

105TH CONGRESS
1ST SESSION

S. 467

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

IN THE SENATE OF THE UNITED STATES

MARCH 18, 1997

Mr. WELLSTONE (for himself, Mrs. MURRAY, Mr. WYDEN, and Mr. DORGAN)
introduced the following bill; which was read twice and referred to the
Committee on Labor and Human Resources

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 In-
5 surance Protection Act”.

6 **SEC. 2. DEFINITIONS.**

7 As used in this Act:

8 (1) ABUSE.—The term “abuse” means the oc-
9 currence of one or more of the following acts by a

1 current or former household or family member, inti-
2 mate partner, or caretaker:

3 (A) Attempting to cause or causing an-
4 other person bodily injury, physical harm, sub-
5 stantial emotional distress, psychological trau-
6 ma, rape, sexual assault, or involuntary sexual
7 intercourse.

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

14 (C) Subjecting another person to false im-
15 prisonment or kidnapping.

16 (D) Attempting to cause or causing dam-
17 age to property so as to intimidate or attempt
18 to control the behavior of another person.

19 (2) ABUSE-RELATED MEDICAL CONDITION.—

20 The term “abuse-related medical condition” means a
21 medical condition which arises in whole or in part
22 out of an action or pattern of abuse.

23 (3) ABUSE STATUS.—The term “abuse status”
24 means the fact or perception that a person is, has
25 been, or may be a subject of abuse, irrespective of

1 whether the person has sustained abuse-related med-
2 ical conditions or has incurred abuse-related claims.

3 (4) HEALTH BENEFIT PLAN.—The term
4 “health benefit plan” means any public or private
5 entity or program that provides for payments for
6 health care, including—

7 (A) a group health plan (as defined in sec-
8 tion 607 of the Employee Retirement Income
9 Security Act of 1974 (29 U.S.C. 1167)) or a
10 multiple employer welfare arrangement (as de-
11 fined in section 3(40) of such Act (29 U.S.C.
12 1102(40)) that provides health benefits;

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

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

23 (D) automobile medical insurance to the
24 extent that it relates to medical benefits (as de-
25 fined by the Federal Trade Commission).

1 (5) HEALTH CARRIER.—The term “health car-
2 rier” means a person that contracts or offers to con-
3 tract on a risk-assuming basis to provide, deliver, ar-
4 range for, pay for or reimburse any of the cost of
5 health care services, including a sickness and acci-
6 dent insurance company, a health maintenance orga-
7 nization, a nonprofit hospital and health service cor-
8 poration or any other entity providing a plan of
9 health insurance, health benefits or health services.

10 (6) INSURED.—The term “insured” means a
11 party named on a policy, certificate, or health bene-
12 fit plan, including an individual, corporation, part-
13 nership, association, unincorporated organization or
14 any similar entity, as the person with legal rights to
15 the benefits provided by the policy, certificate, or
16 health benefit plan. For group insurance, such term
17 includes a person who is a beneficiary covered by a
18 group policy, certificate, or health benefit plan. For
19 life insurance, the term refers to the person whose
20 life is covered under an insurance policy.

21 (7) INSURER.—The term “insurer” means any
22 person, reciprocal exchange, interinsurer, Lloyds in-
23 surer, fraternal benefit society, or other legal entity
24 engaged in the business of insurance, including
25 agents, brokers, adjusters, and third party adminis-

1 trators. The term also includes health carriers,
2 health benefit plans, and life, disability, and prop-
3 erty and casualty insurers.

4 (8) POLICY.—The term “policy” means a con-
5 tract of insurance, certificate, indemnity, suretyship,
6 or annuity issued, proposed for issuance or intended
7 for issuance by an insurer, including endorsements
8 or riders to an insurance policy or contract.

9 (9) SUBJECT OF ABUSE.—The term “subject of
10 abuse” means a person against whom an act of
11 abuse has been directed, a person who has prior or
12 current injuries, illnesses, or disorders that resulted
13 from abuse, or a person who seeks, may have
14 sought, or had reason to seek medical or psycho-
15 logical treatment for abuse, protection, court-ordered
16 protection, or shelter from abuse.

17 **SEC. 3. DISCRIMINATORY ACTS PROHIBITED.**

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

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

4 (2) Restricting, excluding, or limiting insurance
5 or health benefit plan coverage for losses incurred as
6 a result of abuse or denying a claim incurred by an
7 insured as a result of abuse, except as otherwise per-
8 mitted or required by State laws relating to life in-
9 surance beneficiaries.

