HOUSE BILL NO. 647

AN ACT TO PROHIBIT UNFAIR DISCRIMINATION AGAINST SUBJECTS OF ABUSE IN DISABILITY INCOME INSURANCE; TO DEFINE CERTAIN TERMS; TO PRESCRIBE UNFAIR DISCRIMINATORY ACTS RELATING TO DISABILITY INCOME 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. Purpose.

The purpose of this act is to prohibit unfair discrimination by disability income insurers and 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. Scope.

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

SECTION 3. Definitions.

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 a party named on a disability income policy or certificate as the person with legal rights to the benefits provided by the policy or certificate. For group insurance, "insured" includes a person who is a beneficiary covered by a group policy or certificate.
(h) "Insurer" means a person or other legal entity engaged in the business of disability income insurance in this state.

(i) "Policy" or "certificate" means a contract of insurance or indemnity, 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.


(1) It is unfairly discriminatory to:

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

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

(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, 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 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, 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 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,
provided 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
the 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 (3) of this section does not prohibit a
disability income 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 knows or has reason to know is abuse-related, to the
extent otherwise permitted under this act and other applicable
law.

(6) A disability income insurer or insurance professional
shall not be held civilly or criminally liable for the death of or
injury to an insured resulting from an 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. Justification of Adverse Insurance Decisions.

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 or disability without regard to
whether the condition 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.


Insurers shall develop and adhere to written policies
specifying procedures to be followed by employees and by insurance
professionals they contract with 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. Enforcement.

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 an insurer 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.