

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

A Bill

HOUSE BILL 1040

4
5 By: Representative Lendall
6
7

For An Act To Be Entitled

8
9 "UNFAIR DISCRIMINATION AGAINST SUBJECTS OF ABUSE
10 IN PROPERTY AND CASUALTY INSURANCE MODEL ACT; AND FOR
11 OTHER PURPOSES."

Subtitle

12
13
14 "UNFAIR DISCRIMINATION AGAINST SUBJECTS
15 OF ABUSE IN PROPERTY AND CASUALTY
16 INSURANCE MODEL ACT."
17
18

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
20

SECTION 1. Purpose.

21 The purpose of this Act is to prohibit unfair discrimination by property
22 and casualty insurers and insurance professionals on the basis of abuse
23 status. Nothing in this Act shall be construed to create or imply a private
24 cause of action for a violation of this Act.
25
26

SECTION 2. Scope.

27 This Act applies to all property and casualty insurers and insurance
28 professionals involved in issuing or renewing in this state a policy of
29 property and casualty insurance.
30
31

SECTION 3. Definitions.

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

36 (1) 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 (2) 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 (3) Subjecting another person to false imprisonment;

9 (4) 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 (b) "Abuse-related claim" means a claim under a property and casualty
 13 policy for a loss resulting from an act of abuse.

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

17 (d) "Commissioner" means the insurance commissioner of this state.

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

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

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

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

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

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

1
 2 SECTION 4. Unfairly Discriminatory Acts Relating to Property and
 3 Casualty Insurance.

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

8 (b)(1) It is unfairly discriminatory to:

9 (A) Exclude or limit payment for a covered loss or deny a
 10 covered claim incurred as a result of abuse by a person other than a co-
 11 insured; or

12 (B) Fail to pay losses arising out of abuse to an innocent
 13 first party claimant to the extent of such claimant's legal interest in the
 14 covered property if the loss is caused by the intentional act of an insured,
 15 or using other exclusions or limitations on coverage which the commissioner
 16 has determined unreasonably restrict the ability of subjects of abuse to be
 17 indemnified for such losses.

18 (2) This section shall not require payment in excess of the loss
 19 or policy limits.

20 (3) Nothing in this Act shall be construed to prohibit an insurer
 21 or insurance professional from applying reasonable standards of proof to
 22 claims under this section.

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

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

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

32 (3) When necessary for a valid business purpose to transfer
 33 information that includes confidential abuse information that cannot
 34 reasonably be segregated without undue hardship, confidential abuse
 35 information may be disclosed only if the recipient has executed a written
 36 agreement to be bound by the prohibitions of this Act in all respects and to

1 be subject to the enforcement of this Act by the courts of this state for the
2 benefit of the applicant or the insured, and only to the following persons:

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

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

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

17 (D) With respect to address and telephone number, to
18 entities with whom the insurer transacts business when the business cannot be
19 transacted without the address and telephone number;

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

26 (5) To any other entities deemed appropriate by the commissioner.

27 (d) It is unfairly discriminatory to request information relating to
28 acts of abuse or an applicant's or insured's abuse status, or to make use of
29 that information, however obtained, except for the limited purposes of
30 complying with legal obligations or verifying a person's claim to be a subject
31 of abuse.

32 (e) Nothing in this act shall preclude a subject of abuse from
33 obtaining his or her insurance records.

34 (f) Nothing in this act shall prohibit a property and casualty insurer
35 from asking an applicant or insured about a property and casualty claim, even
36 if the claim is abuse-related, or from using information thereby obtained in

1 evaluating and carrying out its rights and duties under the policy, to the
2 extent otherwise permitted under this Act and other applicable law.

3
4 SECTION 5. Justification of Adverse Insurance Decisions.

5 An insurer or insurance professional that takes an action not prohibited
6 by Section 4 that adversely affects an applicant or insured on the basis of
7 claim or other underwriting information that the insurer or insurance
8 professional knows or has reason to know is abuse-related shall explain the
9 reason for its action to the applicant or insured in writing and shall be able
10 to demonstrate that its action, and any applicable policy provision:

11 (1) Does not have the purpose of treating abuse status as an
12 underwriting criterion; and

13 (2) Is otherwise permissible by law and applies in the same manner and
14 to the same extent to all applicants and insureds with a similar claim or
15 claims history without regard to whether the claims are abuse-related.

16
17 SECTION 6. Insurance Protocols for Subjects of Abuse.

18 Insurers shall develop and adhere to written policies specifying
19 procedures to be followed by employees and by insurance professionals they
20 contract with, for the purpose of protecting the safety and privacy of a
21 subject of abuse and shall otherwise implement the provisions of this Act when
22 taking an application, investigating a claim, pursuing subrogation or taking
23 any other action relating to a policy or claim involving a subject of abuse.
24 Insurers shall distribute their written policies to employees and insurance
25 professionals.

26
27 SECTION 7. Enforcement.

28 The commissioner shall conduct a reasonable investigation based on a
29 written and signed complaint received by the commissioner and issue a prompt
30 determination as to whether a violation of this Act may have occurred. If the
31 commissioner finds from the investigation that a violation of this Act may
32 have occurred, the commissioner shall promptly begin an adjudicatory
33 proceeding. The commissioner may address a violation through means appropriate
34 to the nature and extent of the violation, which may include suspension or
35 revocation of certificates of authority or licenses, imposition of civil
36 penalties, issuance of cease and desist orders, injunctive relief, a

1 requirement for restitution, referral to prosecutorial authorities or any
 2 combination of these. The powers and duties set forth in this section are in
 3 addition to all other authority of the commissioner.

4
 5 SECTION 8. Effective Date.

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

11
 12 SECTION 9. All provisions of this Act of a general and permanent nature
 13 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
 14 Revision Commission shall incorporate the same in the Code.

15
 16 SECTION 10. If any provision of this Act or the application thereof to
 17 any person or circumstance is held invalid, such invalidity shall not affect
 18 other provisions or applications of the Act which can be given effect without
 19 the invalid provision or application, and to this end the provisions of this
 20 Act are declared to be severable.

21
 22 SECTION 11. All laws and parts of laws in conflict with this Act are
 23 hereby repealed.