

By: Blackmon

To: Insurance

SENATE BILL NO. 3041

1 AN ACT TO PROHIBIT UNFAIR DISCRIMINATION AGAINST SUBJECTS OF
2 ABUSE IN PROPERTY AND CASUALTY INSURANCE; TO DEFINE CERTAIN TERMS;
3 TO PRESCRIBE UNFAIRLY DISCRIMINATORY ACTS RELATING TO PROPERTY AND
4 CASUALTY INSURANCE; TO REQUIRE JUSTIFICATION OF ADVERSE INSURANCE
5 DECISIONS WHICH AFFECT AN APPLICANT OR INSURED ON THE BASIS OF
6 CLAIM OR OTHER UNDERWRITING INFORMATION THAT THE INSURER KNOWS OR
7 HAS REASON TO KNOW IS ABUSE-RELATED; TO REQUIRE INSURERS TO
8 DEVELOP AND ADHERE TO PROTOCOLS FOR SUBJECTS OF ABUSE; TO
9 AUTHORIZE THE COMMISSIONER OF INSURANCE TO ENFORCE THE PROVISIONS
10 OF THIS ACT; AND FOR RELATED 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 property and casualty insurers and insurance professionals on
15 the basis of abuse status. Nothing in this act shall be construed
16 to create or imply a private cause of action for a violation of
17 this act.

18 SECTION 2. **Scope.**

19 This act applies to all property and casualty insurers and
20 insurance professionals involved in issuing or renewing in this
21 state a policy of property and casualty 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 claim" means a claim under a
43 property and casualty policy for a loss resulting from an act of
44 abuse.

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

49 (d) "Commissioner" means the Commissioner of Insurance
50 of the State of Mississippi.

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

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

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

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

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

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

74 SECTION 4. **Unfairly Discriminatory Acts Relating to Property**
75 **and Casualty Insurance.**

76 (1) It is unfairly discriminatory to deny, refuse to issue,
77 renew or reissue; to cancel or otherwise terminate; restrict or
78 exclude coverage on or to add a premium differential to a property
79 and casualty insurance policy on the basis of the applicant's or
80 insured's abuse status.

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

82 (i) Exclude or limit payment for a covered loss or
83 deny a covered claim incurred as a result of abuse by a person
84 other than a co-insured; or

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

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

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

97 (3) When the insurer or insurance professional has
98 information in its possession that clearly indicates that the
99 insured, applicant or claimant is a subject of abuse, it is
100 unfairly discriminatory, by a person employed by or contracting

101 with an insurer, to disclose or transfer confidential abuse
102 information, as defined in this act, for any purpose or to any
103 person, except:

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

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

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

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

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

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

131 (iv) With respect to address and telephone number,
132 to entities with whom the insurer transacts business when the
133 business cannot be transacted without the address and telephone

134 number;

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

142 (e) To any other entities deemed appropriate by the
143 commissioner.

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

150 (5) Subsection (3) does not preclude a subject of abuse from
151 obtaining his or her insurance records.

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

158 SECTION 5. Justification of Adverse Insurance Decisions.

159 An insurer or insurance professional that takes an action not
160 prohibited by Section 4 of this act that adversely affects an
161 applicant or insured on the basis of claim or other underwriting
162 information that the insurer or insurance professional knows or
163 has reason to know is abuse-related shall explain the reason for
164 its action to the applicant or insured in writing and shall be
165 able to demonstrate that its action, and any applicable policy
166 provision:

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

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

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

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

181 Insurers shall distribute their written policies to employees and
182 insurance professionals.

183 **SECTION 7. Enforcement.**

184 The commissioner shall conduct a reasonable investigation
185 based on a written and signed complaint received by the
186 commissioner and issue a prompt determination as to whether a
187 violation of this act may have occurred. If the commissioner
188 finds from the investigation that a violation of this act may have
189 occurred, the commissioner shall promptly begin an adjudicatory
190 proceeding. The commissioner may address a violation through
191 means appropriate to the nature and extent of the violation, which
192 may include suspension or revocation of certificates of authority
193 or licenses, imposition of civil penalties, issuance of cease and
194 desist orders, injunctive relief, a requirement for restitution,
195 referral to prosecutorial authorities or any combination of these.

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

198 SECTION 8. This act is effective July 1, 2000, and applies
199 to all actions taken on or after the effective date, except where

200 otherwise explicitly stated. Nothing in this act shall require an
201 insurer or insurance professional to conduct a comprehensive
202 search of its contract files existing on the effective date solely
203 to determine which applicants or insureds are subjects of abuse.