

By: Representative Jones (111th)

To: Insurance

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 657

1 + AN ACT TO PROHIBIT UNFAIR DISCRIMINATION AGAINST SUBJECTS OF
2 ABUSE IN HEALTH BENEFIT PLANS; TO DEFINE CERTAIN TERMS; TO
3 PRESCRIBE UNFAIR DISCRIMINATORY ACTS RELATING TO HEALTH BENEFIT
4 PLANS; TO REQUIRE JUSTIFICATION OF ADVERSE INSURANCE DECISIONS
5 WHICH AFFECT AN APPLICANT OR INSURED ON THE BASIS OF A MEDICAL
6 CONDITION THAT THE HEALTH CARRIER KNOWS OR HAS REASON TO KNOW IS
7 ABUSE-RELATED; TO REQUIRE HEALTH CARRIERS 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; TO PROHIBIT
10 UNFAIR DISCRIMINATION IN LIFE INSURANCE AGAINST PERSONS WHO ARE
11 SUBJECTS OF ABUSE; TO DEFINE CERTAIN TERMS; TO PRESCRIBE UNFAIR
12 DISCRIMINATORY ACTS RELATING TO LIFE INSURANCE; TO REQUIRE
13 JUSTIFICATION OF ADVERSE INSURANCE DECISIONS WHICH AFFECT AN
14 APPLICANT OR INSURED ON THE BASIS OF A MEDICAL CONDITION THAT THE
15 INSURER KNOWS OR HAS REASON TO KNOW IS ABUSE-RELATED; TO REQUIRE
16 INSURERS TO DEVELOP AND ADHERE TO PROTOCOLS FOR PERSONS WHO ARE
17 SUBJECTS OF ABUSE; TO AUTHORIZE THE COMMISSIONER OF INSURANCE TO
18 ENFORCE THE PROVISIONS OF THIS ACT; TO PROHIBIT UNFAIR
19 DISCRIMINATION AGAINST SUBJECTS OF ABUSE IN DISABILITY INCOME
20 INSURANCE; TO DEFINE CERTAIN TERMS; TO PRESCRIBE UNFAIR
21 DISCRIMINATORY ACTS RELATING TO DISABILITY INCOME INSURANCE; TO
22 REQUIRE JUSTIFICATION OF ADVERSE INSURANCE DECISIONS WHICH AFFECT
23 AN APPLICANT OR INSURED ON THE BASIS OF A MEDICAL CONDITION THAT
24 THE INSURER KNOWS OR HAS REASON TO KNOW IS ABUSE-RELATED; TO
25 REQUIRE INSURERS TO DEVELOP AND ADHERE TO PROTOCOLS FOR SUBJECTS
26 OF ABUSE; TO AUTHORIZE THE COMMISSIONER OF INSURANCE TO ENFORCE
27 THE PROVISIONS OF THIS ACT; TO AMEND SECTION 83-5-35, MISSISSIPPI
28 CODE OF 1972, TO CONFORM TO THE PROVISIONS OF THIS ACT; AND FOR
29 RELATED PURPOSES.

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

31 **SECTION 1.** The purpose of Sections 1 through 8 of this act
32 is to prohibit unfair discrimination by health carriers and
33 insurance professionals on the basis of abuse status. Nothing in
34 Sections 1 through 8 of this act shall be construed to create or
35 imply a private cause of action for a violation of Sections 1
36 through 8 of this act.

37 **SECTION 2.** Sections 1 through 8 of this act apply to all
38 health carriers and insurance professionals involved in issuing or



39 renewing in this state a policy or certificate of health
40 insurance.

41 **SECTION 3.** As used in Sections 1 through 8 of this act,
42 unless the context clearly indicates otherwise:

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

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

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

55 (iii) Subjecting another person to false
56 imprisonment; or

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

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

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

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

68 (e) "Confidential abuse information" means information
69 about acts of abuse or abuse status of a subject of abuse, a
70 person's medical condition that the carrier knows or has reason to
71 know is abuse-related, the address and telephone number (home and



72 work) of a subject of abuse or the status of an applicant or
73 insured as a family member, employer or associate of, or a person
74 in a relationship with, a subject of abuse.

