

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

A Bill

HOUSE BILL 1037

4
5 By: Representative Lendall
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7

For An Act To Be Entitled

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

Subtitle

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14 "THE UNFAIR DISCRIMINATION AGAINST
15 SUBJECTS OF ABUSE IN DISABILITY INCOME
16 INSURANCE ACT. "

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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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21 SECTION 1. Purpose.

22 The purpose of this Act is to prohibit unfair discrimination by
23 disability income insurers and insurance professionals on the basis of abuse
24 status. Nothing in this Act shall be construed to create or imply a private
25 cause of action for a violation of this Act.

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27 SECTION 2. Scope.

28 This Act applies to all disability income insurers and insurance
29 professionals involved in issuing or renewing in this state a policy or
30 certificate of disability income insurance.

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32 SECTION 3. Definitions.

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

36 (A) Attempting to cause or intentionally, knowingly or recklessly

1 causing another person bodily injury, physical harm, severe emotional
2 distress, psychological trauma, rape, sexual assault or involuntary sexual
3 intercourse;

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

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

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

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

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

18 (4) "Commissioner" means the Insurance Commissioner of this state.

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

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

26 (7) "Insured" means a party named on a disability income policy or
27 certificate as the person with legal rights to the benefits provided by the
28 policy or certificate. For group insurance, "insured" includes a person who is
29 a beneficiary covered by a group policy or certificate.

30 (8) "Insurer" means a person or other legal entity engaged in the
31 business of disability income insurance in this state.

32 (9) "Policy" or "certificate" means a contract of insurance or
33 indemnity, including endorsements, riders or binders issued, proposed for
34 issuance, or intended for issuance by an insurer or insurance professional.

35 (10) "Subject of abuse" means a person against whom an act of abuse has
36 been directed; who has current or prior injuries, illnesses or disorders that

1 resulted from abuse; or who seeks, may have sought, or had reason to seek
 2 medical or psychological treatment for abuse; or protection, court-ordered
 3 protection or shelter from abuse.

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 5 SECTION 4. Unfairly Discriminatory Acts Relating to Disability Income
 6 Insurance.

7 (a) It is unfairly discriminatory to:

8 (1) deny, refuse to issue or renew, cancel or otherwise
 9 terminate, restrict or exclude insurance coverage on or add a premium
 10 differential to any disability income insurance policy on the basis of the
 11 applicant's or insured's abuse status;

12 (2) Exclude or limit coverage for losses or denying a claim under
 13 a disability income insurance policy on the basis of an insured's abuse
 14 status.

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

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

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

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

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

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

35 (A) A reinsurer that seeks to indemnify or indemnifies all
 36 or any part of a policy covering a subject of abuse and that cannot underwrite

1 or satisfy its obligations under the reinsurance agreement without that
2 disclosure;

3 (B) A party to a proposed or consummated sale, transfer,
4 merger or consolidation of all or part of the business of the insurer or
5 insurance professional;

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

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

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

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

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

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

27 (d) Nothing in this Act is intended to preclude a subject of abuse from
28 obtaining his or her insurance records.

29 (e) Nothing in this Act is intended to prohibit a disability income
30 insurer or insurance professional from asking about a medical condition or
31 from using medical information to underwrite or to carry out its duties under
32 the policy, even if the medical information is related to a medical condition
33 that the insurer knows or has reason to know is abuse-related, to the extent
34 otherwise permitted under this Act and other applicable law.

35 (f) A disability income insurer or insurance professional shall not be
36 held civilly or criminally liable for the death of or injury to an insured

1 resulting from an action taken in a good faith effort to comply with the
 2 requirements of this Act. However, this subsection does not prevent an action
 3 to investigate or enforce a violation of this Act or to assert any other
 4 claims authorized by law.

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 6 SECTION 5. Justification of Adverse Insurance Decisions.

7 An insurer or insurance professional that takes an action that adversely
 8 affects an applicant or insured on the basis of a medical condition that the
 9 insurer or insurance professional knows or has reason to know is abuse-related
 10 shall explain the reason for its action to the applicant or insured in writing
 11 and shall be able to demonstrate that its action, and any applicable policy
 12 provision:

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

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

17 (3) Is otherwise permissible by law and applies in the same manner and
 18 to the same extent to all applicants and insureds with a similar medical
 19 condition or disability without regard to whether the condition is abuse-
 20 related; and

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

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 26 SECTION 6. Insurance Protocols for Subjects of Abuse.

27 Insurers shall develop and adhere to written policies specifying
 28 procedures to be followed by employees and by insurance professionals they
 29 contract with, for the purpose of protecting the safety and privacy of a
 30 subject of abuse and shall otherwise implement the provisions of this Act when
 31 taking an application, investigating a claim, pursuing subrogation or taking
 32 any other action relating to a policy or claim involving a subject of abuse.
 33 Insurers shall distribute their written policies to employees and insurance
 34 professionals.

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 36 SECTION 7. Enforcement.

1 The commissioner shall conduct a reasonable investigation based on a
 2 written and signed complaint received by the commissioner and issue a prompt
 3 determination as to whether a violation of this Act may have occurred. If the
 4 commissioner finds from the investigation that a violation of this Act may
 5 have occurred, the commissioner shall promptly begin an adjudicatory
 6 proceeding. The commissioner may address a violation through means
 7 appropriate to the nature and extent of the violation, which may include
 8 suspension or revocation of certificates of authority or licenses, imposition
 9 of civil penalties, issuance of cease and desist orders, injunctive relief, a
 10 requirement for restitution, referral to prosecutorial authorities or any
 11 combination of these. The powers and duties set forth in this section are in
 12 addition to all other authority of the commissioner.

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 14 SECTION 8. This Act applies to all actions taken on or after the
 15 effective date, except where otherwise explicitly stated. Nothing in this Act
 16 shall require an insurer to conduct a comprehensive search of its contract
 17 files existing on the effective date solely to determine which applicants or
 18 insureds are subjects of abuse.

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 20 SECTION 9. All provisions of this Act of a general and permanent nature
 21 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
 22 Revision Commission shall incorporate the same in the Code.

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 24 SECTION 10. If any provision of this Act or the application thereof to
 25 any person or circumstance is held invalid, such invalidity shall not affect
 26 other provisions or applications of the Act which can be given effect without
 27 the invalid provision or application, and to this end the provisions of this
 28 Act are declared to be severable.

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

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