**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 38‑57‑115 SO AS TO PROVIDE THAT IT IS UNFAIR DISCRIMINATION FOR AN INSURER TO DENY, REFUSE TO ISSUE OR RENEW, CANCEL, RESTRICT OR EXCLUDE COVERAGE, DENY A CLAIM OR LIMIT PAYMENTS, OR ADD A PREMIUM DIFFERENTIAL TO A POLICY OR CERTIFICATE OF COVERAGE ON THE BASIS THAT AN APPLICANT OR INSURED HAS BEEN OR IS PERCEIVED TO HAVE BEEN ABUSED OR MAY BE A SUBJECT OF ABUSE AND TO PROVIDE PENALTIES, INCLUDING FINES UP TO TWO HUNDRED THOUSAND DOLLARS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 57, Title 38 of the 1976 Code is amended by adding:

“Section 38‑57‑115. (A) As used in this section:

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

(a) attempting to cause or intentionally, knowingly, or recklessly causing another person bodily injury, physical harm, severe emotional distress, or psychological trauma;

(b) committing or attempting to commit criminal sexual conduct or spousal sexual battery, as provided for in Article 7, Chapter 3, Title 16, or committing or attempting to commit any other sexual assault or battery on another person;

(c) knowingly engaging in a course of conduct or repeatedly committing acts, including, but not limited to, following the person, without proper authority, under circumstances that place the person in reasonable fear of bodily injury or physical harm;

(d) subjecting another person to false imprisonment; or

(e) attempting to cause or intentionally, knowingly, or recklessly causing damage to property so as to intimidate or attempt to control the behavior of another person.

(2) ‘Abuse‑related medical condition’ means a medical condition sustained by a subject of abuse which arises in whole or in part out of an act or pattern of abuse.

(3) ‘Abuse status’ means the fact or perception that a person is, has been, or may be a subject of abuse, irrespective of whether the person has sustained abuse‑related medical conditions.

(4) ‘Applicant or covered person’ means an individual enrollee, insured, eligible employee, dependent of an eligible employee, or applicant.

(5) ‘Insurance entity or insurance professional’ means a corporation, agency, partnership, association, voluntary organization, individual, or any other entity, organization, or aggregation of individuals engaged in the business of insurance. This term includes an insurer, health maintenance organization, insurance producer, agency, broker, adjuster, third party administrator, and any other individual or entity engaged in the business of insurance. This term also includes the state health plan.

(6) ‘Person’ means a individual, including a minor child.

(7) ‘State health plan’ means the employee and retiree insurance program provided for in Article 5, Chapter 11, Title 1.

(8) ‘Subject of abuse’ means a person against whom an act of abuse has been directed who has current or prior injuries, illness, or disorders that resulted from abuse or who seeks, may have sought, or had reason to seek medical or psychological treatment for abuse or protection, including court‑ordered protection or shelter from abuse.

(B) It is unfair discrimination for an insurance entity or insurance professional to:

(1) deny, refuse to issue, renew or reissue, or cancel or otherwise terminate, restrict, or exclude coverage, or add a premium differential to any policy or certificate of coverage on the basis of the applicant’s or covered person’s abuse status;

(2) impose any preexisting condition exclusion on the basis of the applicant’s or covered person’s abuse status;

(3) exclude or limit coverage for losses or deny a claim incurred by a covered person on the basis of the covered person’s abuse status;

(4) exclude or limit payment for a covered loss or deny a covered claim incurred as a result of abuse;

(5) fail to pay losses arising out of abuse to an innocent first party claimant to the extent of the claimant’s legal interest in the covered property if the loss is caused by the intentional act of an insured;

(6) request information relating to acts of abuse or an applicant’s or covered person’s abuse status or make use of that information, however obtained;

(7) consider the applicant’s or covered person’s abuse status in determining the premium rates to be charged for a policy or certificate of coverage; or

(8) use other exclusions or limitations on coverage which the director determines to be unreasonably or unfairly discriminatory.

(C) Nothing in this section may be construed so as to prohibit an insurance entity or insurance professional from asking about a medical condition or from using medical information to underwrite or to carry out its duties under the policy, even if the medical information is related to a medical condition that the insurance entity or insurance professional knows or has reason to know is abuse related, to the extent otherwise permitted under law.

(D) Nothing in this section prohibits an insurance entity or insurance professional from setting rates in accordance with relevant actuarial data except that no insurance entity or insurance professional may set rates based in whole or in part on the applicant’s or covered person’s abuse status.

(E) Notwithstanding any other provisions of this title or any other applicable law or regulation, a single instance of unfair discrimination is a violation of this section.

(F) An insurance entity or insurance professional who violates this section is subject to the penalties as provide in Section 38‑2‑10. If the director or his designee finds that an insurance entity or insurance professional is participating in a pattern of unfair discrimination, the director or his designee may impose a fine of up to two hundred thousand dollars. The director or his designee at any time may examine an insurance entity or insurance professional to enforce this section. The expense of examination must be paid by the insurance entity or insurance professional.

(G) Insurance entities and insurance professionals shall develop and adhere to written policies specifying procedures to be followed by employees and by insurance professionals they contract with, for the purpose of protecting the safety and privacy of a subject of abuse and shall otherwise implement the provisions of this section when taking an application, investigating a claim, pursuing subrogation, or taking any other action relating to a policy, certificate, or claim involving a subject of abuse. Insurance entities shall distribute their written policies to employees and insurance professionals.”

SECTION 2. This act takes effect upon approval by the Governor.

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