

By: Representative Stevens

To: Insurance

HOUSE BILL NO. 648

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

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

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

17 SECTION 2. This act applies to all property and casualty
 18 insurers and insurance professionals involved in issuing or
 19 renewing in this state a policy of property and casualty
 20 insurance.

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

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

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

30 (ii) Knowingly engaging in a course of conduct or



31 repeatedly committing acts toward another person, including
32 following the person without proper authority, under circumstances
33 that place the person in reasonable fear of bodily injury or
34 physical harm;

35 (iii) Subjecting another person to false
36 imprisonment; or

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

40 (b) "Abuse-related claim" means a claim under a
41 property and casualty policy for a loss resulting from an act of
42 abuse.

43 (c) "Abuse status" means the fact or perception that a
44 natural person is, has been, or may be a subject of abuse,
45 irrespective of whether the natural person has incurred
46 abuse-related claims.

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

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

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

58 (g) "Insured" means the party named on a policy or
59 certificate as the individual with legal rights to the benefits
60 provided by such policy.

61 (h) "Insurer" means a person or other entity engaged in
62 the business of property and casualty insurance in this state.



63 (i) "Policy" means a contract of insurance, including
64 endorsements, riders or binders issued, proposed for issuance or
65 intended for issuance by an insurer or insurance professional.

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

72 SECTION 4. (1) It is unfairly discriminatory to deny,
73 refuse to issue, renew or reissue, cancel or otherwise terminate,
74 restrict or exclude coverage on or add a premium differential to a
75 property and casualty insurance policy on the basis of the
76 applicant's or insured's abuse status.

77 (2) (a) It is unfairly discriminatory to:

78 (i) Exclude or limit payment for a covered loss or
79 deny a covered claim incurred as a result of abuse by a person
80 other than a coinsured; or

81 (ii) Fail to pay losses arising out of abuse to an
82 innocent first party claimant to the extent of such claimants'
83 legal interest in the covered property if the loss is caused by
84 the intentional act of an insured, or using other exclusions or
85 limitations on coverage which the commissioner has determined
86 unreasonably restrict the ability of subjects of abuse to be
87 indemnified for such losses.

88 (b) This section shall not require payment in excess of
89 the loss or policy limits.

90 (c) Nothing in this act shall be construed to prohibit
91 an insurer or insurance professional from applying reasonable
92 standards of proof to claims under this section.

93 (3) When the insurer or insurance professional has
94 information in its possession that clearly indicates that the
95 insured, applicant or claimant is a subject of abuse, it is



96 unfairly discriminatory by a person employed by or contracting
97 with an insurer to disclose or transfer confidential abuse
98 information, as defined in this act, for any purpose or to any
99 person, except:

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

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

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

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

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

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

127 (iv) With respect to address and telephone number,
128 to entities with whom the insurer transacts business when the



129 business cannot be transacted without the address and telephone
130 number;

131 (d) To an attorney who needs the information to
132 represent the insurer or insurance professional effectively, if
133 the insurer or insurance professional notifies the attorney of its
134 obligations under this act and requests that the attorney exercise
135 due diligence to protect the confidential abuse information
136 consistent with the attorney's obligation to represent the insurer
137 or insurance professional; or

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

140 (4) It is unfairly discriminatory to request information
141 relating to acts of abuse or an applicant's or insured's abuse
142 status, or to make use of that information, however obtained,
143 except for the limited purposes of complying with legal
144 obligations or verifying a person's claim to be a subject of
145 abuse.

146 (5) Subsection (3) of this section does not preclude a
147 subject of abuse from obtaining his or her insurance records.

148 (6) Subsection (4) of this section does not prohibit a
149 property and casualty insurer from asking an applicant or insured
150 about a property and casualty claim, even if the claim is
151 abuse-related or from using information thereby obtained in
152 evaluating and carrying out its rights and duties under the
153 policy, to the extent otherwise permitted under this act and other
154 applicable law.

155 SECTION 5. An insurer or insurance professional that takes
156 an action not prohibited by Section 4 of this act that adversely
157 affects an applicant or insured on the basis of claim or other
158 underwriting information that the insurer or insurance
159 professional knows or has reason to know is abuse-related shall
160 explain the reason for its action to the applicant or insured in



161 writing and shall be able to demonstrate that its action and any
162 applicable policy provision:

163 (a) Does not have the purpose of treating abuse status
164 as an underwriting criterion; and

165 (b) Is otherwise permissible by law and applies in the
166 same manner and to the same extent to all applicants and insureds
167 with a similar claim or claims history without regard to whether
168 the claims are abuse-related.

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

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

192 SECTION 8. This act applies to all actions taken on or after
193 the effective date, except where otherwise explicitly stated.



194 Nothing in this act shall require an insurer or insurance
195 professional to conduct a comprehensive search of its contract
196 files existing on the effective date solely to determine which
197 applicants or insureds are subjects of abuse.

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

