

# WEST VIRGINIA LEGISLATURE

## 2022 REGULAR SESSION

Introduced

### House Bill 4317

FISCAL  
NOTE

BY DELEGATES BURKHAMMER, PINSON, MAZZOCCHI,  
TULLY, PACK, D. JEFFRIES, KEATON, HANNA, ELLINGTON,  
GRAVES AND MANDT

[Introduced January 21, 2022; Referred to the  
Committee on Health and Human Resources then  
Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
 2 designated §11-29-1, §11-29-2, §11-29-3, §11-29-4, and §11-29-5; to amend said code  
 3 by adding thereto a new section, designated §21-5-19; to amend said code by adding  
 4 thereto a new section, designated §33-13-49; and to amend said code by adding thereto  
 5 a new section, designated §33-15-15, all related to fostering organ donation by providing  
 6 benefits and protections for persons who donate or agree to donate bodily organs: creating  
 7 a tax credit for living and deceased organ donors; establishing purpose of credit;  
 8 establishing the amount of tax credit and eligible taxpayers; providing for the applicability  
 9 of the tax credit; prohibiting the termination of an employee who takes time away from  
 10 employment to donate an organ or organs; prohibiting denial of coverage, increase in  
 11 premiums, or cancellation of life insurance for living organ donors; and prohibiting denial  
 12 of coverage, increase in premiums, or cancellation of sickness, disability, or long-term  
 13 care insurance for living organ donors.

*Be it enacted by the Legislature of West Virginia:*

## **CHAPTER 11. TAXATION.**

### **ARTICLE 29. ORGAN DONATION TAX STIMULUS ACT.**

#### **§11-29-1. Title.**

1 This article may be cited as the “Organ Donation Stimulus Act.”

#### **§11-29-2. Purpose.**

1 The purpose of the “Organ Donation Stimulus Act” is to create an income tax modification  
 2 for certain individuals who donate a human organ and a tax credit for employers who provide paid  
 3 leave for an employee who takes time off from employment in order to donate a bodily organ or  
 4 organs for human organ transplantation.

#### **§11-29-3. Personal income tax credit for organ donor.**

1 (a) There is allowed to eligible taxpayers who have donated organs for human organ

2 transplantation, a credit against taxes imposed by §11-21-1 et seq. of this code in the amounts  
3 set forth in subsections (b) and (c) of this section.

4 (b) If an individual, while living, donates one or more of his or her human organs to another  
5 human being for human organ transplantation, he or she may claim a credit in the amount of up  
6 to \$5,000 during the taxable year during which the human organ transplantation occurred. The  
7 credit shall reduce the total amount of tax imposed by §11-21-1 et seq. of this code. If the amount  
8 of the credit exceeds the taxpayer's tax liability for the taxable year, the amount which exceeds  
9 the tax liability may be carried over and applied as a credit against the tax liability of the taxpayer  
10 for the next taxable year.

11 (c) The estate of an individual who has donated one or more of the individual's human  
12 organs to another human being for human organ transplantation may claim a credit in the amount  
13 of up to \$10,000 during the taxable year during which the human organ transplantation occurred.  
14 The credit shall reduce the total amount of tax imposed by §11-21-1 et seq. of this code. If the  
15 amount of the credit exceeds the taxpayer's tax liability for the taxable year, the amount which  
16 exceeds the tax liability may be carried over and applied as a credit against the tax liability of the  
17 taxpayer for the next taxable year.

18 (d) The credits established under subsections (b) and (c) may not be claimed by a part-  
19 year resident or a nonresident of this state.

**§11-29-4. Employer credit for providing paid leave to an employee for organ donation.**

1 There shall be allowed to eligible taxpayers a credit against the taxes imposed in §11-21-  
2 1 et seq. or §11-24-1 et seq. of this code. For the purpose of this section, "eligible taxpayer"  
3 means a person, firm, partnership, corporation or other entity who provides paid leave to an  
4 employee who takes time off from his or her employment to donate a body organ or organs for  
5 human organ transplantation during any tax year in which this article is in effect. Such credit shall  
6 be in an amount equal to one half of the total net wages paid to the employee for the period of  
7 time away from employment for which the employee is compensated.

