H. B. No. 646

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MISSISSIPPI LEGISLATURE           REGULAR SESSION 2001

By: Representatives Stevens, Masterson

To: Insurance

HOUSE BILL NO. 646

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

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

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

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

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

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

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

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

(iii) Subjecting another person to false imprisonment; or

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

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

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

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

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

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

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

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

(i) "Policy" or "certificate" means a contract of insurance or annuity including endorsements, riders or binders issued, proposed for issuance or intended for issuance by an insurer or insurance professional.
(j) "Subject of abuse" means a person against whom an act of abuse has been directed; who has current or prior injuries, illnesses or disorders that resulted from abuse; or who seeks, may have sought or had reason to seek medical or psychological treatment for abuse or protection, court-ordered protection or shelter from abuse.

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) To an attorney who needs the information to represent the insurer or insurance professional effectively, if the insurer or insurance professional notifies the attorney of its obligations under this act and requests that the attorney exercise due diligence to protect the confidential abuse information consistent with the attorney's obligation to represent the insurer or insurance professional;
(g) To the policyowner or assignee, in the course of delivery of the policy, if the policy contains information about abuse status; or

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

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

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

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

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

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

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

(6) Subsection (3) of this section does not prohibit a life insurer or insurance professional from asking about a medical condition or from using medical information to underwrite or to carry out its duties under the policy, even if the medical information is related to a medical condition that the insurer or insurance professional knows or has reason to know is abuse-related, to the extent otherwise permitted under this act and other applicable law.
(7) A life insurer or insurance professional shall not be held civilly or criminally liable for the death of or injury to an insured resulting from any action taken in a good faith effort to comply with the requirements of this act. However, this subsection does not prevent an action to investigate or enforce a violation of this act or to assert any other claims authorized by law.

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

(a) Does not have the purpose or effect of treating abuse status as a medical condition or underwriting criterion;
(b) Is not based upon any actual or perceived correlation between a medical condition and abuse;
(c) Is otherwise permissible by law and applies in the same manner and to the same extent to all applicants and insureds with a similar medical condition without regard to whether the condition or claim is abuse-related; and
(d) Except for claims actions, is based on a determination, made in conformance with sound actuarial principles and otherwise supported by actual or reasonably anticipated experience, that there is a correlation between the medical condition and a material increase in insurance risk.

SECTION 6. Insurers shall develop and adhere to written policies specifying procedures to be followed by employees and by insurance professionals with which they contract for the purpose of protecting the safety and privacy of a subject of abuse and shall otherwise implement the provisions of this act when taking an application, investigating a claim, pursuing subrogation or
taking any other action relating to a policy or claim involving a
subject of abuse. Insurers shall distribute their written
policies to employees and insurance professionals.

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

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

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