

By: Representatives Stevens, Masterson

To: Insurance

HOUSE BILL NO. 646

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

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

11 SECTION 1. The purpose of this act is to prohibit unfair
12 discrimination by life insurers or insurance professionals on the
13 basis of abuse status. Nothing in this act shall be construed to
14 create or imply a private cause of action for a violation of this
15 act.

16 SECTION 2. This act applies to all life insurers and
17 insurance professionals involved in issuing or renewing in this
18 state a policy or certificate of life insurance.

19 SECTION 3. As used in this act, unless the context clearly
20 indicates otherwise:

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

24 (i) Attempting to cause or intentionally,
25 knowingly or recklessly causing another person bodily injury,
26 physical harm, severe emotional distress, psychological trauma,
27 rape, sexual assault or involuntary sexual intercourse;

28 (ii) Knowingly engaging in a course of conduct or
29 repeatedly committing acts toward another person, including
30 following the person without proper authority, under circumstances



31 that place the person in reasonable fear of bodily injury or
32 physical harm;

33 (iii) Subjecting another person to false
34 imprisonment; or

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

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

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

44 (d) "Commissioner" means the Commissioner of Insurance
45 of the State of Mississippi.

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

52 (f) "Insurance professional" means an agent, broker,
53 adjuster or third-party administrator as defined in the insurance
54 laws of this state.

55 (g) "Insured" means the person whose life is covered
56 under an insurance policy.

57 (h) "Insurer" means a person or other legal entity
58 engaged in the business of life insurance in this state.

59 (i) "Policy" or "certificate" means a contract of
60 insurance or annuity including endorsements, riders or binders
61 issued, proposed for issuance or intended for issuance by an
62 insurer or insurance professional.



63 (j) "Subject of abuse" means a person against whom an
64 act of abuse has been directed; who has current or prior injuries,
65 illnesses or disorders that resulted from abuse; or who seeks, may
66 have sought or had reason to seek medical or psychological
67 treatment for abuse or protection, court-ordered protection or
68 shelter from abuse.

69 SECTION 4. (1) It is unfairly discriminatory to:

70 (a) Deny, refuse to issue, renew or reissue, cancel or
71 otherwise terminate, restrict or exclude insurance coverage on or
72 add a premium differential to a policy for an applicant or insured
73 on the basis of the applicant's or insured's abuse status; or

74 (b) Exclude, limit or deny benefits on a life insurance
75 policy on the basis of an insured's abuse status except as
76 otherwise permitted or required by the laws of this state relating
77 to acts of abuse committed by a life insurance beneficiary.

78 (2) When the insurer or insurance professional has
79 information in its possession that clearly indicates that the
80 insured or applicant is a subject of abuse, the disclosure or
81 transfer of confidential abuse information, as defined in this
82 act, by a person employed by or contracting with an insurer or
83 insurance professional for any purpose or to any person is
84 unfairly discriminatory, except:

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

87 (b) To a health care provider for the direct provision
88 of health care services;

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

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

93 (e) When necessary for a valid business purpose to
94 transfer information that includes confidential abuse information
95 that cannot reasonably be segregated without undue hardship.



96 Confidential abuse information may be disclosed only if the
97 recipient has executed a written agreement to be bound by the
98 prohibitions of this act in all respects and to be subject to the
99 enforcement of this act by the courts of this state for the
100 benefit of the applicant or the insured, and only to the following
101 persons:

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

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

109 (iii) Medical or claims personnel contracting with
110 the insurer or insurance professional, only where necessary to
111 process an application or perform the insurer's or insurance
112 professional's duties under the policy or to protect the safety or
113 privacy of a subject of abuse (also includes parent or affiliate
114 companies of the insurer or insurance professional that have
115 service agreements with the insurer or insurance professional); or

116 (iv) With respect to address and telephone number,
117 to entities with whom the insurer or insurance professional
118 transacts business when the business cannot be transacted without
119 the address and telephone number;

120 (f) To an attorney who needs the information to
121 represent the insurer or insurance professional effectively, if
122 the insurer or insurance professional notifies the attorney of its
123 obligations under this act and requests that the attorney exercise
124 due diligence to protect the confidential abuse information
125 consistent with the attorney's obligation to represent the insurer
126 or insurance professional;



127 (g) To the policyowner or assignee, in the course of
128 delivery of the policy, if the policy contains information about
129 abuse status; or

130 (h) To any other entities deemed appropriate by the
131 commissioner.

