; consider the status of a person as a
36 living organ donor in determining the premium rate for coverage of the
37 person ², provided that this shall not preclude consideration of other
38 actuarial risks in determining premium rates for coverage² ; or
39 otherwise discriminate in the offering, issuance, cancellation, amount
40 of coverage, price, or other condition of coverage for an individual
41 based solely, and without any additional actuarial risks, on the status
42 of the person as a living organ donor.

43 b. (1) No long-term care insurance policy or certificate shall use
44 a definition of "preexisting condition" which is more restrictive than
45 the following: preexisting condition means a condition for which
46 medical advice or treatment was recommended by, or received from a

1 provider of health care services, within six months preceding the
2 effective date of coverage of an insured person.

3 (2) No long-term care insurance policy or certificate shall exclude
4 coverage for a loss or confinement which is the result of a preexisting
5 condition unless that loss or confinement begins within six months
6 following the effective date of coverage of an insured person.

7 (3) The definition of "preexisting condition" shall not prohibit an
8 insurer from using an application form designed to elicit the complete
9 health history of an applicant, and, on the basis of the answers on that
10 application, from underwriting in accordance with that insurer's
11 established underwriting standards. Unless otherwise provided in the
12 policy or certificate, a preexisting condition, regardless of whether it is
13 disclosed on the application, need not be covered until the waiting
14 period described in paragraph (2) of this subsection b. expires. No
15 long-term care insurance policy or certificate shall exclude or use
16 waivers or riders of any kind to exclude, limit or reduce coverage or
17 benefits for specifically named or described preexisting diseases or
18 physical conditions beyond the waiting period described in paragraph
19 (2) of this subsection b.

20 (4) A preexisting condition limitation shall only apply to the long-
21 term care insurance coverage and shall not apply to any death benefit
22 or other life insurance benefit provided by a long-term care insurance
23 policy or certificate.

24 c. (1) No long-term care insurance policy or certificate shall be
25 delivered or issued for delivery in this State if that policy or certificate:

26 (a) Conditions eligibility for any benefits on a prior hospitalization
27 requirement;

28 (b) Conditions eligibility for benefits provided in an institutional
29 care setting on the receipt of a higher level of institutional care; or

30 (c) Conditions eligibility for any benefits, other than waiver of
31 premium, post-confinement, post-acute care or recuperative benefits,
32 on a prior institutionalization requirement.

33 (2) (a) A long-term care insurance policy or certificate containing
34 post-confinement, post-acute care or recuperative benefits shall clearly
35 label in a separate paragraph of the policy or certificate entitled
36 "Limitations or Conditions on Eligibility for Benefits" those
37 limitations or conditions, including any required number of days of
38 confinement.

39 (b) A long-term care insurance policy or certificate which
40 conditions eligibility for non-institutional benefits on the prior receipt
41 of institutional care shall not require a prior institutional stay of more
42 than 30 days.

43 d. Long-term care insurance applicants shall have the right to
44 return the policy or certificate within 30 days of its delivery and to
45 have the premium refunded if, after examination of the policy or
46 certificate, the applicant is not satisfied for any reason. Long-term
47 care insurance policies and certificates shall have a notice prominently
48 printed on the first page or attached thereto stating in substance that

1 the applicant shall have the right to return the policy or certificate
2 within 30 days of its delivery and to have the premium refunded if,
3 after examination of the policy or certificate, the applicant is not
4 satisfied for any reason.

5 e. (1) An outline of coverage shall be delivered to a prospective
6 applicant for long-term care insurance at the time of initial solicitation
7 through means which prominently direct the attention of the recipient
8 to the document and its purpose.

9 (a) The commissioner shall prescribe a standard format, including
10 style, arrangement and overall appearance, and the content of an
11 outline of coverage.

12 (b) In the case of insurance producer solicitations, an insurance
13 producer shall deliver the outline of coverage prior to the presentation
14 of an application or enrollment form.

15 (c) In the case of direct response solicitations, the outline of
16 coverage shall be presented in conjunction with any application or
17 enrollment form.

