

104TH CONGRESS
1ST SESSION

H. R. 2654

To prevent discrimination against victims of abuse in all lines of insurance.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 16, 1995

Mr. SANDERS (for himself, Mrs. MORELLA, Mr. WYDEN, and Mr. DEFAZIO) introduced the following bill; which was referred to the Committee on Commerce, and in addition to the Committee on Economic and Educational Opportunities, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To prevent discrimination against victims of abuse in all
lines of insurance.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Victims of Abuse
5 Insurance Protection Act”.

6 **SEC. 2. DEFINITIONS.**

7 As used in this Act:

8 (1) The term “abuse” means the occurrence of
9 one or more of the following acts between household

1 or family (including in-laws or extended family)
2 members, spouses or former spouses, or individuals
3 engaged in or formerly engaged in a sexually inti-
4 mate relationship:

5 (A) Attempting to cause or intentionally,
6 knowingly, or recklessly causing another person
7 bodily injury, physical harm, substantial emo-
8 tional distress, psychological trauma, rape, sex-
9 ual assault, or involuntary sexual intercourse.

10 (B) Engaging in a course of conduct or re-
11 peatedly committing acts toward another per-
12 son, including following the person without
13 proper authority and under circumstances that
14 place the person in reasonable fear of bodily in-
15 jury or physical harm.

16 (C) Subjecting another person to false im-
17 prisonment or kidnapping.

18 (D) Attempting to cause or intentionally,
19 knowingly, or recklessly causing damage to
20 property so as to intimidate or attempt to con-
21 trol the behavior of another person.

22 (2) The term “abuse-related medical condition”
23 means a medical condition which arises in whole or
24 in part out of an action or pattern of abuse.

1 (3) The term “abuse status” means the fact or
2 perception that a person is, has been, or may be a
3 subject of abuse, irrespective of whether the person
4 has sustained abuse-related medical conditions or
5 has incurred abuse-related claims.

6 (4) The term “health benefit plan” means any
7 public or private entity or program that provides for
8 payments for health care, including—

9 (A) a group health plan (as defined in sec-
10 tion 607 of the Employee Retirement Income
11 Security Act of 1974) or a multiple employer
12 welfare arrangement (as defined in section
13 3(40) of such Act) that provides health bene-
14 fits;

15 (B) any other health insurance arrange-
16 ment, including any arrangement consisting of
17 a hospital or medical expense incurred policy or
18 certificate, hospital or medical service plan con-
19 tract, or health maintenance organization sub-
20 scriber contract;

21 (C) workers’ compensation or similar in-
22 surance to the extent that it relates to workers’
23 compensation medical benefits (as defined by
24 the Federal Trade Commission); and

1 (D) automobile medical insurance to the
2 extent that it relates to medical benefits (as de-
3 fined by the Federal Trade Commission).

4 (5) The term “health carrier” means a person
5 that contracts or offers to contract on a risk-assum-
6 ing basis to provide, deliver, arrange for, pay for or
7 reimburse any of the cost of health care services un-
8 less the person assuming the risk is accepting the
9 risk from a duly licensed health carrier.

10 (6) The term “insured” means a party named
11 on a policy, certificate, or health benefit plan as the
12 person with legal rights to the benefits provided by
13 the policy, certificate, or health benefit plan. For
14 group insurance, such term includes a person who is
15 a beneficiary covered by a group policy, certificate,
16 or health benefit plan.

17 (7) The term “insurer” means any person, re-
18 ciprocal exchange, interinsurer, Lloyds insurer, fra-
19 ternal benefit society, or other legal entity engaged
20 in the business of insurance, including agents, bro-
21 kers, adjusters, and third party administrators. The
22 term also includes health carriers, health benefit
23 plans, and life, disability, and property and casualty
24 insurers.

1 (8) The term “policy” means a contract of in-
2 surance, certificate, indemnity, suretyship, or annu-
3 ity issued, proposed for issuance or intended for is-
4 suance by an insurer, including endorsements or rid-
5 ers to an insurance policy or contract.

6 (9) The term “subject of abuse” means a per-
7 son to whom an act of abuse is directed, a person
8 who has had prior or current injuries, illnesses, or
9 disorders that resulted from abuse, or a person who
10 seeks, may have sought, or should have sought medi-
11 cal or psychological treatment for abuse, protection,
12 court-ordered protection, or shelter from abuse.

13 **SEC. 3. DISCRIMINATORY ACTS PROHIBITED.**

14 (a) IN GENERAL.—No insurer or health carrier may,
15 directly or indirectly, engage in any of the following acts
16 or practices on the basis that the applicant or insured,
17 or any person employed by the applicant or insured or
18 with whom the applicant or insured is known to have a
19 relationship or association, is, has been, or may be the
20 subject of abuse:

21 (1) Denying, refusing to issue, renew or reissue,
22 or canceling or otherwise terminating an insurance
23 policy or health benefit plan.

24 (2) Restricting, excluding, or limiting insurance
25 or health benefit plan coverage for losses as a result

1 of abuse or denying a claim incurred by an insured
2 as a result of abuse, except as otherwise permitted
3 or required by State laws relating to life insurance
4 beneficiaries.

5 (3) Adding a premium differential to any insur-
6 ance policy or health benefit plan.

