

104TH CONGRESS
2D SESSION

S. 1630

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

IN THE SENATE OF THE UNITED STATES

MARCH 20, 1996

Mr. WELLSTONE (for himself and Mr. WYDEN) 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
5 Insurance Protection Act”.

6 **SEC. 2. DEFINITIONS.**

7 As used in this Act:

8 (1) The term “abuse” means the occurrence of
9 one or more of the following acts between household
10 or family (including in-laws or extended family)

1 members, spouses or former spouses, or individuals
2 engaged in or formerly engaged in a sexually inti-
3 mate relationship:

4 (A) Attempting to cause or intentionally,
5 knowingly, or recklessly causing another person
6 bodily injury, physical harm, substantial emo-
7 tional distress, psychological trauma, rape, sex-
8 ual assault, or involuntary sexual intercourse.

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

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

17 (D) Attempting to cause or intentionally,
18 knowingly, or recklessly causing damage to
19 property so as to intimidate or attempt to con-
20 trol the behavior of another person.

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

24 (3) The term “abuse status” means the fact or
25 perception that a person is, has been, or may be a

1 subject of abuse, irrespective of whether the person
2 has sustained abuse-related medical conditions or
3 has incurred abuse-related claims.

4 (4) The term “health benefit plan” means any
5 public or private entity or program that provides for
6 payments for 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) or a multiple employer
10 welfare arrangement (as defined in section
11 3(40) of such Act) that provides health bene-
12 fits;

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) The term “health carrier” means a person
2 that contracts or offers to contract on a risk-assum-
3 ing basis to provide, deliver, arrange for, pay for or
4 reimburse any of the cost of health care services un-
5 less the person assuming the risk is accepting the
6 risk from a duly licensed health carrier.

7 (6) The term “insured” means a party named
8 on a policy, certificate, or health benefit plan as the
9 person with legal rights to the benefits provided by
10 the policy, certificate, or health benefit plan. For
11 group insurance, such term includes a person who is
12 a beneficiary covered by a group policy, certificate,
13 or health benefit plan.

14 (7) The term “insurer” means any person, re-
15 ciprocal exchange, interinsurer, Lloyds insurer, fra-
16 ternal benefit society, or other legal entity engaged
17 in the business of insurance, including agents, bro-
18 kers, adjusters, and third party administrators. The
19 term also includes health carriers, health benefit
20 plans, and life, disability, and property and casualty
21 insurers.

22 (8) The term “policy” means a contract of in-
23 surance, certificate, indemnity, suretyship, or annu-
24 ity issued, proposed for issuance or intended for is-

1 suance by an insurer, including endorsements or rid-
2 ers to an insurance policy or contract.

3 (9) The term “subject of abuse” means a per-
4 son to whom an act of abuse is directed, a person
5 who has had prior or current injuries, illnesses, or
6 disorders that resulted from abuse, or a person who
7 seeks, may have sought, or should have sought medi-
8 cal or psychological treatment for abuse, protection,
9 court-ordered protection, or shelter from abuse.

10 **SEC. 3. DISCRIMINATORY ACTS PROHIBITED.**

11 (a) IN GENERAL.—No insurer or health carrier may,
12 directly or indirectly, engage in any of the following acts
13 or practices on the basis that the applicant or insured,
14 or any person employed by the applicant or insured or
15 with whom the applicant or insured is known to have a
16 relationship or association, is, has been, or may be the
17 subject of abuse:

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

21 (2) Restricting, excluding, or limiting insurance
22 or health benefit plan coverage for losses as a result
23 of abuse or denying a claim incurred by an insured
24 as a result of abuse, except as otherwise permitted

1 or required by State laws relating to life insurance
2 beneficiaries.

