

104<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 3590

To prevent discrimination against victims of domestic abuse in all lines  
of insurance and in group health plans.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 5, 1996

Mr. POMEROY 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

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## A BILL

To prevent discrimination against victims of domestic abuse  
in all lines of insurance and in group health plans.

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 Domestic  
5 Abuse Insurance Protection Act of 1996”.

6 **SEC. 2. DEFINITIONS.**

7 As used in this Act:

8 (1) The term “domestic abuse” means the oc-  
9 currence of one or more of the following acts be-

1       tween former or current household or family mem-  
2       bers (including in-laws or extended family), spouses  
3       or former spouses, individuals engaged in or for-  
4       merly engaged in a sexually intimate relationship, a  
5       caretaker and the person taken care of, a perpetra-  
6       tor of sexual assault and the victim of the assault,  
7       or a stalker or a sex offender in relation to the per-  
8       son being stalked or person against whom the of-  
9       fense was or is being committed:

10               (A) Attempting to cause or intentionally,  
11               knowingly, or recklessly causing the other per-  
12               son bodily injury, physical harm, severe emo-  
13               tional distress, psychological trauma, rape, sex-  
14               ual assault, or involuntary sexual intercourse.

15               (B) Engaging in a course of conduct or re-  
16               peatedly committing acts toward the other per-  
17               son, including following the person without  
18               proper authority and under circumstances that  
19               place the person in reasonable fear of bodily in-  
20               jury or physical harm.

21               (C) Subjecting the other person to false  
22               imprisonment or kidnapping.

23               (D) Attempting to cause or intentionally,  
24               knowingly, or recklessly causing damage to

1           property so as to intimidate or attempt to con-  
2           trol the behavior of the other person.

3           (2) The term “domestic abuse-related medical  
4           condition” means a medical condition sustained by  
5           the subject of domestic abuse which arises in whole  
6           or in part out of an action or pattern of domestic  
7           abuse in relation to the subject of domestic abuse.

8           (3) The term “domestic abuse status” means  
9           the fact or perception that a person is, has been, or  
10          may be a subject of domestic abuse, irrespective of  
11          whether the person has sustained domestic abuse-re-  
12          lated medical conditions.

13          (4) The term “insurance policy” means any pol-  
14          icy, contract, or certificate of insurance (whether for  
15          health benefits, life insurance benefits, property and  
16          casualty benefits, or otherwise) issued by an insurer  
17          and subject to the insurance laws and regulations of  
18          a State, and includes an endorsement or rider to  
19          such a policy, contract, or certificate and includes a  
20          contract of health benefits issued by a health main-  
21          tenance organization.

22          (5) The term “insured” means a party named  
23          on an insurance policy as the person with legal  
24          rights to the benefits provided by the policy. For

1 group insurance, such term includes a person who is  
2 a beneficiary covered by a group policy or certificate.

3 (6) The term “insurer” means any person or  
4 legal entity (including a health carrier or life, dis-  
5 ability, and property and casualty insurer) engaged  
6 in the business of insurance and subject to the in-  
7 surance laws and regulations of a State, and in-  
8 cludes agents, brokers, adjusters, and third party  
9 administrators and includes health maintenance or-  
10 ganizations and similar organizations subject to reg-  
11 ulation by a State for insolvency.

12 (7) The term “subject of domestic abuse”  
13 means—

14 (A) a person to whom an act of domestic  
15 abuse is directed,

16 (B) a person who has had prior or current  
17 injuries, illnesses, or disorders that resulted  
18 from domestic abuse, or

19 (C) a person who seeks, may have sought,  
20 or had reason to seek—

21 (i) medical or psychological treatment  
22 for domestic abuse, or

23 (ii) protection (including court-order  
24 protection) or shelter from domestic abuse.

1           (8) The term “group health plan” has the  
2 meaning given such term in section 607(1) of the  
3 Employee Retirement Income Security Act of 1974  
4 (29 U.S.C. 1167(1)).

5           (9) The terms “beneficiary” and “participant”  
6 have the meanings given such terms in section 3 of  
7 the Employee Retirement Income Security Act of  
8 1974.

9 **SEC. 3. PROHIBITION OF UNFAIR DISCRIMINATION**  
10 **AGAINST SUBJECTS OF DOMESTIC ABUSE.**

11       (a) IN GENERAL.—An insurer or group health plan  
12 may not, directly or indirectly, engage in any of the follow-  
13 ing acts or practices on the basis that the applicant or  
14 insured, or any person employed by the applicant or in-  
15 sured or with whom the applicant or insured is known to  
16 have a relationship or association, or a beneficiary or par-  
17 ticipant in the plan is, has been, or may be the subject  
18 of domestic abuse:

19           (1) Denying, refusing to issue, renew or reissue,  
20 or canceling or otherwise terminating an insurance  
21 policy or coverage under the group health plan; or  
22 restricting or excluding coverage under the policy or  
23 plan; or adding a premium differential to any insur-  
24 ance policy or for coverage under the plan on such  
25 basis.