18 (2) The outline of coverage shall include:

19 (a) A description of the principal benefits and coverage provided
20 in the policy;

21 (b) A statement of the principal exclusions, reductions, and
22 limitations contained in the policy;

23 (c) A statement of the terms under which the policy or certificate,
24 or both, may be continued in force or discontinued, including any
25 reservation in the policy of a right to change premium. Continuation
26 or conversion provisions of group coverage shall be specifically
27 described;

28 (d) A statement that the outline of coverage is a summary only, not
29 a contract of insurance, and that the policy or group master policy
30 contains governing contractual provisions;

31 (e) A description of the terms under which the policy or certificate
32 may be returned and the premium refunded;

33 (f) A brief description of the relationship of cost of care and
34 benefits; and

35 (g) A statement that discloses to the policyholder or certificate
36 holder whether the policy is intended to be a federally tax-qualified
37 long-term care insurance contract under 26 U.S.C. s. 7702B(b).

38 f. A certificate issued pursuant to a group long-term care
39 insurance policy, which policy is delivered or issued for delivery in
40 this State, shall include:

41 (1) A description of the principal benefits and coverage provided
42 in the policy;

43 (2) A statement of the principal exclusions, reductions and
44 limitations contained in the policy; and

45 (3) A statement that the group master policy determines governing
46 contractual provisions.

47 g. At the time of policy delivery, a policy summary as prescribed
48 by the commissioner pursuant to subsection e. of this section shall be

1 delivered for an individual life insurance policy which provides long-
2 term care benefits within the policy or by rider. In the case of direct
3 response solicitations, the insurer shall deliver the policy summary
4 upon the applicant's request, but regardless of request shall make that
5 delivery no later than at the time of policy delivery. In addition to
6 complying with all applicable requirements, the summary shall also
7 include:

8 (1) An explanation of how the long-term care benefit interacts with
9 other components of the policy, including deductions from death
10 benefits;

11 (2) An illustration of the amount of benefits, the length of benefit,
12 and the guaranteed lifetime benefits if any, for each covered person;

13 (3) Any exclusions, reductions and limitations on benefits of long-
14 term care;

15 (4) A statement as to whether any long-term care inflation
16 protection option is available under this policy;

17 (5) If applicable to the policy type, the summary shall also include:

18 (a) A disclosure of the effects of exercising other rights under the
19 policy;

20 (b) A disclosure of guarantees related to long-term care costs of
21 insurance charges;

22 (c) Current and projected maximum lifetime benefits; and

23 (6) The provisions of the policy summary listed above may be
24 incorporated into a basic illustration required to be delivered in
25 accordance with regulations promulgated by the commissioner or into
26 the life insurance policy summary which is required to be delivered in
27 accordance with regulations promulgated by the commissioner.

28 h. Whenever a long-term care benefit, funded through a life
29 insurance policy by the acceleration of the death benefit, is in benefit
30 payment status, a monthly report as specified by the commissioner
31 shall be provided to the policyholder or certificate holder. The report
32 shall include:

33 (1) Any long-term care benefits paid out during the month;

34 (2) An explanation of any changes in the policy, such as death
35 benefits or cash values, due to long-term care benefits being paid out;
36 and

37 (3) The amount of long-term care benefits existing or remaining.

38 (cf: P.L.2003, c.207, s.6)

39

40 3. N.J.S.17B:30-12 is amended to read as follows:

41 17B:30-12. a. No person shall discriminate against any person or
42 group of persons because of race, creed, color, national origin or
43 ancestry of such person or group of persons in the issuance,
44 withholding, extension or renewal of any policy of life or health
45 insurance or annuity or in the fixing of the rates, terms or conditions
46 therefor, or in the issuance or acceptance of any application therefor.

47 b. No person shall use any form of policy of life or health
48 insurance or contract of annuity which expresses, directly or indirectly,

1 any limitation, or discrimination as to race, creed, color, national
2 origin or ancestry or any intent to make any such limitation or
3 discrimination.

4 c. No person shall make or permit any unfair discrimination
5 between individuals of the same class and equal expectation of life in
6 the rates charged for any policy of life insurance or contract of annuity
7 or in the dividends or other benefits payable thereon, or in any other of
8 the terms and conditions of such policy of life insurance or contract of
9 annuity.

10 d. No person shall make or permit any unfair discrimination
11 between individuals of the same class and of essentially the same
12 hazard in the amount of premium, policy fees, or rates charged for any
13 policy or contract of health insurance or in the benefits payable
14 thereunder, or in any of the terms or conditions of such policy or
15 contract, or in any other manner whatever.

16 e. (1) No person shall discriminate against any individual on the
17 basis of genetic information or the refusal to submit to a genetic test or
18 make available the results of a genetic test to the person in the
19 issuance, withholding, extension or renewal of any hospital
20 confinement or other supplemental limited benefit insurance, as
21 defined by regulation of the commissioner, or in the fixing of the rates,
22 terms or conditions therefor, or in the issuance or acceptance of any
23 application therefor.

24 (2) As used in this subsection and subsection f. of this section:

25 "Genetic characteristic" means any inherited gene or chromosome,
26 or alteration thereof, that is scientifically or medically believed to
27 predispose an individual to a disease, disorder or syndrome, or to be
28 associated with a statistically significant increased risk of development
29 of a disease, disorder or syndrome.

30 "Genetic information" means the information about genes, gene
31 products or inherited characteristics that may derive from an individual
32 or family member.

33 "Genetic test" means a test for determining the presence or absence
34 of an inherited genetic characteristic in an individual, including tests of
35 nucleic acids such as DNA, RNA and mitochondrial DNA,
36 chromosomes or proteins in order to identify a predisposing genetic
37 characteristic.

38 f. No person shall make or permit any unfair discrimination
39 against an individual in the application of the results of a genetic test
40 or genetic information in the issuance, withholding, extension or
41 renewal of a policy of life insurance, including credit life insurance, an
42 annuity, disability income insurance contract or credit accident
43 insurance coverage. If the commissioner has reason to believe that
44 such unfair discrimination has occurred, including that application of
45 the results of a genetic test is not reasonably related to anticipated
46 claim experience, and that a proceeding by the commissioner would be
47 in the interest of the public, the commissioner shall, in accordance
48 with the provisions of N.J.S.17B:30-1 et seq., issue and serve upon the

insurer a statement of the charges. Upon a determination that the practice or act of the insurer is in conflict with the provisions of this subsection, the commissioner shall issue an order requiring the insurer to cease and desist from engaging in the practice or act and may order payment of a penalty consistent with the provisions of N.J.S.17B:30-1 et seq.

If, in the issuance, withholding, extension or renewal of any policy of life insurance, including credit life insurance, an annuity, disability income insurance contract or credit accident insurance coverage, an insurer will use the results of a genetic test in compliance with this subsection, the insurer shall notify the individual who is the subject of the genetic test that such a test shall be required and shall obtain the individual's written informed consent for the test prior to the administration of the test, in accordance with the requirements of P.L.1985, c.179 (C.17:23A-1 et seq.). The insurer shall also provide that the physician or other health care professional designated by the individual shall promptly receive a copy of the results of the test and, if required, an interpretation of the test results by a qualified professional, and that the individual shall state in writing whether the individual elects to be informed of the results of the test.

g. No person shall make or permit any unfair discrimination against any individual on the basis of the individual's intent to engage in future lawful foreign travel in the issuance, extension or renewal of any policy of life insurance or in the fixing of the rates, terms or conditions therefor. For purposes of this subsection, "unfair discrimination" means any decision to issue, extend, or renew a policy of life insurance or the fixing of rates, terms, or conditions of a life insurance policy, on the basis of the individual's intent to engage in future lawful foreign travel, which is not based on sound actuarial principles or actual or reasonably anticipated experience.

h. Nothing contained in this section shall be construed to require any agent or company to take or receive the application for insurance or annuity of any person or to issue a policy of insurance or contract of annuity to any person.

i. No person shall decline or limit coverage under a policy of life or health insurance to any individual based 'solely' on the 'status of the covered' individual '[being] as' a living organ donor; preclude an individual covered under a policy of life or health insurance from donating all or part of an organ 'as a condition of continuing to receive coverage' ; consider the status of a person as a living organ donor in determining the premium rate for coverage of the person under a policy of life or health insurance ², provided that this shall not preclude consideration of other actuarial risks in determining premium rates for coverage² ; or otherwise discriminate in the offering, issuance, cancellation, amount of coverage, price, or other condition of coverage for an individual under a policy of life or health insurance

1 based solely, and without any additional actuarial risks, on the status
2 of the individual as a living organ donor.