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

12 (4) Terminating health coverage for a subject
13 of abuse because coverage was originally issued in
14 the name of the abuser and the abuser has divorced,
15 separated from, or lost custody of the subject of
16 abuse or the abuser's coverage has terminated volun-
17 tarily or involuntarily and the subject of abuse does
18 not qualify for extension of coverage under part 6 of
19 subtitle B of title I or the Employee Retirement In-
20 come Security Act of 1974 (29 U.S.C. 1161 et seq.)
21 or 4980B of the Internal Revenue Code of 1986.
22 Nothing in this paragraph prohibits the insurer from
23 requiring the subject of abuse to pay the full pre-
24 mium for the subject's coverage under the health
25 plan if the requirements are applied to all insureds

1 of the health carrier. The insurer may terminate
2 group coverage after the continuation coverage re-
3 quired by this paragraph has been in force for 18
4 months if it offers conversion to an equivalent indi-
5 vidual plan. The continuation of health coverage re-
6 quired by this paragraph shall be satisfied by any
7 extension of coverage under part 6 of subtitle B of
8 title I or the Employee Retirement Income Security
9 Act of 1974 (29 U.S.C. 1161 et seq.) or 4980B of
10 the Internal Revenue Code of 1986 provided to a
11 subject of abuse and is not intended to be in addi-
12 tion to any extension of coverage provided under
13 part 6 of subtitle B of title I or the Employee Re-
14 tirement Income Security Act of 1974 (29 U.S.C.
15 1161 et seq.) or 4980B of the Internal Revenue
16 Code of 1986.

17 (b) USE OF INFORMATION.—

18 (1) IN GENERAL.—No person employed by or
19 contracting with an insurer or health benefit plan
20 may use, disclose, or transfer information relating to
21 an applicant's or insured's abuse status or abuse-re-
22 lated medical condition or the applicant's or
23 insured's status as a family member, employer, or
24 associate, person in a relationship with a subject of
25 abuse for any purpose unrelated to the direct provi-

1 sion of health care services unless such use, disclo-
2 sure, or transfer is required by an order of an entity
3 with authority to regulate insurance or an order of
4 a court of competent jurisdiction. In addition, such
5 a person may not disclose or transfer information
6 relating to an applicant's or insured's location or
7 telephone number. Nothing in this paragraph shall
8 be construed as limiting or precluding a subject of
9 abuse from obtaining the subject's own insurance
10 records from an insurer.

11 (2) **AUTHORITY OF SUBJECT OF ABUSE.**—A
12 subject of abuse, at the absolute discretion of the
13 subject of abuse, may provide evidence of abuse to
14 an insurer for the limited purpose of facilitating
15 treatment of an abuse-related condition or dem-
16 onstrating that a condition is abuse-related. Nothing
17 in this paragraph shall be construed as authorizing
18 an insurer or health carrier to disregard such pro-
19 vided evidence.

20 **SEC. 4. INSURANCE PROTOCOLS FOR SUBJECTS OF ABUSE.**

21 Insurers shall develop and adhere to written policies
22 specifying procedures to be followed by employees, con-
23 tractors, producers, agents and brokers for the purpose
24 of protecting the safety and privacy of a subject of abuse
25 and otherwise implementing the provisions of this Act

1 when taking an application, investigating a claim, or tak-
2 ing any other action relating to a policy or claim involving
3 a subject of abuse.

4 **SEC. 5. REASONS FOR ADVERSE ACTIONS.**

5 An insurer that takes an action that adversely affects
6 a subject of abuse, shall advise the subject of abuse appli-
7 cant or insured of the specific reasons for the action in
8 writing. Reference to general underwriting practices or
9 guidelines does not constitute a specific reason.

10 **SEC. 6. LIFE INSURANCE.**

11 Nothing in this Act shall be construed to prohibit a
12 life insurer from declining to issue a life insurance policy
13 if the applicant or prospective owner of the policy is or
14 would be designated as a beneficiary of the policy, and
15 if—

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

18 (2) the applicant or prospective owner of the
19 policy is known, on the basis of police or court
20 records, to have committed an act of abuse against
21 the proposed insured.

22 **SEC. 7. SUBROGATION WITHOUT CONSENT PROHIBITED.**

23 Subrogation of claims resulting from abuse is prohib-
24 ited without the informed consent of the subject of abuse.

1 **SEC. 8. ENFORCEMENT.**

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

15 (b) PRIVATE CAUSE OF ACTION.—An applicant or in-
16 sured who believes that the applicant or insured has been
17 adversely affected by an act or practice of an insurer in
18 violation of this Act may maintain an action against the
19 insurer in a Federal or State court of original jurisdiction.
20 Upon proof of such conduct by a preponderance of the
21 evidence, the court may award appropriate relief, includ-
22 ing temporary, preliminary, and permanent injunctive re-
23 lief and compensatory and punitive damages, as well as
24 the costs of suit and reasonable fees for the aggrieved indi-
25 vidual's attorneys and expert witnesses. With respect to
26 compensatory damages, the aggrieved individual may

1 elect, at any time prior to the rendering of final judgment,
2 to recover in lieu of actual damages, an award of statutory
3 damages in the amount of \$5,000 for each violation.

4 **SEC. 9. EFFECTIVE DATE.**

5 This Act shall apply with respect to any action taken
6 on or after the date of the enactment of this Act, except
7 that section 4 shall only apply to actions taken after the
8 expiration of 60 days after such date.

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