1           (2) Excluding or limiting coverage for losses or  
2           denying a claim incurred by an insured or partici-  
3           pant or beneficiary as a result of domestic abuse on  
4           the basis of the insured's, participant's, or bene-  
5           ficiary's abuse status, except (in the case of an in-  
6           surer) as otherwise permitted or required by State  
7           laws relating to acts of abuse committed by life in-  
8           surance beneficiaries.

9           (3)(A) Subject to subparagraph (B), terminat-  
10          ing coverage for a subject of domestic abuse because  
11          coverage was originally issued or provided in the  
12          name of the abuser and the abuser has divorced,  
13          separated from, or lost custody of the subject of do-  
14          mestic abuse or the abuser's coverage has termi-  
15          nated voluntarily or involuntarily and, with respect  
16          to health insurance coverage or coverage under a  
17          group health plan, the subject of domestic abuse  
18          does not qualify for extension of coverage under part  
19          6 of subtitle B of title I or the Employee Retirement  
20          Income Security Act of 1974, section 4980B of the  
21          Internal Revenue Code of 1986, or title XXII of the  
22          Public Health Service Act.

23          (B) Nothing in subparagraph (A) prohibits the  
24          insurer or group health plan from requiring the sub-  
25          ject of domestic abuse to pay the full premium for

1 the subject's coverage under the policy or plan or  
2 from requiring, as a condition of health insurance  
3 coverage or coverage under the plan, that the subject  
4 of domestic abuse reside or work within its service  
5 area if such requirements are applied to all insureds  
6 of the insurer with respect to such coverage or to all  
7 participants and beneficiaries.

8 (C) The insurer may terminate group health in-  
9 surance coverage after the continuation coverage re-  
10 quired by this paragraph has been in force for 18  
11 months if it offers conversion to an equivalent indi-  
12 vidual plan.

13 (D) The continuation of health coverage re-  
14 quired by this paragraph shall be satisfied by cov-  
15 erage under part 6 of subtitle B of title I or the Em-  
16 ployee Retirement Income Security Act of 1974 (29  
17 U.S.C. 1161 et seq.), section 4980B of the Internal  
18 Revenue Code of 1986, or title XXII of the Public  
19 Health Service Act provided to a subject of domestic  
20 abuse and is not intended to be in addition to any  
21 extension of coverage provided under such part, sec-  
22 tion, or title.

23 (b) LIMITATION ON USE OR TRANSFER OF INFORMA-  
24 TION.—

1           (1) IN GENERAL.—An insurer or group health  
2 plan (or a contractor with an insurer or group  
3 health plan) may not use, disclose, or transfer infor-  
4 mation relating to an individual’s abuse status, or  
5 medical condition which the insurer or plan knows or  
6 has reason to know is abuse-related, or an individ-  
7 ual’s family, household, social, or employment rela-  
8 tionship with a subject of domestic abuse except to  
9 the extent necessary for the direct provision of  
10 health care services, compliance with abuse reporting  
11 laws, or (in the case of an insurer) compliance with  
12 an order of an entity with authority to regulate in-  
13 surance or an order of a court of competent jurisdic-  
14 tion. Nothing in this paragraph shall be construed  
15 as limiting or precluding a subject of domestic abuse  
16 from obtaining the subject’s own medical records  
17 from an insurer or group health plan.

18           (2) ACCESS TO INFORMATION BY SUBJECT OF  
19 DOMESTIC ABUSE.—A subject of domestic abuse  
20 may provide evidence of domestic abuse to an in-  
21 surer or group health plan for the limited purpose  
22 of facilitating treatment of an domestic abuse-relat-  
23 ed condition or demonstrating that a condition is do-  
24 mestic abuse-related. Nothing in this paragraph

1 shall be construed as authorizing an insurer or plan  
2 to disregard such provided evidence.

3 **SEC. 4. EXPLANATION OF REASONS FOR ADVERSE AC-**  
4 **TIONS.**

5 An insurer or group health plan that takes any ad-  
6 verse action relating to any insurance policy or coverage  
7 under a group health plan of a subject of domestic abuse  
8 on the basis of a claim or medical condition that the in-  
9 surer or plan knows or has reason to know is abuse-relat-  
10 ed, shall explain the reason for its action to the applicant  
11 or insured or individual in writing. Reference to general  
12 underwriting practices or guidelines does not constitute a  
13 specific reason.

14 **SEC. 5. SPECIAL RULE FOR LIFE INSURANCE.**

15 Nothing in this Act shall be construed to prohibit a  
16 life insurer from declining to issue a life insurance policy  
17 on the life of an individual if the applicant or prospective  
18 owner of the policy is or would be designated as a bene-  
19 ficiary of the policy, and if—

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

22 (2) the applicant or prospective owner of the  
23 policy is known, on the basis of police or court  
24 records, to have committed an act of domestic abuse  
25 in relation to the individual.

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

2 Except where the subject of domestic abuse has al-  
3 ready recovered damages, subrogation of claims resulting  
4 from domestic abuse is prohibited without the informed  
5 consent of the subject of domestic abuse.

