

By: Senator(s) Carlton

To: Insurance

SENATE BILL NO. 2728

1 AN ACT TO PROHIBIT DISCRIMINATION BY INSURANCE COMPANIES
 2 AGAINST VICTIMS OF ABUSE; TO DEFINE CERTAIN TERMS USED IN THE ACT;
 3 TO PROHIBIT CERTAIN ACTS BY INSURERS WHEN BASED UPON THE
 4 APPLICANT'S ABUSE STATUS OR ON THE BASIS OF A PROPERTY'S USE IN
 5 THE OPERATION OF A SHELTER FOR SUBJECTS OF ABUSE; TO PROHIBIT
 6 CERTAIN ACTS AS UNFAIR PRACTICES; TO REQUIRE INSURERS TO ADHERE TO
 7 WRITTEN PROCEDURES, DEVELOPED AND FILED WITH THE COMMISSIONER OF
 8 INSURANCE, TO ENSURE THE PRIVACY OF THE SUBJECT OF ABUSE; AND FOR
 9 RELATED PURPOSES. BE IT ENACTED BY THE LEGISLATURE OF THE STATE
 10 OF MISSISSIPPI:

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 12 SECTION 1. (1) For purposes of this section, the following
 13 definitions apply:

14 (a) "Abuse" means the occurrence of one or more of the
 15 following acts by a current or former family member, household
 16 member, or caretaker:

17 (i) Attempting to cause or intentionally,
 18 knowingly, or recklessly causing another person, bodily injury or
 19 emotional distress;

20 (ii) Knowingly engaging in a course of conduct or
 21 repeatedly committing acts toward another person, including
 22 stalking under Section 97-3-107, Mississippi Code of 1972, under
 23 circumstances that place the person in reasonable fear of bodily
 24 injury;

25 (iii) Subjecting another person to false
 26 imprisonment; or

27 (iv) Attempting to cause, or intentionally,
 28 knowingly, or recklessly causing, damage to property so as to
 29 intimidate or attempt to control the behavior of another person.

30 (b) "Abuse status" means the fact or perception that a

31 person is, has been, or may be a subject of abuse or abuse-related
32 claims, regardless of whether the person has sustained
33 abuse-related medical conditions or has incurred abuse-related
34 claims.

35 (c) "Confidential abuse information" means information
36 about acts of abuse or abuse status of a subject of abuse, the
37 address and telephone number of a subject of abuse or the status
38 of an applicant insured as a family member, associate of, or a
39 person in a relationship with, a subject of abuse.

40 (d) "Insured" means a party named on a policy or
41 certificate, or an individual with legal rights to the benefits
42 provided by such policy.

43 (e) "Insurer" means a person engaged in the business of
44 insurance, a health care service contractor, a health maintenance
45 organization, including producers and agents to the extent that
46 they perform underwriting or claims activities delegated by an
47 insurer, or possess confidential abuse information.

48 (2) The following acts are prohibited when based upon the
49 applicant's, insured's, or enrolled participant's abuse status or
50 on the basis of a property's use in the operation of a shelter for
51 subjects of abuse:

52 (a) Refusing to issue, renew or reissue an insurance
53 policy or health benefit plan;

54 (b) Canceling or otherwise terminating an insurance
55 policy or health benefit plan;

56 (c) Restricting or excluding coverage or adding a
57 premium differential to an insurance policy or health benefit
58 plan;

59 (d) Denying or limiting payment for a covered loss or
60 denying a covered claim;

61 (e) Failing to pay losses to an innocent claimant when
62 the loss is caused by the intentional act of a coinsured; and

63 (f) Using other exclusions or limitations on coverage

64 which the commissioner has determined to unreasonably restrict the
65 ability of subjects of abuse or shelters to be indemnified for
66 losses.

67 (3) The following acts are prohibited as unfair practices:

68 (a) Requesting information relating to acts of abuse or
69 an applicant's or insured's abuse status or making use of such
70 information, however obtained, except for the limited purpose of
71 complying with legal obligations or verifying a person's claim;
72 and

73 (b) Disclosure or transfer of confidential abuse
74 information by a person employed by or contracting with an insurer
75 for any purpose or to any person, except where required by the
76 Commissioner of Insurance, a court of competent jurisdiction,
77 abuse reporting laws, or as otherwise required by law.

78 (4) Nothing in this section prohibits a life insurer from
79 declining to issue a life insurance policy if the applicant or
80 prospective owner of the policy is or would be designated as a
81 beneficiary of the policy, and if:

82 (a) The applicant or prospective owner of the policy
83 lacks an insurable interest in the insured;

84 (b) The applicant or prospective owner of the policy is
85 known, on the basis of police or court records, to have committed
86 an act of abuse against a prospective insured; or

87 (c) The insured or prospective insured is a subject of
88 abuse, and that person, or a person who has assumed the care of
89 that person if a minor or an incapacitated adult, has objected to
90 the issuance of the policy in good faith and with probable cause
91 on the grounds that the policy would be issued to or for the
92 direct or indirect benefit of the abuser.

93 (5) Any insurer that takes an action, not prohibited by this
94 section, that adversely affects an applicant or insured on the
95 basis of an abuse-related medical condition or an abuse-related
96 claim, shall upon written request, directly notify in writing the

97 applicant, insured, or enrolled participant, of the reason for the
98 action and must be able to demonstrate that the action, and any
99 applicable policy provision:

100 (a) Does not have the purpose or effect of treating
101 abuse status as a medical condition or underwriting criterion;

102 (b) Is not based upon any actual or perceived
103 correlation between a medical condition or a type of property and
104 casualty claim and abuse;

105 (c) Is otherwise permissible by law and applies in the
106 same manner and to the same extent to all applicants and insureds
107 with a similar medical condition or property and casualty claim
108 without regard to whether the condition or claim is abuse-related;
109 and

110 (d) Is based on a determination, made in conformance
111 with sound actuarial principles and supported by reasonable
112 statistical evidence, that there is a correlation between the type
113 of property and casualty claim and a material increase in
114 insurance risk.

115 (6) Insurers shall adhere to written procedures, developed
116 and filed with the Commissioner of Insurance, to be followed by
117 employees, contractors, producers, agents, and brokers to ensure
118 the privacy of the subject of abuse when taking an application,
119 investigating a claim, pursuing subrogation, or taking any other
120 action relating to a policy or claim involving a subject of abuse.

121 Insurers shall distribute their written procedures to employees,
122 contractors, adjusters, producers, agents and brokers.

123 SECTION 2. Section 1 of this act shall be codified as a
124 separate section within Chapter 5 of Title 83, Mississippi Code of
125 1972.

126 SECTION 3. This act shall take effect and be in force from
127 and after July 1, 1999.