**§11-29-5. Initial Applicability.**

1           The tax credits provided under this article shall first apply to taxable years beginning on  
2 January 1 of the year in which this article takes effect.

**CHAPTER 21. LABOR****ARTICLE 5. WAGE PAYMENT AND COLLECTION.****§21-5-19. Employers prohibited from discharging employees for leave from employment or time lost for organ donation.**

1           No employer may terminate an employee for time taken away from employment for a  
2 reasonable period, not to exceed 60 days, for the purpose of donating a bodily organ or organs  
3 for human organ transplantation. Any time lost from employment as provided in this section may  
4 be charged against the employee's regular pay and the provisions of §21-5D-1 et seq. of this  
5 code may apply if the donation involves the employee's son, daughter, spouse, parent or  
6 dependent.

7           At the request of an employer, any employee losing time as provided herein shall supply  
8 his or her employer with a statement from the physician performing the organ transplantation as  
9 grounds for the employee's absence and evidence of the time required for the employee to  
10 recover safely.

11           Any employer who willfully and knowingly violates the provisions of this section shall be  
12 required to reinstate such employee to his or her former position and shall be required to pay such  
13 employee all lost wages and benefits for the period between termination and reinstatement. Any  
14 action to enforce the provisions of this section shall be commenced within a period of one year  
15 after the date of violation and such action shall be commenced in the circuit court of the county  
16 wherein the place of employment is located.

**CHAPTER 33. INSURANCE.****ARTICLE 13. LIFE INSURANCE.**

**§33-13-49. Prohibition on denial of coverage, increase in premiums, or cancellation of life insurance for living organ donors.**

1 (a) For purposes of this section, the term “living organ donor” means an individual who  
2 has donated all or part of an organ and is not deceased.

3 (b) Notwithstanding any other provision of law, it shall be unlawful to:

4 (1) Decline or limit coverage of a person under any life insurance policy or industrial life  
5 insurance policy solely due to the status of such person as a living organ donor;

6 (2) Preclude an insured from donating all or part of an organ as a condition of continuing  
7 to receive a life insurance policy or industrial life insurance policy; or

8 (3) Otherwise discriminate in the offering, issuance, cancellation, amount of such  
9 coverage, price, or any other condition of a life insurance policy or industrial life insurance policy  
10 for a person, based solely and without any additional actuarial risks upon the status of such person  
11 as a living organ donor.

**ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.**

**§33-15-15. Prohibition on denial of coverage, increase in premiums, or cancellation of sickness, disability, or long-term care insurance for living organ donors.**

1 (a) For purposes of this section, the term “living organ donor” means an individual who  
2 has donated all or part of an organ and is not deceased.

3 (b) Notwithstanding any other provision of law, it shall be unlawful to:

4 (1) Decline or limit coverage of a person under any sickness, disability, or long-term care  
5 insurance policy solely due to the status of such person as a living organ donor;

6 (2) Preclude an insured from donating all or part of an organ as a condition of continuing  
7 to receive a sickness, disability, or long-term care insurance policy; or

8 (3) Otherwise discriminate in the offering, issuance, cancellation, amount of such  
9 coverage, price, or any other condition of a sickness, disability, or long-term care insurance policy  
10 for a person, based solely and without any additional actuarial risks upon the status of such person

11 as a living organ donor.

NOTE: The purpose of this bill is foster the donation of body organs through creation of a tax credit for living and deceased organ donors, providing a tax credit to employees providing paid leave to an employee for organ donation, prohibiting termination of an employee for taking time away from employment to donate an organ, and prohibiting the denial, cancellation, or other discrimination in policies of life insurance, sickness, disability, or long-term care insurance due to the status of the insured as a living organ donor.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.