

By: Blackmon

To: Insurance

SENATE BILL NO. 3038

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

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

11 SECTION 1. **Purpose.**

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

16 SECTION 2. **Scope.**

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

20 SECTION 3. **Definitions.**

21 As used in this act, unless the context clearly indicates
 22 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 medical condition" means a medical
41 condition sustained by a subject of abuse which arises in whole or
42 part out of an act or pattern of abuse.

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

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

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

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

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

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

61 (i) "Policy" or "certificate" means a contract of
62 insurance or annuity, including endorsements, riders or binders

63 issued, proposed for issuance, or intended for issuance by an
64 insurer or insurance professional.

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

71 **SECTION 4. Unfairly Discriminatory Acts Relating to Life**
72 **Insurance.**

73 (1) It is unfairly discriminatory to:

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

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

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

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

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

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

95 (d) When ordered by the commissioner or a court of

96 competent jurisdiction or otherwise required by law;

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

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

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

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

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

124 (f) To an attorney who needs the information to
125 represent the insurer or insurance professional effectively,
126 provided the insurer or insurance professional notifies the
127 attorney of its obligations under this act and requests that the
128 attorney exercise due diligence to protect the confidential abuse

129 information consistent with the attorney's obligation to represent
130 the insurer or insurance professional;

131 (g) To the policyowner or assignee, in the course of
132 delivery of the policy, if the policy contains information about
133 abuse status; or

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

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

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

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

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

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

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

155 (6) Subsection (3) does not prohibit a life insurer or
156 insurance professional from asking about a medical condition or
157 from using medical information to underwrite or to carry out its
158 duties under the policy, even if the medical information is
159 related to a medical condition that the insurer or insurance
160 professional knows or has reason to know is abuse-related, to the
161 extent otherwise permitted under this act and other applicable

162 law.

163 (7) A life insurer or insurance professional shall not be
164 held civilly or criminally liable for the death of or injury to an
165 insured resulting from any action taken in a good faith effort to
166 comply with the requirements of this act. However, this
167 subsection does not prevent an action to investigate or enforce a
168 violation of this act or to assert any other claims authorized by
169 law.

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

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

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

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

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

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

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

192 Insurers shall develop and adhere to written policies
193 specifying procedures to be followed by employees and by insurance
194 professionals they contract with, for the purpose of protecting

195 the safety and privacy of a subject of abuse and shall otherwise
196 implement the provisions of this act when taking an application,
197 investigating a claim, pursuing subrogation or taking any other
198 action relating to a policy or claim involving a subject of abuse.

199 Insurers shall distribute their written policies to employees and
200 insurance professionals.

201 SECTION 7. **Enforcement.**

202 The commissioner shall conduct a reasonable investigation
203 based on a written and signed [add any means by which the
204 commissioner receives complaints] complaint received by the
205 commissioner and issue a prompt determination as to whether a
206 violation of this act may have occurred. If the commissioner
207 finds from the investigation that a violation of this act may have
208 occurred, the commissioner shall promptly begin an adjudicatory
209 proceeding. The commissioner may address a violation through
210 means appropriate to the nature and extent of the violation, which
211 may include suspension or revocation of certificates of authority
212 or licenses, imposition of civil penalties, issuance of cease and
213 desist orders, injunctive relief, a requirement for restitution,
214 referral to prosecutorial authorities or any combination of these.

215 The powers and duties set forth in this section are in addition
216 to all other authority of the commissioner.

217 SECTION 8. This act is effective July 1, 2000, and applies
218 to all actions taken on or after the effective date, except where
219 otherwise explicitly stated. Nothing in this act shall require
220 the insurer or insurance professional to conduct a comprehensive
221 search of its contract files existing on the effective date solely
222 to determine which applicants or insureds are subjects of abuse.