75 (f) "Health benefit plan" or "plan" means a policy,
76 contract, certificate or agreement offered by a carrier or
77 insurance professional to provide, deliver, arrange for, pay for
78 or reimburse any of the costs of health care services. Health
79 benefit plan includes accident only, credit health, dental,
80 vision, Medicare supplement or long-term care insurance, coverage
81 issued as a supplement to liability insurance, short-term and
82 catastrophic health insurance policies and a policy that pays on a
83 cost-incurred basis. Health benefit plan does not include
84 workers' compensation or similar insurance.

85 (g) "Health carrier" means an entity subject to the
86 insurance laws and regulations of this state, or subject to the
87 jurisdiction of the commissioner, that contracts or offers to
88 contract to provide, deliver, arrange for, pay for or reimburse
89 any of the costs of health care services, including a sickness and
90 accident insurance company, a health maintenance organization, a
91 nonprofit hospital and health service corporation or any other
92 entity providing a plan of health insurance, health benefits or
93 health services.

94 (h) "Insurance professional" means an agent, insurance
95 producer, adjuster or third-party administrator as defined in the
96 insurance laws of this state.

97 (i) "Insured" means a party named on a health benefit
98 plan as the person with legal rights to the benefits provided by
99 the health benefit plan. For group plans, "insured" includes a
100 person who is a beneficiary covered by a group health benefit
101 plan.

102 (j) "Subject of abuse" means a person: against whom an
103 act of abuse has been directed; who has current or prior injuries,
104 illnesses or disorders that resulted from abuse; or who seeks, may



105 have sought or had reason to seek medical or psychological
106 treatment for abuse, or protection, court-ordered protection or
107 shelter from abuse.

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

109 (a) Deny, refuse to issue, renew or reissue, cancel or
110 otherwise terminate a health benefit plan or restrict or exclude
111 health benefit plan coverage or add a premium differential to any
112 health benefit plan on the basis of the applicant's or insured's
113 abuse status; or

114 (b) Exclude or limit coverage for losses or deny a
115 claim incurred by an insured on the basis of the insured's abuse
116 status;

117 (2) When the health carrier or insurance professional has
118 information in its possession that clearly indicates that the
119 insured or applicant is a subject of abuse, the disclosure or
120 transfer of the confidential abuse information by a person
121 employed by or contracting with a health carrier or insurance
122 professional for any purpose or to any person is unfairly
123 discriminatory, except disclosure or transfer:

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

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

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

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

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

135 Confidential abuse information may be disclosed only if the
136 recipient has executed a written agreement to be bound by the
137 prohibitions of Sections 1 through 8 of this act in all respects



138 and to be subject to the enforcement of Sections 1 through 8 of
139 this act by the courts of this state for the benefit of the
140 applicant or the insured and only to the following persons:

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

145 (ii) A party to a proposed or consummated sale,
146 transfer, merger or consolidation of all or part of the business
147 of the health carrier or insurance professional;

148 (iii) Medical or claims personnel contracting
149 with the health carrier or insurance professional, only where
150 necessary to process an application or perform the health
151 carrier's or insurance professional's duties under the policy or
152 to protect the safety or privacy of a subject of abuse (also
153 includes parent or affiliate companies of the health carrier or
154 insurance professional that have service agreements with the
155 health carrier or insurance professional); or

156 (iv) With respect to address and telephone number,
157 to entities with whom the health carrier or insurance professional
158 transacts business when the business cannot be transacted without
159 the address and telephone number;

160 (f) To an attorney who needs the information to
161 represent the health carrier or insurance professional
162 effectively, if the health carrier or insurance professional
163 notifies the attorney of its obligations under Sections 1 through
164 8 of this act and requests that the attorney exercise due
165 diligence to protect the confidential abuse information consistent
166 with the attorney's obligation to represent the health carrier or
167 insurance professional;

168 (g) To the policy owner or assignee, in the course of
169 delivery of the policy, if the policy contains information about
170 abuse status; or



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

173 (3) It is unfairly discriminatory to request information
174 relating to acts of abuse or an applicant's or insured's abuse
175 status or make use of that information, however obtained, except
176 for the limited purposes of complying with legal obligations or
177 verifying a person's claim to be a subject of abuse.