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

5 (4) Terminating health coverage for a subject
6 of abuse because coverage was originally issued in
7 the name of the abuser and the abuser has divorced,
8 separated from, or lost custody of the subject of
9 abuse or the abuser's coverage has terminated volun-
10 tarily or involuntarily and the subject of abuse does
11 not qualify for extension of coverage under part 6 of
12 subtitle B of title I or the Employee Retirement In-
13 come Security Act of 1974 (29 U.S.C. 1161 et seq.)
14 or 4980B of the Internal Revenue Code of 1986.
15 Nothing in this paragraph prohibits the insurer from
16 requiring the subject of abuse to pay the full pre-
17 mium for the subject's coverage under the health
18 plan. The insurer may terminate group coverage
19 after the continuation coverage required by this
20 paragraph has been in force for 18 months if it of-
21 fers conversion to an equivalent individual plan. The
22 continuation of health coverage required by this
23 paragraph shall be satisfied by any extension of cov-
24 erage under part 6 of subtitle B of title I or the Em-
25 ployee Retirement Income Security Act of 1974 (29

1 U.S.C. 1161 et seq.) or 4980B of the Internal Reve-
2 nue Code of 1986 provided to a subject of abuse and
3 is not intended to be in addition to any extension of
4 coverage provided under part 6 of subtitle B of title
5 I or the Employee Retirement Income Security Act
6 of 1974 (29 U.S.C. 1161 et seq.) or 4980B of the
7 Internal Revenue Code of 1986.

8 (b) USE OF INFORMATION.—

9 (1) IN GENERAL.—No insurer may use, dis-
10 close, or transfer information relating to an appli-
11 cant's or insured's abuse status or abuse-related
12 medical condition or the applicant's or insured's sta-
13 tus as a family member, employer or associate, per-
14 son in a relationship with a subject of abuse for any
15 purpose unrelated to the direct provision of health
16 care services unless such use, disclosure, or transfer
17 is required by an order of an entity with authority
18 to regulate insurance or an order of a court of com-
19 petent jurisdiction or by abuse reporting laws. Noth-
20 ing in this paragraph shall be construed as limiting
21 or precluding a subject of abuse from obtaining the
22 subject's own medical records from an insurer.

23 (2) AUTHORITY OF SUBJECT OF ABUSE.—A
24 subject of abuse, at the absolute discretion of the
25 subject of abuse, may provide evidence of abuse to

1 an insurer for the limited purpose of facilitating
2 treatment of an abuse-related condition or dem-
3 onstrating that a condition is abuse-related. Nothing
4 in this paragraph shall be construed as authorizing
5 an insurer or health carrier to disregard such pro-
6 vided evidence.

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

8 An insurer that takes any adverse action relating to
9 any plan or policy of a subject of abuse, shall advise the
10 subject of abuse applicant or insured of the specific rea-
11 sons for the action in writing. Reference to general under-
12 writing practices or guidelines does not constitute a spe-
13 cific reason.

14 **SEC. 5. 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 if the applicant or prospective owner of the policy is or
18 would be designated as a beneficiary of the policy, and
19 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 abuse.

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

2 Except where the subject of abuse has already recov-
3 ered damages, subrogation of claims resulting from abuse
4 is prohibited with the informed consent of the subject of
5 abuse.

6 **SEC. 7. ENFORCEMENT.**

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

20 (b) PRIVATE CAUSE OF ACTION.—An applicant or in-
21 sured claiming to be adversely affected by an act or prac-
22 tice of an insurer in violation of this Act may maintain
23 an action against the insurer in a Federal or State court
24 of original jurisdiction. Upon proof of such conduct by a
25 preponderance of the evidence, the court may award ap-
26 propriate relief, including temporary, preliminary, and

1 permanent injunctive relief and compensatory and puni-
2 tive damages, as well as the costs of suit and reasonable
3 fees for the aggrieved individual's attorneys and expert
4 witnesses. With respect to compensatory damages, the ag-
5 grieved individual may elect, at any time prior to the ren-
6 dering of final judgment, to recover in lieu of actual dam-
7 ages, an award of statutory damages in the amount of
8 \$5,000 for each violation.

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