

1 State of Arkansas
2 82nd General Assembly
3 Regular Session, 1999

A Bill

HOUSE BILL 1039

4
5 By: Representative Lendall
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For An Act To Be Entitled

8
9 "THE UNFAIR DISCRIMINATION AGAINST SUBJECTS OF ABUSE
10 IN LIFE INSURANCE ACT; AND FOR OTHER PURPOSES."

Subtitle

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13 "THE UNFAIR DISCRIMINATION AGAINST
14 SUBJECTS OF ABUSE IN LIFE INSURANCE ACT."
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17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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19 SECTION 1. Purpose.

20 The purpose of this Act is to prohibit unfair discrimination by life
21 insurers or insurance professionals on the basis of abuse status. Nothing in
22 this Act shall be construed to create or imply a private cause of action for a
23 violation of this Act.
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25 SECTION 2. Scope.

26 This Act applies to all life insurers and insurance professionals
27 involved in issuing or renewing in this state a policy or certificate of life
28 insurance.
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30 SECTION 3. Definitions.

31 (1) "Abuse" means the occurrence of one or more of the following acts
32 by a current or former family member, household member, intimate partner, or
33 caretaker:

34 (A) Attempting to cause or intentionally, knowingly or recklessly
35 causing another person bodily injury, physical harm, severe emotional
36 distress, psychological trauma, rape, sexual assault or involuntary sexual

1 intercourse;

2 (B) Knowingly engaging in a course of conduct or repeatedly
3 committing acts toward another person including following the person without
4 proper authority, under circumstances that place the person in reasonable fear
5 of bodily injury or physical harm;

6 (C) Subjecting another person to false imprisonment; or

7 (D) Attempting to cause or intentionally, knowingly, or
8 recklessly causing damage to property so as to intimidate or attempt to
9 control the behavior of another person.

10 (2) "Abuse-related medical condition" means a medical condition
11 sustained by a subject of abuse which arises in whole or part out of an act or
12 pattern of abuse.

13 (3) "Abuse status" means the fact or perception that a person is, has
14 been, or may be a subject of abuse, irrespective of whether the person has
15 sustained abuse-related medical conditions.

16 (4) "Commissioner" means the insurance commissioner of this state.

17 (5) "Confidential abuse information" means information about acts of
18 abuse or abuse status of a subject of abuse, the address and telephone number
19 (home and work) of a subject of abuse, or the status of an applicant or
20 insured as a family member, employer or associate of, or a person in a
21 relationship with, a subject of abuse.

22 (6) "Insurance professional" means an agent, broker, adjuster or third
23 party administrator as defined in the insurance laws of this state.

24 (7) "Insured" means the person whose life is covered under an insurance
25 policy.

26 (8) "Insurer" means a person or other legal entity engaged in the
27 business of life insurance in this state.

28 (9) "Policy" or "certificate" means a contract of insurance or annuity,
29 including endorsements, riders or binders issued, proposed for issuance, or
30 intended for issuance by an insurer or insurance professional.

31 (10) "Subject of abuse" means a person against whom an act of abuse has
32 been directed; who has current or prior injuries, illnesses or disorders that
33 resulted from abuse; or who seeks, may have sought, or had reason to seek
34 medical or psychological treatment for abuse; or protection, court-ordered
35 protection or shelter from abuse.

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SECTION 4. Unfairly Discriminatory Acts Relating to Life Insurance.

(a) It is unfairly discriminatory to:

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

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

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

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

(2) To a health care provider for the direct provision of health care services;

(3) To a licensed physician identified and designated by the subject of abuse;

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

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

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

(B) A party to a proposed or consummated sale, transfer,

1 merger or consolidation of all or part of the business of the insurer or
2 insurance professional;

3 (C) Medical or claims personnel contracting with the
4 insurer or insurance professional, only where necessary to process an
5 application or perform the insurer's or insurance professional's duties under
6 the policy or to protect the safety or privacy of a subject of abuse (also
7 includes parent or affiliate companies of the insurer or insurance
8 professional that have service agreements with the insurer or insurance
9 professional); or

10 (D) With respect to address and telephone number, to
11 entities with whom the insurer or insurance professional transacts business
12 when the business cannot be transacted without the address and telephone
13 number;

14 (6) To an attorney who needs the information to represent the
15 insurer or insurance professional effectively, provided the insurer or
16 insurance professional notifies the attorney of its obligations under this Act
17 and requests that the attorney exercise due diligence to protect the
18 confidential abuse information consistent with the attorney's obligation to
19 represent the insurer or insurance professional;

20 (7) To the policyowner or assignee, in the course of delivery of
21 the policy, if the policy contains information about abuse status; or

22 (8) To any other entities deemed appropriate by the commissioner.

23 (c) It is unfairly discriminatory to request information about acts of
24 abuse or abuse status, or make use of that information, however obtained.

25 (d) Nothing in this act shall preclude a subject of abuse from
26 obtaining his or her insurance records.

27 (e) Nothing in this act shall prohibit a life insurer or insurance
28 professional from declining to issue a life insurance policy if the applicant
29 or prospective owner of the policy is or would be designated as a beneficiary
30 of the policy, and if:

31 (1) The applicant or prospective owner of the policy lacks an
32 insurable interest in the insured;

33 (2) The applicant or prospective owner of the policy is known, on
34 the basis of medical, police or court records, to have committed an act of
35 abuse against the proposed insured; or

36 (3) The insured or prospective insured is a subject of abuse, and

1 that person, or a person who has assumed the care of that person if a minor or
 2 incapacitated, has objected to the issuance of the policy on the ground that
 3 the policy would be issued to or for the direct or indirect benefit of the
 4 abuser.

5 (f) Nothing in this act shall prohibit a life insurer or insurance
 6 professional from asking about a medical condition or from using medical
 7 information to underwrite or to carry out its duties under the policy, even if
 8 the medical information is related to a medical condition that the insurer or
 9 insurance professional knows or has reason to know is abuse-related, to the
 10 extent otherwise permitted under this Act and other applicable law.

11 (g) A life insurer or insurance professional shall not be held civilly
 12 or criminally liable for the death of or injury to an insured resulting from
 13 any action taken in a good faith effort to comply with the requirements of
 14 this Act. However, this subsection does not prevent an action to investigate
 15 or enforce a violation of this Act or to assert any other claims authorized by
 16 law.

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 18 SECTION 5. Justification of Adverse Insurance Decisions.

19 An insurer or insurance professional that takes an action that adversely
 20 affects an applicant or insured on the basis of a medical condition that the
 21 insurer or insurance professional knows or has reason to know is abuse-related
 22 shall explain the reason for its action to the applicant or insured in writing
 23 and shall be able to demonstrate that its action, and any applicable policy
 24 provision:

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

27 (2) Is not based upon any actual or perceived correlation between a
 28 medical condition and abuse;

29 (3) Is otherwise permissible by law and applies in the same manner and
 30 to the same extent to all applicants and insureds with a similar medical
 31 condition without regard to whether the condition or claim is abuse-related;
 32 and

33 (4) Except for claims actions, is based on a determination, made in
 34 conformance with sound actuarial principles and otherwise supported by actual
 35 or reasonably anticipated experience, that there is a correlation between the
 36 medical condition and a material increase in insurance risk.

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2 SECTION 6. Insurance Protocols for Subjects of Abuse.

3 Insurers shall develop and adhere to written policies specifying
4 procedures to be followed by employees and by insurance professionals they
5 contract with, for the purpose of protecting the safety and privacy of a
6 subject of abuse and shall otherwise implement the provisions of this Act when
7 taking an application, investigating a claim, pursuing subrogation or taking
8 any other action relating to a policy or claim involving a subject of abuse.
9 Insurers shall distribute their written policies to employees and insurance
10 professionals.

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12 SECTION 7. Enforcement.

13 The commissioner shall conduct a reasonable investigation based on a
14 written and signed complaint received by the commissioner and issue a prompt
15 determination as to whether a violation of this Act may have occurred. If the
16 commissioner finds from the investigation that a violation of this Act may
17 have occurred, the commissioner shall promptly begin an adjudicatory
18 proceeding. The commissioner may address a violation through means
19 appropriate to the nature and extent of the violation, which may include
20 suspension or revocation of certificates of authority or licenses, imposition
21 of civil penalties, issuance of cease and desist orders, injunctive relief, a
22 requirement for restitution, referral to prosecutorial authorities or any
23 combination of these. The powers and duties set forth in this section are in
24 addition to all other authority of the commissioner.

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26 SECTION 8. Effective Date.

27 This Act applies to all actions taken on or after the effective date,
28 except where otherwise explicitly stated. Nothing in this Act shall require
29 the insurer or insurance professional to conduct a comprehensive search of its
30 contract files existing on the effective date solely to determine which
31 applicants or insureds are subjects of abuse.

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33 SECTION 9. All provisions of this Act of a general and permanent nature
34 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
35 Revision Commission shall incorporate the same in the Code.
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1 SECTION 10. If any provision of this Act or the application thereof to
2 any person or circumstance is held invalid, such invalidity shall not affect
3 other provisions or applications of the Act which can be given effect without
4 the invalid provision or application, and to this end the provisions of this
5 Act are declared to be severable.

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7 SECTION 11. All laws and parts of laws in conflict with this Act are
8 hereby repealed.

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