178 (4) It is unfairly discriminatory to terminate group
179 coverage for a subject of abuse because coverage was originally
180 issued in the name of the abuser and the abuser has divorced,
181 separated from or lost custody of the subject of abuse or the
182 abuser's coverage has terminated voluntarily or involuntarily.
183 Nothing in this subsection prohibits the health carrier or
184 insurance professional from requiring the subject of abuse to pay
185 the full premium for coverage under the health plan or from
186 requiring as a condition of coverage that the subject of abuse
187 reside or work within its service area, if the requirements are
188 applied to all insureds of the health carrier or insurance
189 professional. The health carrier or insurance professional may
190 terminate group coverage after the continuation coverage required
191 by this subsection has been in force for eighteen (18) months, if
192 it offers conversion to an equivalent individual plan. The
193 continuation coverage required by this section shall be satisfied
194 by coverage required under Public Law 99-272, the Consolidated
195 Omnibus Budget Reconciliation Act (COBRA) of 1985, provided to a
196 subject of abuse and is not intended to be in addition to coverage
197 provided under COBRA.

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

200 (6) Subsection (3) of this section does not prohibit a
201 health carrier or insurance professional from asking about a
202 medical condition or from using medical information to underwrite
203 or to carry out its duties under the policy, even if the medical



204 information is related to a medical condition that the insurer or
205 insurance professional knows or has reason to know is
206 abuse-related, to the extent otherwise permitted under this act
207 and other applicable law.

208 **SECTION 5.** A health carrier or insurance professional that
209 takes an action that adversely affects an applicant or insured on
210 the basis of a medical condition that the health carrier or
211 insurance professional knows or has reason to know is
212 abuse-related shall explain the reason for its action to the
213 applicant or insured in writing and shall be able to demonstrate
214 that its action, and any applicable plan provision:

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

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

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

223 (d) Except for claim actions, is based on a
224 determination, made in conformance with sound actuarial principles
225 and supported by reasonable statistical evidence, that there is a
226 correlation between the medical condition and a material increase
227 in insurance risk.

228 **SECTION 6.** Health carriers shall develop and adhere to
229 written policies specifying procedures to be followed by employees
230 and by insurance professionals they contract with for the purpose
231 of protecting the safety and privacy of a subject of abuse and
232 shall otherwise implement the provisions of Sections 1 through 8
233 of this act when taking an application, investigating a claim,
234 pursuing subrogation or taking any other action relating to a
235 policy or claim involving a subject of abuse. Insurers shall



236 distribute their written policies to employees and insurance
237 professionals.

238 **SECTION 7.** The commissioner shall conduct a reasonable
239 investigation based on a written and signed complaint received by
240 the commissioner and shall issue a prompt determination as to
241 whether a violation of Sections 1 through 8 of this act may have
242 occurred. If the commissioner finds from the investigation that a
243 violation of Sections 1 through 8 of this act may have occurred,
244 the commissioner shall promptly begin an adjudicatory proceeding.
245 The commissioner may address a violation through means appropriate
246 to the nature and extent of the violation, which may include
247 suspension or revocation of certificates of authority or licenses,
248 imposition of civil penalties, issuance of cease and desist
249 orders, injunctive relief, a requirement for restitution, referral
250 to prosecutorial authorities or any combination of these. The
251 powers and duties set forth in this section are in addition to all
252 other authority of the commissioner.

253 **SECTION 8.** Sections 1 through 8 of this act apply to every
254 health benefit plan or plan that is issued, reissued, renewed or
255 continued on or after July 1, 2010, and to every application that
256 is submitted on or after July 1, 2010, for coverage under a health
257 benefit plan or plan.

258 **SECTION 9.** The purpose of Sections 9 through 16 of this act
259 is to prohibit unfair discrimination by life insurers or insurance
260 professionals on the basis of abuse status. Nothing in Sections 9
261 through 16 of this act shall be construed to create or imply a
262 private cause of action for a violation of Sections 9 through 16
263 of this act.

