



State of Wisconsin  
2015 - 2016 LEGISLATURE

LRB-3682/1  
GMM&AJM:klm

## 2015 SENATE BILL 489

December 29, 2015 – Introduced by Senators BEWLEY, VINEHOUT, L. TAYLOR, SHILLING, RISSER and C. LARSON, cosponsored by Representatives MASON, MEYERS, MILROY, JORGENSEN, JACQUE, HORLACHER, SUBECK, GENRICH, POPE, ZAMARRIPA, BERCEAU, OHNSTAD, WACHS, BALLWEG, C. TAYLOR, SPREITZER and CONSIDINE. Referred to Committee on Labor and Government Reform.

1     **AN ACT** *to amend* 103.10 (1) (g) (intro.), 625.12 (1) (e), 625.12 (2) and 628.34 (3)  
2           (a); and *to create* 631.97 of the statutes; **relating to:** inclusion of recovery from  
3           bone marrow or organ donation surgery as a serious health condition for which  
4           an employee may take leave from employment under the family and medical  
5           leave law and prohibiting certain insurance practices on the basis of a person  
6           being a living organ donor or bone marrow donor.

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### *Analysis by the Legislative Reference Bureau*

#### ***Introduction***

This bill includes recovery from bone marrow or organ donation surgery as a serious health condition for which an employee may take leave from employment under the family and medical leave law. The bill also prohibits insurers from refusing to provide or renew coverage, canceling coverage, setting rates, or otherwise discriminating in the terms of a life, long-term care, or income continuation insurance policy on the basis of a person's status as a bone marrow or living organ donor.

#### ***Family and medical leave***

Under current law, an employer, including the state, employing at least 50 individuals on a permanent basis in this state (employer) must permit an employee who has been employed by the employer for more than 52 consecutive weeks and who

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has worked for the employer for at least 1,000 hours during the preceding 52-week period (employee) to take: 1) two weeks of medical leave in a 12-month period when the employee has a serious health condition that makes the employee unable to perform the employee's employment duties; and 2) two weeks of family leave in a 12-month period to care for a child, spouse, domestic partner, or parent who has a serious health condition. Current law defines "serious health condition" for purposes of the family and medical leave law as a disabling physical or mental illness, injury, impairment, or condition involving inpatient care in a hospital, nursing home, or hospice or outpatient care that requires continuing treatment or supervision by a health care provider.

This bill includes the condition of being in recovery from surgery related to donating bone marrow or a human organ in the definition of "serious health condition" for purposes of the family and medical leave law. As such, the bill permits an employee to take leave from employment for the following reasons: 1) when the employee is in recovery from surgery related to donating bone marrow or a human organ and is unable to perform his or her employment duties; or 2) to care for a child, spouse, domestic partner, or parent who is in recovery from surgery related to donating bone marrow or a human organ.

***Insurance discrimination***

This bill prohibits an insurer from refusing to provide or renew coverage to a person, canceling a person's coverage, or limiting a person's coverage under a life insurance policy, long-term care insurance policy, or income continuation insurance policy (collectively, policy) on the basis that the person is a living organ donor or bone marrow donor. Under the bill, insurers may not preclude a person from donating an organ or bone marrow as a condition of issuing a policy to the person. The bill also prohibits an insurer from using the status of a person as a living organ donor or bone marrow donor as a factor in determining rates or any other aspect of insurance coverage under a policy.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

- 1           **SECTION 1.** 103.10 (1) (g) (intro.) of the statutes is amended to read:
- 2           103.10 (1) (g) (intro.) "Serious health condition" means a disabling physical or
- 3           mental illness, injury, impairment, or condition, including the condition of being in
- 4           recovery from surgery related to donating bone marrow, as defined in s. 146.34 (1)
- 5           (a), or a human organ, as defined in s. 230.35 (2d) (a) 2., involving any of the following:

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1           **SECTION 2.** 625.12 (1) (e) of the statutes is amended to read:

2           625.12 (1) (e) Subject to ~~s.~~ ss. 631.97 (2) (c) and 632.365, all other relevant  
3 factors, including the judgment of technical personnel.

4           **SECTION 3.** 625.12 (2) of the statutes is amended to read:

5           625.12 (2) **CLASSIFICATION.** Risks may be classified in any reasonable way for  
6 the establishment of rates and minimum premiums, except that no classifications  
7 may be based on race, color, creed, or national origin, and classifications in  
8 automobile insurance may not be based on physical condition or developmental  
9 disability as defined in s. 51.01 (5). Subject to ~~s.~~ ss. 631.97 (2) (c) and 632.365, rates  
10 thus produced may be modified for individual risks in accordance with rating plans  
11 or schedules that establish reasonable standards for measuring probable variations  
12 in hazards, expenses, or both. Rates may also be modified for individual risks under  
13 s. 625.13 (2).

14           **SECTION 4.** 628.34 (3) (a) of the statutes is amended to read:

15           628.34 (3) (a) No insurer may unfairly discriminate among policyholders by  
16 charging different premiums or by offering different terms of coverage except on the  
17 basis of classifications related to the nature and the degree of the risk covered or the  
18 expenses involved, subject to ss. 631.97, 632.365, 632.746, and 632.748. Rates are  
19 not unfairly discriminatory if they are averaged broadly among persons insured  
20 under a group, blanket or franchise policy, and terms are not unfairly discriminatory  
21 merely because they are more favorable than in a similar individual policy.

22           **SECTION 5.** 631.97 of the statutes is created to read:

23           **631.97 Restrictions on insurance practices; living organ donors. (1)**

24           **DEFINITIONS.** In this section:

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1 (a) “Living organ donor” means a person who, while living, donates one or more  
2 of his or her human organs, as defined in s. 146.435 (1) (a), to another human being  
3 for human organ transplantation, as defined in s. 146.345 (1) (b).

4 (b) “Policy” means a life insurance policy, long-term care insurance policy, or  
5 income continuation insurance policy.

6 **(2) GENERAL PROHIBITIONS.** An insurer may not do any of the following:

7 (a) Refuse to issue or renew coverage to a person under a policy, limit the  
8 coverage of a person under a policy, or, notwithstanding s. 631.36 (2) (a) 2., cancel a  
9 person’s coverage under a policy on the basis that the person is a living organ donor.

10 (b) Preclude a person from donating a human organ as a condition of issuing  
11 a policy to the person.

12 (c) Consider the status of a person as a living organ donor in the determination  
13 of rates or any other aspect of the person’s coverage under a policy.

14 (d) Otherwise discriminate in the offering, issuance, cancellation, setting of  
15 rates, or any other condition of a policy for a person based solely and without any  
16 additional actuarial risks on the person’s status as a living organ donor.

17 **SECTION 6. Initial applicability.**

18 (1) FAMILY AND MEDICAL LEAVE. The treatment of section 103.10 (1) (g) (intro.)  
19 of the statutes first applies to an employee, as defined in section 103.10 (1) (b) of the  
20 statutes, who is affected by a collective bargaining agreement that contains  
21 provisions that are inconsistent with the treatment of section 103.10 (1) (g) (intro.)  
22 of the statutes on the day on which the collective bargaining agreement expires or  
23 is extended, modified, or renewed, whichever occurs first.

24 (2) INSURANCE. The treatment of sections 625.12 (1) (e) and (2), 628.34 (3) (a),  
25 and 631.97 of the statutes first applies to all of the following:

