

By: Blackmon

To: Insurance

## SENATE BILL NO. 3040

1 AN ACT TO PROHIBIT UNFAIR DISCRIMINATION AGAINST SUBJECTS OF  
2 ABUSE IN DISABILITY INCOME INSURANCE; TO DEFINE CERTAIN TERMS; TO  
3 PRESCRIBE UNFAIRLY DISCRIMINATORY ACTS RELATING TO DISABILITY  
4 INCOME INSURANCE; TO REQUIRE JUSTIFICATION OF ADVERSE INSURANCE  
5 DECISIONS WHICH AFFECT AN APPLICANT OR INSURED ON THE BASIS OF A  
6 MEDICAL CONDITION THAT THE INSURER KNOWS OR HAS REASON TO KNOW IS  
7 ABUSE-RELATED; TO REQUIRE INSURERS TO DEVELOP AND ADHERE TO  
8 PROTOCOLS FOR SUBJECTS OF ABUSE; TO AUTHORIZE THE COMMISSIONER OF  
9 INSURANCE TO ENFORCE THE PROVISIONS OF THIS ACT; AND FOR RELATED  
10 PURPOSES.

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

12 SECTION 1. **Purpose.**

13 The purpose of this act is to prohibit unfair discrimination  
14 by disability income insurers and insurance professionals on the  
15 basis of abuse status. Nothing in this act shall be construed to  
16 create or imply a private cause of action for a violation of this  
17 act.

18 SECTION 2. **Scope.**

19 This act applies to all disability income insurers and  
20 insurance professionals involved in issuing or renewing in this  
21 state a policy or certificate of disability income insurance.

22 SECTION 3. **Definitions.**

23 As used in this act, unless the context clearly indicates  
24 otherwise:

25 (a) "Abuse" means the occurrence of one or more of the  
26 following acts by a current or former family member, household  
27 member, intimate partner, or caretaker:

28 (i) Attempting to cause or intentionally,  
29 knowingly or recklessly causing another person bodily injury,  
30 physical harm, severe emotional distress, psychological trauma,

31 rape, sexual assault or involuntary sexual intercourse;

32 (ii) Knowingly engaging in a course of conduct or  
33 repeatedly committing acts toward another person including  
34 following the person without proper authority, under circumstances  
35 that place the person in reasonable fear of bodily injury or  
36 physical harm;

37 (iii) Subjecting another person to false  
38 imprisonment; or

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

42 (b) "Abuse-related medical condition" means a medical  
43 condition sustained by a subject of abuse which arises in whole or  
44 part out of an act or pattern of abuse.

45 (c) "Abuse status" means the fact or perception that a  
46 person is, has been, or may be a subject of abuse, irrespective of  
47 whether the person has sustained abuse-related medical conditions.

48 (d) "Commissioner" means the Commissioner of Insurance  
49 of the State of Mississippi.

50 (e) "Confidential abuse information" means information  
51 about acts of abuse or abuse status of a subject of abuse, the  
52 address and telephone number (home and work) of a subject of  
53 abuse, or the status of an applicant or insured as a family  
54 member, employer or associate of, or a person, in a relationship  
55 with, a subject of abuse.

56 (f) "Insurance professional" means an agent, broker,  
57 adjuster or third party administrator as defined in the insurance  
58 laws of this state.

59 (g) "Insured" means a party named on a disability  
60 income policy or certificate as the person with legal rights to  
61 the benefits provided by the policy or certificate. For group  
62 insurance, "insured" includes a person who is a beneficiary  
63 covered by a group policy or certificate.

64 (h) "Insurer" means a person or other legal entity  
65 engaged in the business of disability income insurance in this  
66 state.

67 (i) "Policy" or "certificate" means a contract of

68 insurance or indemnity, including endorsements, riders or binders  
69 issued, proposed for issuance, or intended for issuance by an  
70 insurer or insurance professional.

71 (j) "Subject of abuse" means a person against whom an  
72 act of abuse has been directed; who has current or prior injuries,  
73 illnesses or disorders that resulted from abuse; or who seeks, may  
74 have sought, or had reason to seek medical or psychological  
75 treatment for abuse; or protection, court-ordered protection or  
76 shelter from abuse.

77 **SECTION 4. Unfairly Discriminatory Acts Relating to**  
78 **Disability Income Insurance.**

79 (1) It is unfairly discriminatory to:

80 (a) Deny, refuse to issue or renew, cancel or otherwise  
81 terminate, restrict or exclude insurance coverage on or add a  
82 premium differential to any disability income insurance policy on  
83 the basis of the applicant's or insured's abuse status; or

84 (b) Exclude or limit coverage for losses or denying a  
85 claim under a disability income insurance policy on the basis of  
86 an insured's abuse status.

87 (2) When the insurer or insurance professional has  
88 information in its possession that clearly indicates that the  
89 insured or applicant is a subject of abuse, the disclosure or  
90 transfer of confidential abuse information, as defined in this  
91 act, for any purpose or to any person is unfairly discriminatory,  
92 except:

93 (a) To the subject of abuse or an individual  
94 specifically designated in writing by the subject of abuse;

95 (b) To a health care provider for the direct provision  
96 of health care services;

97 (c) To a licensed physician identified and designated  
98 by the subject of abuse;

99 (d) When ordered by the commissioner or a court of  
100 competent jurisdiction or otherwise required by law;

101           (e) When necessary for a valid business purpose to  
102 transfer information that includes confidential abuse information  
103 that cannot reasonably be segregated without undue hardship,  
104 confidential abuse information may be disclosed only if the  
105 recipient has executed a written agreement to be bound by the  
106 prohibitions of this act in all respects and to be subject to the  
107 enforcement of this act by the courts of this state for the  
108 benefit of the applicant or insured, and only to the following  
109 persons:

110                   (i) A reinsurer that seeks to indemnify or  
111 indemnifies all or any part of a policy covering a subject of  
112 abuse and that cannot underwrite or satisfy its obligations under  
113 the reinsurance agreement without that disclosure;

114                   (ii) A party to a proposed or consummated sale,  
115 transfer, merger or consolidation of all or part of the business  
116 of the insurer or insurance professional;

117                   (iii) Medical or claims personnel contracting with  
118 the insurer, only where necessary to process an application or  
119 perform the insurer's or insurance professional's duties under the  
120 policy or to protect the safety or privacy of a subject of abuse  
121 (also includes parent or affiliate companies of the insurer that  
122 have service agreements with the insurer or insurance  
123 professional); or

124                   (iv) With respect to address and telephone number,  
125 to entities with whom the insurer or insurance professional  
126 transacts business when the business cannot be transacted without  
127 the address and telephone number;

128           (f) To an attorney who needs the information to  
129 represent the insurer or insurance professional effectively,  
130 provided the insurer or insurance professional notifies the  
131 attorney of its obligations under this act and requests that the  
132 attorney exercise due diligence to protect the confidential abuse  
133 information consistent with the attorney's obligation to represent

134 the insurer or insurance professional;

135 (g) To the policyowner or assignee, in the course of  
136 delivery of the policy, if the policy contains information about  
137 the abuse status; or

138 (h) To any other entities deemed appropriate by the  
139 commissioner.

140 (3) It is unfairly discriminatory to request information  
141 about acts of abuse or abuse status, or make use of that  
142 information, however obtained.

143 (4) Subsection (2) does not preclude a subject of abuse from  
144 obtaining his or her insurance records.

145 (5) Subsection (3) does not prohibit a disability income  
146 insurer or insurance professional from asking about a medical  
147 condition or from using medical information to underwrite or to  
148 carry out its duties under the policy, even if the medical  
149 information is related to a medical condition that the insurer  
150 knows or has reason to know is abuse-related, to the extent  
151 otherwise permitted under this act and other applicable law.

152 (6) A disability income insurer or insurance professional  
153 shall not be held civilly or criminally liable for the death of or  
154 injury to an insured resulting from an action taken in a good  
155 faith effort to comply with the requirements of this act.  
156 However, this subsection does not prevent an action to investigate  
157 or enforce a violation of this act or to assert any other claims  
158 authorized by law.

159 **SECTION 5. Justification of Adverse Insurance Decisions.**

160 An insurer or insurance professional that takes an action  
161 that adversely affects an applicant or insured on the basis of a  
162 medical condition that the insurer or insurance professional knows  
163 or has reason to know is abuse-related shall explain the reason  
164 for its action to the applicant or insured in writing and shall  
165 be able to demonstrate that its action, and any applicable policy  
166 provision:

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

169 (b) Is not based upon any actual or perceived  
170 correlation between a medical condition and abuse;

171 (c) Is otherwise permissible by law and applies in the  
172 same manner and to the same extent to all applicants and insureds  
173 with a similar medical condition or disability without regard to  
174 whether the condition is abuse-related; and

175 (d) Except for claims actions, is based on a  
176 determination, made in conformance with sound actuarial principles  
177 and otherwise supported by actual or reasonably anticipated  
178 experience, that there is a correlation between the medical  
179 condition and a material increase in insurance risk.

180 **SECTION 6. Insurance Protocols for Subjects of Abuse.**

181 Insurers shall develop and adhere to written policies  
182 specifying procedures to be followed by employees and by  
183 insurance professionals they contract with, for the purpose of  
184 protecting the safety and privacy of a subject of abuse and shall  
185 otherwise implement the provisions of this act when taking an  
186 application, investigating a claim, pursuing subrogation or taking  
187 any other action relating to a policy or claim involving a subject  
188 of abuse. Insurers shall distribute their written policies to  
189 employees and insurance professionals.

190 **SECTION 7. Enforcement.**

191 The commissioner shall conduct a reasonable investigation  
192 based on a written and signed [add any means by which the  
193 commissioner receives complaints] complaint received by the  
194 commissioner and issue a prompt determination as to whether a  
195 violation of this act may have occurred. If the commissioner  
196 finds from the investigation that a violation of this act may have  
197 occurred, the commissioner shall promptly begin an adjudicatory  
198 proceeding. The commissioner may address a violation through  
199 means appropriate to the nature and extent of the violation, which

200 may include suspension or revocation of certificates of authority  
201 or licenses, imposition of civil penalties, issuance of cease and  
202 desist orders, injunctive relief, a requirement for restitution,  
203 referral to prosecutorial authorities or any combination of these.

204 The powers and duties set forth in this section are in addition  
205 to all other authority of the commissioner.

206 SECTION 8. This act is effective July 1, 2000, and applies  
207 to all actions taken on or after the effective date, except where  
208 otherwise explicitly stated. Nothing in this act shall require an  
209 insurer to conduct a comprehensive search of its contract files  
210 existing on the effective date solely to determine which  
211 applicants or insureds are subjects of abuse.