264 **SECTION 10.** Sections 9 through 16 of this act apply to all
265 life insurers and insurance professionals involved in issuing or
266 renewing in this state a policy or certificate of life insurance.

267 **SECTION 11.** As used in Sections 9 through 16 of this act,
268 unless the context clearly indicates otherwise:



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

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

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

281 (iii) Subjecting another person to false
282 imprisonment; or

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

286 (b) "Abuse-related medical condition" means a medical
287 condition sustained by a subject of abuse which arises, in whole
288 or in part, out of abuse.

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

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

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



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

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

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

307 (i) "Policy" or "certificate" means a contract of
308 insurance or annuity including endorsements, riders or binders
309 issued, proposed for issuance or intended for issuance by an
310 insurer or insurance professional.

311 (j) "Subject of abuse" means a person: against whom an
312 act of abuse has been directed; who has current or prior injuries,
313 illnesses or disorders that resulted from abuse; or who seeks, may
314 have sought or had reason to seek medical or psychological
315 treatment for abuse or protection, court-ordered protection or
316 shelter from abuse.

317 **SECTION 12.** (1) It is unfairly discriminatory to:

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

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

327 (2) When the insurer or insurance professional has
328 information in its possession that clearly indicates that the
329 insured or applicant is a subject of abuse, the disclosure or
330 transfer of confidential abuse information by a person employed by
331 or contracting with an insurer or insurance professional for any



332 purpose or to any person is unfairly discriminatory, except
333 disclosure or transfer:

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

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

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

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

342 (e) When necessary for a valid business purpose to
343 transfer information that includes confidential abuse information
344 that cannot reasonably be segregated without undue hardship.
345 Confidential abuse information may be disclosed only if the
346 recipient has executed a written agreement to be bound by the
347 prohibitions of Sections 9 through 16 of this act in all respects
348 and to be subject to the enforcement of Sections 9 through 16 of
349 this act by the courts of this state for the benefit of the
350 applicant or the insured, and only to the following persons:

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

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

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



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

369 (f) To an attorney who needs the information to
370 represent the insurer or insurance professional effectively, if
371 the insurer or insurance professional notifies the attorney of its
372 obligations under Sections 9 through 16 of this act and requests
373 that the attorney exercise due diligence to protect the
374 confidential abuse information consistent with the attorney's
375 obligation to represent the insurer or insurance professional;

376 (g) To the policyowner or assignee, in the course of
377 delivery of the policy, if the policy contains information about
378 abuse status; or

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

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

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

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

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

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

396 (c) The insured or prospective insured is a subject of
397 abuse, and that person, or a person who has assumed the care of



398 that person if a minor or incapacitated, has objected to the
399 issuance of the policy on the ground that the policy would be
400 issued to or for the direct or indirect benefit of the abuser.

401 (6) Subsection (3) of this section does not prohibit an
402 insurer or insurance professional from asking about a medical
403 condition or from using medical information to underwrite or to
404 carry out its duties under the policy, even if the medical
405 information is related to a medical condition that the insurer or
406 insurance professional knows or has reason to know is
407 abuse-related, to the extent otherwise permitted under Sections 9
408 through 16 of this act and other applicable law.

409 (7) An insurer or insurance professional shall not be held
410 civilly or criminally liable for the death of or injury to an
411 insured resulting from any action taken in a good faith effort to
412 comply with the requirements of Sections 9 through 16 of this act.
413 However, this subsection does not prevent an action to investigate
414 or enforce a violation of Sections 9 through 16 of this act or to
415 assert any other claims authorized by law.

416 **SECTION 13.** An insurer or insurance professional that takes
417 an action that adversely affects an applicant or insured on the
418 basis of a medical condition that the insurer or insurance
419 professional knows or has reason to know is abuse-related shall
420 explain the reason for its action to the applicant or insured in
421 writing and shall be able to demonstrate that its action, and any
422 applicable policy provision:

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

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

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



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

436 **SECTION 14.** Insurers shall develop and adhere to written
437 policies specifying procedures to be followed by employees and by
438 insurance professionals with which they contract for the purpose
439 of protecting the safety and privacy of a subject of abuse and
440 shall otherwise implement the provisions of Sections 9 through 16
441 of this act when taking an application, investigating a claim,
442 pursuing subrogation or taking any other action relating to a
443 policy or claim involving a subject of abuse. Insurers shall
444 distribute their written policies to employees and insurance
445 professionals.

446 **SECTION 15.** The commissioner shall conduct a reasonable
447 investigation based on a written and signed complaint received by
448 the commissioner and shall issue a prompt determination as to
449 whether a violation of Sections 9 through 16 of this act may have
450 occurred. If the commissioner finds from the investigation that a
451 violation of Sections 9 through 16 of this act may have occurred,
452 the commissioner shall promptly begin an adjudicatory proceeding.
453 The commissioner may address a violation through means appropriate
454 to the nature and extent of the violation, which may include
455 suspension or revocation of certificates of authority or licenses,
456 imposition of civil penalties, issuance of cease and desist
457 orders, injunctive relief, a requirement for restitution, referral
458 to prosecutorial authorities or any combination of these. The
459 powers and duties set forth in this section are in addition to all
460 other authority of the commissioner.

461 **SECTION 16.** Sections 9 through 16 of this act apply to every
462 policy or certificate that is issued, reissued, renewed or
463 continued on or after July 1, 2010, and to every application that



464 is submitted on or after July 1, 2010, for coverage under a policy
465 or certificate.

466 **SECTION 17.** The purpose of Sections 17 through 24 of this
467 act is to prohibit unfair discrimination by disability income
468 insurers and insurance professionals on the basis of abuse status.
469 Nothing in Sections 17 through 24 of this act shall be construed
470 to create or imply a private cause of action for a violation of
471 Sections 17 through 24 of this act.

472 **SECTION 18.** Sections 17 through 24 of this act apply to all
473 disability income insurers and insurance professionals involved in
474 issuing or renewing in this state a policy or certificate of
475 disability income insurance.

476 **SECTION 19.** As used in Sections 17 through 24 of this act,
477 unless the context clearly indicates otherwise:

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

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

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

490 (iii) Subjecting another person to false
491 imprisonment; or

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



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

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

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

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

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

512 (g) "Insured" means a party named on a disability
513 income policy or certificate as the person with legal rights to
514 the benefits provided by the policy or certificate. For group
515 insurance, "insured" includes a person who is a beneficiary
516 covered by a group policy or certificate.

517 (h) "Insurer" means a person or other legal entity
518 engaged in the business of disability income insurance in this
519 state.

520 (i) "Policy" or "certificate" means a contract of
521 insurance or indemnity, including endorsements, riders or binders
522 issued, proposed for issuance or intended for issuance by an
523 insurer or insurance professional.

524 (j) "Subject of abuse" means a person: against whom an
525 act of abuse has been directed; who has current or prior injuries,
526 illnesses or disorders that resulted from abuse; or who seeks, may
527 have sought or had reason to seek medical or psychological



528 treatment for abuse or protection, court-ordered protection or
529 shelter from abuse.

530 **SECTION 20.** (1) It is unfairly discriminatory to:

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

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

538 (2) When the insurer or insurance professional has
539 information in its possession that clearly indicates that the
540 insured or applicant is a subject of abuse, the disclosure or
541 transfer of confidential abuse information for any purpose or to
542 any person is unfairly discriminatory, except disclosure or
543 transfer:

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

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

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

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

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

555 Confidential abuse information may be disclosed only if the
556 recipient has executed a written agreement to be bound by the
557 prohibitions of Sections 17 through 24 of this act in all respects
558 and to be subject to the enforcement of Sections 17 through 24 of
559 this act by the courts of this state for the benefit of the
560 applicant or insured and only to the following persons:



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

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

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

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

579 (f) To an attorney who needs the information to
580 represent the insurer or insurance professional effectively,
581 provided the insurer or insurance professional notifies the
582 attorney of its obligations under Sections 17 through 24 of this
583 act and requests that the attorney exercise due diligence to
584 protect the confidential abuse information consistent with the
585 attorney's obligation to represent the insurer or insurance
586 professional;

587 (g) To the policyowner or assignee, in the course of
588 delivery of the policy, if the policy contains information about
589 the abuse status; or

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



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

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

597 (5) Subsection (3) of this section does not prohibit a
598 disability income insurer or insurance professional from asking
599 about a medical condition or from using medical information to
600 underwrite or to carry out its duties under the policy, even if
601 the medical information is related to a medical condition that the
602 insurer knows or has reason to know is abuse-related, to the
603 extent otherwise permitted under Sections 17 through 24 of this
604 act and other applicable law.

605 (6) A disability income insurer or insurance professional
606 shall not be held civilly or criminally liable for the death of or
607 injury to an insured resulting from an action taken in a good
608 faith effort to comply with the requirements of Sections 17
609 through 24 of this act. However, this subsection does not prevent
610 an action to investigate or enforce a violation of Sections 17
611 through 24 of this act or to assert any other claims authorized by
612 law.

613 **SECTION 21.** An insurer or insurance professional that takes
614 an action that adversely affects an applicant or insured on the
615 basis of a medical condition that the insurer or insurance
616 professional knows or has reason to know is abuse-related shall
617 explain the reason for its action to the applicant or insured in
618 writing and shall be able to demonstrate that its action and any
619 applicable policy provision:

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

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



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

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

633 **SECTION 22.** Insurers shall develop and adhere to written
634 policies specifying procedures to be followed by employees and by
635 insurance professionals they contract with for the purpose of
636 protecting the safety and privacy of a subject of abuse and shall
637 otherwise implement the provisions of Sections 17 through 24 of
638 this act when taking an application, investigating a claim,
639 pursuing subrogation or taking any other action relating to a
640 policy or claim involving a subject of abuse. Insurers shall
641 distribute their written policies to employees and insurance
642 professionals.

643 **SECTION 23.** The commissioner shall conduct a reasonable
644 investigation based on a written and signed complaint received by
645 the commissioner and shall issue a prompt determination as to
646 whether a violation of Sections 17 through 24 of this act may have
647 occurred. If the commissioner finds from the investigation that a
648 violation of Sections 17 through 24 of this act may have occurred,
649 the commissioner shall promptly begin an adjudicatory proceeding.
650 The commissioner may address a violation through means appropriate
651 to the nature and extent of the violation, which may include
652 suspension or revocation of certificates of authority or licenses,
653 imposition of civil penalties, issuance of cease and desist
654 orders, injunctive relief, a requirement for restitution, referral
655 to prosecutorial authorities or any combination of these. The



656 powers and duties set forth in this section are in addition to all
657 other authority of the commissioner.

658 **SECTION 24.** Sections 17 through 24 of this act apply to
659 every policy or certificate that is issued, reissued, renewed or
660 continued on or after July 1, 2010, and to every application that
661 is submitted on or after July 1, 2010, for coverage under a policy
662 or certificate.

663 **SECTION 25.** Section 83-5-35, Mississippi Code of 1972, is
664 amended as follows:

665 83-5-35. The following are hereby defined as unfair methods
666 of competition and unfair and deceptive acts or practices in the
667 business of insurance:

668 (a) **Misrepresentations and false advertising of policy**
669 **contracts.** Making, issuing, circulating, or causing to be made,
670 issued, or circulated, any estimate, illustration, circular, or
671 statement misrepresenting the terms of any policy issued or to be
672 issued, or the benefits or advantages promised thereby, or the
673 dividends or share of the surplus to be received thereon; or
674 making any false or misleading statement as to the dividends or
675 share of surplus previously paid on similar policies; or making
676 any misleading representation or any misrepresentation as to the
677 financial condition of any insurer, or as to the legal reserve
678 system upon which any life insurer operates; or using any name or
679 title of any policy or class of policies misrepresenting the true
680 nature thereof; or making any misrepresentation to any
681 policyholder insured in any company for the purpose of inducing or
682 tending to induce such policyholder to lapse, forfeit, or
683 surrender his insurance.

684 (b) **False information and advertising generally.**
685 Making, publishing, disseminating, circulating, or placing before
686 the public, or causing, directly or indirectly, to be made,
687 published, disseminated, circulated, or placed before the public,
688 in a newspaper, magazine, or other publication, or in the form of



689 a notice, circular, pamphlet, letter, or poster, or over any radio
690 or television station, or in any other way, an advertisement,
691 announcement, or statement containing any assertion,
692 representation, or statement with respect to the business of
693 insurance, or with respect to any person in the conduct of his
694 insurance business, which is untrue, deceptive, or misleading.

695 (c) **Defamation.** Making, publishing, disseminating, or
696 circulating, directly or indirectly, or aiding, abetting, or
697 encouraging the making, publishing, disseminating, or circulating
698 of any oral or written statement or any pamphlet, circular,
699 article, or literature which is false and maliciously critical of
700 or derogatory to the financial condition of an insurer, and which
701 is calculated to injure any person engaged in the business of
702 insurance.

703 (d) **Boycott, coercion and intimidation.** Entering into
704 any agreement to commit, or by any concerted action committing,
705 any act of boycott, coercion, or intimidation resulting in or
706 tending to result in unreasonable restraint of, or monopoly in,
707 the business of insurance.

708 (e) **False financial statements.** Filing with any
709 supervisory or other public official, or making, publishing,
710 disseminating, circulating, or delivering to any person, or
711 placing before the public, or causing directly or indirectly to be
712 made, published, disseminated, circulated, delivered to any
713 person, or placed before the public, any false statement of
714 financial condition of an insurer, with intent to deceive.

715 Making any false entry in any book, report, or statement of
716 any insurer with intent to deceive any agent or examiner lawfully
717 appointed to examine into its condition or into any of its
718 affairs, or any public official to whom such insurer is required
719 by law to report or file, or who has authority by law to examine
720 into its condition or into any of its affairs, or, with like
721 intent, willfully omitting to make a true entry of any material



722 fact pertaining to the business of such insurer in any book,
723 report, or statement of such insurer.

724 (f) **Stock operations and insurance company advisory**
725 **board contracts.** Issuing or delivering, or permitting agents,
726 officers, or employees to issue or deliver, agency company stock
727 or other capital stock, or benefit certificates or shares in any
728 corporation, or securities, or any special or any insurance
729 company advisory board contracts or other contracts of any kind
730 promising returns and profit as an inducement to insurance.

731 (g) **Unfair discrimination.** (i) Making or permitting
732 any unfair discrimination between individuals of the same class
733 and equal expectation of life in the rates charged for any
734 contract of life insurance or of life annuity or in the dividends
735 or other benefits payable thereon, or in any other of the terms
736 and conditions of such contract.

737 (ii) Making or permitting any unfair
738 discrimination between individuals of the same class and of
739 essentially the same hazard in the amount of premium, policy fees,
740 or rates charged for any policy or contract of accident or health
741 insurance or in the benefits payable thereunder, or in any of the
742 terms or conditions of such contract, or in any other manner
743 whatever.

744 (iii) Any violation of Section 4, 12 or 20 of this
745 act.

746 (h) **Designation of agent, solicitor, or insurer.**
747 Requiring as a condition precedent to the purchase or the lending
748 of money upon the security of real or personal property that any
749 insurance covering such property or liability arising from the
750 ownership, maintenance, or use thereof, to be procured by or on
751 behalf of the vendee or by borrower in connection with such
752 purchase or loan, be so procured through any particular person,
753 agent, solicitor, or in any particular insurer.



754 This section shall not prevent the reasonable exercise by any
755 such vendor or lender of his right to approve or disapprove the
756 insurer selected to underwrite the insurance, and to determine the
757 adequacy of the insurance offered.

758 (i) Any violation of Sections 83-3-33 and 83-3-121,
759 Mississippi Code of 1972.

760 **SECTION 26.** This act shall take effect and be in force from
761 and after July 1, 2010.

