

By: Representative Stevens

To: Insurance

HOUSE BILL NO. 647

1 AN ACT TO PROHIBIT UNFAIR DISCRIMINATION AGAINST SUBJECTS OF
2 ABUSE IN DISABILITY INCOME INSURANCE; TO DEFINE CERTAIN TERMS; TO
3 PRESCRIBE UNFAIR DISCRIMINATORY ACTS RELATING TO DISABILITY INCOME
4 INSURANCE; TO REQUIRE JUSTIFICATION OF ADVERSE INSURANCE DECISIONS
5 WHICH AFFECT AN APPLICANT OR INSURED ON THE BASIS OF A MEDICAL
6 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 in 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 abuse
53 or the status of an applicant or insured as a family member,
54 employer or associate of, or a person in a relationship with, a
55 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. Unfair Discriminatory Acts Relating to Disability**
78 **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 deny 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) of this section does not preclude a
144 subject of abuse from obtaining his or her insurance records.

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

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

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

161 An insurer or insurance professional that takes an action
162 that adversely affects an applicant or insured on the basis of a



163 medical condition that the insurer or insurance professional knows
164 or has reason to know is abuse-related shall explain the reason
165 for its action to the applicant or insured in writing and shall
166 be able to demonstrate that its action and any applicable policy
167 provision:

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

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

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

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

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

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

191 **SECTION 7. Enforcement.**

192 The commissioner shall conduct a reasonable investigation
193 based on a written and signed complaint received by the
194 commissioner and shall issue a prompt determination as to whether
195 a 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 to
205 all other authority of the commissioner.

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

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