6 **SEC. 7. COMPLIANCE WITH INSURANCE PROTOCOLS FOR**  
7 **SUBJECTS OF DOMESTIC ABUSE.**

8 An insurer shall develop, file with the applicable regu-  
9 latory authority, and adhere to, protocols specifying how  
10 employees, contractors, agents, and broker of the insurer  
11 will pursue an insurance action (including claims inves-  
12 tigation and subrogation) that may impact the safety of  
13 a subject of domestic abuse involved with that action.

14 **SEC. 8. ESTABLISHMENT OF STANDARDS FOR INSURERS.**

15 (a) IN GENERAL.—If, within the 90-day period begin-  
16 ning on the date of the enactment of this Act, the National  
17 Association of Insurance Commissioners adopts a Model  
18 Act and Regulations that establish standards for insurers  
19 with respect to the requirements under this Act, such  
20 standards shall apply to insurers in carrying out this Act.

21 (b) FALLBACK FEDERAL STANDARDS.—If the NAIC  
22 does not adopt such an Act and Regulations within the  
23 period specified in subsection (a), the Secretary of Health  
24 and Human Services shall promulgate, not later than 60  
25 days after the end of such period, standards for insurers  
26 to carry out this Act.

1 **SEC. 9. ENFORCEMENT FOR INSURERS.**

2 (a) STATE ENFORCEMENT.—

3 (1) IN GENERAL.—Each State may establish  
4 under State law a regulatory program that provides  
5 for the application and enforcement of standards for  
6 insurers equal to or more stringent than the stand-  
7 ards established under section 8 to carry out this  
8 Act.

9 (2) REVIEW.—The Secretary periodically shall  
10 review State regulatory programs to determine if  
11 they continue to substantially meet the requirements  
12 specified in paragraph (1). If the Secretary finds  
13 that a State regulatory program no longer substan-  
14 tially meets the requirements, before making a final  
15 determination, the Secretary shall provide the State  
16 an opportunity to adopt such a plan of correction as  
17 would permit the State regulatory program to con-  
18 tinue to meet such requirements. If the Secretary  
19 makes a final determination that the State regu-  
20 latory program, after such an opportunity, fails to  
21 substantially meet such requirements, the provisions  
22 of subsection (b) shall apply to insurers in that  
23 State.

24 (b) FEDERAL FALLBACK ENFORCEMENT.—In the  
25 case of an insurer, with respect to insurance policies issued  
26 in a State which does not have an approved regulatory

1 program in effect under subsection (a)(1), that the Sec-  
2 retary of Health and Human Services determines fails to  
3 comply with an applicable standard established under sec-  
4 tion 8, the insurer is subject to a civil money penalty of  
5 not to exceed \$25,000 for each such violation. The provi-  
6 sions of section 1128A of the Social Security Act (other  
7 than the first sentence of subsection (a) and other than  
8 subsection (b)) shall apply to a civil money penalty under  
9 the previous sentence in the same manner as such provi-  
10 sions apply to a penalty or proceeding under section  
11 1128A(a) of such Act.

12 **SEC. 10. ENFORCEMENT WITH RESPECT TO GROUP**  
13 **HEALTH PLANS.**

14 The provisions of this Act insofar as they relate to  
15 group health plans shall be deemed to be provisions of title  
16 I of the Employee Retirement Income Security Act of  
17 1974 for purposes of applying such title. With respect to  
18 group health plans, the Secretary of Labor shall enforce  
19 the requirements of this Act in the same manner as pro-  
20 vided for under sections 502, 504, 506, and 510 of the  
21 Employee Retirement Income Security Act of 1974 (29  
22 U.S.C. 1132, 1134, 1136, and 1140).

23 **SEC. 11. EFFECTIVE DATE.**

24 (a) IN GENERAL.—Subject to subsection (b), the re-  
25 quirements of this Act shall take effect on July 1, 1997,

1 or, in the case of insurers and if later, the date specified  
2 in subsection (b), and shall apply to actions occurring on  
3 or after such date.

4 (b) SPECIAL RULE.—In the case of a State which the  
5 Secretary of Health and Human Services identifies as—

6 (1) requiring State legislation (other than legis-  
7 lation appropriating funds) in order for insurance  
8 policies to meet standards established under section  
9 8 or for the State insurance commissioner to per-  
10 form the functions described in section 9(a), but

11 (2) having a legislature which is not scheduled  
12 to meet in 1997 in a legislative session in which  
13 such legislation may be considered,

14 the date specified in this subsection is the first day of the  
15 first calendar quarter beginning after the close of the first  
16 legislative session of the State legislature that begins on  
17 or after the date of the enactment of this Act, and in  
18 which legislation described in paragraph (1) may be con-  
19 sidered. For purposes of the previous sentence, in the case  
20 of a State that has a 2-year legislative session, each year  
21 of such session shall be deemed to be a separate regular  
22 session of the State legislature.

○