7 (4) Terminating health coverage for a subject
8 of abuse because coverage was originally issued in
9 the name of the abuser and the abuser has divorced,
10 separated from, or lost custody of the subject of
11 abuse or the abuser's coverage has terminated volun-
12 tarily or involuntarily and the subject of abuse does
13 not qualify for extension of coverage under part 6 of
14 subtitle B of title I or the Employee Retirement In-
15 come Security Act of 1974 (29 U.S.C. 1161 et seq.)
16 or 4980B of the Internal Revenue Code of 1986.
17 Nothing in this paragraph prohibits the insurer from
18 requiring the subject of abuse to pay the full pre-
19 mium for the subject's coverage under the health
20 plan. The insurer may terminate group coverage
21 after the continuation coverage required by this
22 paragraph has been in force for 18 months if it of-
23 fers conversion to an equivalent individual plan. The
24 continuation of health coverage required by this
25 paragraph shall be satisfied by any extension of cov-

1 erage under part 6 of subtitle B of title I or the Em-
2 ployee Retirement Income Security Act of 1974 (29
3 U.S.C. 1161 et seq.) or 4980B of the Internal Reve-
4 nue Code of 1986 provided to a subject of abuse and
5 is not intended to be in addition to any extension of
6 coverage provided under part 6 of subtitle B of title
7 I or the Employee Retirement Income Security Act
8 of 1974 (29 U.S.C. 1161 et seq.) or 4980B of the
9 Internal Revenue Code of 1986.

10 (b) USE OF INFORMATION.—

11 (1) IN GENERAL.—No insurer may use, dis-
12 close, or transfer information relating to an appli-
13 cant’s or insured’s abuse status or abuse-related
14 medical condition or the applicant’s or insured’s sta-
15 tus as a family member, employer or associate, per-
16 son in a relationship with a subject of abuse for any
17 purpose unrelated to the direct provision of health
18 care services unless such use, disclosure, or transfer
19 is required by an order of an entity with authority
20 to regulate insurance or an order of a court of com-
21 petent jurisdiction or by abuse reporting laws. Noth-
22 ing in this paragraph shall be construed as limiting
23 or precluding a subject of abuse from obtaining the
24 subject’s own medical records from an insurer.

1 (2) AUTHORITY OF SUBJECT OF ABUSE.—A
2 subject of abuse, at the absolute discretion of the
3 subject of abuse, may provide evidence of abuse to
4 an insurer for the limited purpose of facilitating
5 treatment of an abuse-related condition or dem-
6 onstrating that a condition is abuse-related. Nothing
7 in this paragraph shall be construed as authorizing
8 an insurer or health carrier to disregard such pro-
9 vided evidence.

10 **SEC. 4. REASONS FOR ADVERSE ACTIONS.**

11 An insurer that takes any adverse action relating to
12 any plan or policy of a subject of abuse, shall advise the
13 subject of abuse applicant or insured of the specific rea-
14 sons for the action in writing. Reference to general under-
15 writing practices or guidelines does not constitute a spe-
16 cific reason.

17 **SEC. 5. LIFE INSURANCE.**

18 Nothing in this Act shall be construed to prohibit a
19 life insurer from declining to issue a life insurance policy
20 if the applicant or prospective owner of the policy is or
21 would be designated as a beneficiary of the policy, and
22 if—

23 (1) the applicant or prospective owner of the
24 policy lacks an insurable interest in the insured; or

1 (2) the applicant or prospective owner of the
2 policy is known, on the basis of police or court
3 records, to have committed an act of abuse.

4 **SEC. 6. SUBROGATION WITHOUT CONSENT PROHIBITED.**

5 Except where the subject of abuse has already recov-
6 ered damages, subrogation of claims resulting from abuse
7 is prohibited with the informed consent of the subject of
8 abuse.

9 **SEC. 7. ENFORCEMENT.**

10 (a) FEDERAL TRADE COMMISSION.—The Federal
11 Trade Commission shall have the power to examine and
12 investigate any insurer to determine whether such insurer
13 has been or is engaged in any act or practice prohibited
14 by this Act. If the Federal Trade Commission determines
15 an insurer has been or is engaged in any act or practice
16 prohibited by this Act, the Commission may take action
17 against such insurer by the issuance of a cease and desist
18 order as if the insurer was in violation of section 5 of the
19 Federal Trade Commission Act. Such cease and desist
20 order may include any individual relief warranted under
21 the circumstances, including temporary, preliminary, and
22 permanent injunctive and compensatory relief.

23 (b) PRIVATE CAUSE OF ACTION.—An applicant or in-
24 sured claiming to be adversely affected by an act or prac-
25 tice of an insurer in violation of this Act may maintain

1 an action against the insurer in a Federal or State court
2 of original jurisdiction. Upon proof of such conduct by a
3 preponderance of the evidence, the court may award ap-
4 propriate relief, including temporary, preliminary, and
5 permanent injunctive relief and compensatory and puni-
6 tive damages, as well as the costs of suit and reasonable
7 fees for the aggrieved individual's attorneys and expert
8 witnesses. With respect to compensatory damages, the ag-
9 grieved individual may elect, at any time prior to the ren-
10 dering of final judgment, to recover in lieu of actual dam-
11 ages, an award of statutory damages in the amount of
12 \$5,000 for each violation.

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