3 As used in this subsection, “living organ donor” means a person
4 who has donated all or part of an organ and is not deceased.
5 (cf: P.L.2008, c.4, s.1)

6
7 4. Section 5 of P.L.2008, c.48 (C.45:9-7.5) is amended to read
8 as follows:

9 5. The State Board of Medical Examiners, in collaboration with
10 the organ procurement organizations designated pursuant to 42
11 U.S.C.s.1320b-8 to serve in the State of New Jersey, shall prescribe
12 by regulation the following requirements for physician training:

13 a. The curriculum in each college of medicine in this State
14 shall include instruction in organ and tissue donation and recovery
15 designed to address clinical aspects of the donation and recovery
16 process and the rights of living organ donors as set forth in
17 paragraph (4) of subsection a. of section 6 of P.L.2003, c.207
18 (C.17B:27E-6) and subsection i. of N.J.S.17B:30-12.

19 b. Completion of organ and tissue donation and recovery
20 instruction as provided in subsection a. of this section shall be
21 required as a condition of receiving a diploma from a college of
22 medicine in this State.

23 c. A college of medicine which includes instruction in organ
24 and tissue donation and recovery as provided in subsection a. of this
25 section in its curricula shall offer such training for continuing
26 education credit.

27 d. A physician licensed to practice medicine in this State prior
28 to the effective date of this act, who was not required to receive and
29 did not receive instruction in organ and tissue donation and
30 recovery as part of a medical school curriculum, is encouraged to
31 complete such training no later than three years after the effective
32 date of this act. The training may be completed through an on-line,
33 credit-based course developed by or for the organ procurement
34 organizations, in collaboration with professional medical
35 organizations in the State.

36 (cf: P.L.2008, c.48, s.5)

37
38 5. Section 6 of P.L.2008, c.48 (C.45:11-26.1) is amended to
39 read as follows:

40 6. The New Jersey Board of Nursing, in collaboration with the
41 organ procurement organizations designated pursuant to 42 U.S.C.
42 s.1320b-8 to serve in the State of New Jersey, shall prescribe by
43 regulation the following requirements for professional nurse
44 training:

45 a. The curriculum in each educational program of professional
46 nursing in this State shall include instruction in organ and tissue
47 donation and recovery designed to address clinical aspects of the
48 donation and recovery process and the rights of living organ donors

1 as set forth in paragraph (4) of subsection a. of section 6 of
2 P.L.2003, c.207 (C.17B:27E-6) and subsection i. of N.J.S.17B:30-
3 12.

4 b. Completion of organ and tissue donation and recovery
5 instruction as provided in subsection a. of this section shall be
6 required as a condition of receiving a degree or diploma, as
7 applicable, in professional nursing from a nursing program in this
8 State.

9 c. A nursing program which includes instruction in organ and
10 tissue donation and recovery as provided in subsection a. of this
11 section in its curricula shall offer such training for continuing
12 education credit.

13 d. (1) A licensed professional nurse licensed to practice
14 nursing in this State prior to the effective date of this act, who was
15 not required to receive and did not receive instruction in organ and
16 tissue donation and recovery as part of his nursing program
17 curriculum, shall be required, as a condition of relicensure, to
18 document completion of such training to the satisfaction of the
19 board no later than three years after the effective date of this act.
20 The training may be completed through an on-line, one credit hour
21 course developed by or for the organ procurement organizations and
22 approved by the board.

23 (2) The board may waive the requirement in this subsection if an
24 applicant for relicensure demonstrates to the satisfaction of the
25 board that the applicant has attained the substantial equivalent of
26 this requirement through completion of a similar course in his post-
27 secondary education which meets criteria established by regulation
28 of the board.

29 (cf: P.L.2008, c.48, s.6)

30

31 6. This act shall take effect immediately.