132 (3) It is unfairly discriminatory to request information
133 about acts of abuse or abuse status or make use of that
134 information, however obtained.

135 (4) Subsection (2) of this section does not preclude a
136 subject of abuse from obtaining his or her insurance records.

137 (5) Subsection (1) of this section does not prohibit a life
138 insurer or insurance professional from declining to issue a life
139 insurance policy if the applicant or prospective owner of the
140 policy is or would be designated as a beneficiary of the policy,
141 and if:

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

144 (b) The applicant or prospective owner of the policy is
145 known, on the basis of medical, police or court records, to have
146 committed an act of abuse against the proposed insured; or

147 (c) The insured or prospective insured is a subject of
148 abuse, and that person, or a person who has assumed the care of
149 that person if a minor or incapacitated, has objected to the
150 issuance of the policy on the ground that the policy would be
151 issued to or for the direct or indirect benefit of the abuser.

152 (6) Subsection (3) of this section does not prohibit a life
153 insurer or insurance professional from asking about a medical
154 condition or from using medical information to underwrite or to
155 carry out its duties under the policy, even if the medical
156 information is related to a medical condition that the insurer or
157 insurance professional knows or has reason to know is
158 abuse-related, to the extent otherwise permitted under this act
159 and other applicable law.



160 (7) A life insurer or insurance professional shall not be
161 held civilly or criminally liable for the death of or injury to an
162 insured resulting from any action taken in a good faith effort to
163 comply with the requirements of this act. However, this
164 subsection does not prevent an action to investigate or enforce a
165 violation of this act or to assert any other claims authorized by
166 law.

167 SECTION 5. An insurer or insurance professional that takes
168 an action that adversely affects an applicant or insured on the
169 basis of a medical condition that the insurer or insurance
170 professional knows or has reason to know is abuse-related shall
171 explain the reason for its action to the applicant or insured in
172 writing and shall be able to demonstrate that its action, and any
173 applicable policy provision:

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

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

178 (c) Is otherwise permissible by law and applies in the
179 same manner and to the same extent to all applicants and insureds
180 with a similar medical condition without regard to whether the
181 condition or claim is abuse-related; and

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

187 SECTION 6. Insurers shall develop and adhere to written
188 policies specifying procedures to be followed by employees and by
189 insurance professionals with which they contract for the purpose
190 of protecting the safety and privacy of a subject of abuse and
191 shall otherwise implement the provisions of this act when taking
192 an application, investigating a claim, pursuing subrogation or



193 taking any other action relating to a policy or claim involving a
194 subject of abuse. Insurers shall distribute their written
195 policies to employees and insurance professionals.

196 SECTION 7. The commissioner shall conduct a reasonable
197 investigation based on a written and signed complaint received by
198 the commissioner and shall issue a prompt determination as to
199 whether a violation of this act may have occurred. If the
200 commissioner finds from the investigation that a violation of this
201 act may have occurred, the commissioner shall promptly begin an
202 adjudicatory proceeding. The commissioner may address a violation
203 through means appropriate to the nature and extent of the
204 violation, which may include suspension or revocation of
205 certificates of authority or licenses, imposition of civil
206 penalties, issuance of cease and desist orders, injunctive relief,
207 a requirement for restitution, referral to prosecutorial
208 authorities or any combination of these. The powers and duties
209 set forth in this section are in addition to all other authority
210 of the commissioner.

211 SECTION 8. This act applies to all actions taken on or after
212 the effective date, except where otherwise explicitly stated.
213 Nothing in this act shall require the insurer or insurance
214 professional to conduct a comprehensive search of its contract
215 files existing on the effective date solely to determine which
216 applicants or insureds are subjects of abuse.

217 SECTION 9. This act shall take effect and be in force from
218 and after July 1, 2001.

