AMENDED

April 19, 2011

**H. 3344**

Introduced by Reps. Brady, Erickson, Sandifer, Allison, Dillard, Butler Garrick, Munnerlyn, Funderburk, Horne, Long, Nanney, Bowers, Bales, Anderson, Pinson, Weeks and Clemmons

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Read the first time February 9, 2011.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, TO ENACT THE “UNFAIR DISCRIMINATION AGAINST SUBJECTS OF ABUSE IN INSURANCE ACT” 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.

Amend Title To Conform

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

SECTION 1. This act may be cited as the “Unfair Discrimination Against Subjects of Abuse in Insurance Act”.

SECTION 2. 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 insured, individual enrollee, covered dependent, eligible employee, dependent of an eligible employee, or applicant for a policy or certificate of coverage.

(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 an 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) The purpose of this section is to prohibit unfair discrimination by insurance entities and insurance professionals on the basis of abuse status and to expressly create a private cause of action for a violation of this section, notwithstanding the provisions of Chapter 57 and Chapter 59, Title 38, or another provision of law.

(C) This section applies to:

(1) an insurance company, health maintenance organization, and any other insurance entity that is licensed to engage in the business of insurance in this State and that is subject to state insurance regulation;

(2) insurance professionals; and

(3) the state health plan.

(D) An insurance entity or insurance professional may not engage in an unfairly discriminatory act or practice against a subject of abuse. It is a prohibited act of 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) use the applicant’s or covered person’s abuse status in the underwriting of a policy; or

(4)(a) terminate group coverage for a subject of abuse because coverage was originally issued in the name of the abuser and the abuser has divorced, separated from, or lost custody of the subject of abuse, or the abuser’s coverage has terminated voluntarily or involuntarily;

(b) The continuation coverage required by subsection (4)(a) must be satisfied by coverage required under state continuation of coverage, as provided in Section 38‑71‑770, or COBRA continuation of coverage, as provided in 29 U.S.C. 1161, et seq., whichever is applicable, provided to a subject of abuse and is not intended to be in addition to such continuation of coverage requirements;

(5) 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;

(6) exclude, limit, or deny benefits on a life insurance policy on the basis of an applicant or covered person’s abuse status except as otherwise permitted or required by the laws of this State relating to acts of abuse committed by a life insurance beneficiary;

(7) in the case of property and casualty insurance:

(a)(i) exclude or limit payment for a covered loss or deny a covered claim incurred as a result of abuse by a person other than a coinsured;

(ii) 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 a coinsured or use other exclusions or limitations on coverage which the director determines to unreasonably restrict the ability of subjects of abuse to be indemnified for such losses; or

(iii) use abuse‑related claims history in the underwriting of a policy;

(b)(i) this item does not require payment in excess of the loss or policy limits; and

(ii) nothing in this item may be construed to prohibit an insurance entity or insurance professional from applying reasonable standards of proof to claims under this item; and

(8) directly or indirectly 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, except:

(a) for the limited purposes of complying with legal obligations;

(b) when verifying a person’s claim to be a subject of abuse or to have sustained an abuse‑related medical condition or incurred an abuse‑related claim; or

(c) when cooperating with a subject of abuse in seeking protection from abuse or facilitating the treatment of an abuse‑related medical condition;

(9) 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;

(10) use other exclusions or limitations on coverage which the director determines to be an unreasonably or unfairly discriminatory act or practice against a subject of abuse.

(E) To the extent otherwise permitted by law, nothing in this section may be construed to prohibit an insurance entity or insurance professional from recovering any payment from an insured or any third party whose act of abuse caused this claim.

(F)(1) Nothing in this section may be construed 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 rights and 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.

(2)(a) Nothing in this section may be construed to prohibit a property and casualty insurance entity or insurance professional from investigating or inquiring about a property and casualty claim, even if the claim is abuse‑related, or from using information thereby obtained in evaluating and carrying out its rights and duties under the policy to the extent otherwise permitted under law.

(b) This section does not prohibit a property and casualty insurer from denying a property claim when the damage or loss is the result of intentional conduct by a named insured who commits an act of abuse, except that the property and casualty insurer shall make payment on such a claim to an innocent coinsured subject of abuse to the extent of the innocent coinsured’s interest in the property and within the limits of coverage when the damage or loss was proximately related to and in furtherance of abuse. A property and casualty insurer paying such a claim must be subrogated to the rights of the innocent coinsured subject of abuse to recover for any damages paid by the insurance.

(3)(a) Nothing in this section may be construed to prohibit a life insurance entity or insurance professional from declining to issue a life insurance policy if the applicant or prospective owner of the policy is or would be designated as a beneficiary of the policy; and if:

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

(ii) the applicant or prospective owner of the policy is known, on the basis of medical, police, or court records, to have committed an act of abuse against the prospective insured; or

(iii) the insured or prospective insured is a subject of abuse, and that person, or a person who has assumed the care of that person if a minor or incapacitated, has objected to the issuance of the policy on the ground that the policy would be issued to or for the direct or indirect benefit of the abuser.

(b) In the case of an act of abuse committed by a life insurance beneficiary, nothing in this section may be construed to prohibit an insurance entity or insurance professional from excluding, limiting, or denying benefits to the beneficiary on a life insurance policy as otherwise permitted or required by law.

(G) 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.

(H) 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.

(I) An insurance entity or insurance professional who violates this section is subject to the penalties as provided in Section 38‑2‑10 and may be liable in a civil action brought by a party for a violation, notwithstanding the provisions of Chapter 57 and Chapter 59, Title 38, or another provision of law. 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. If an insurance entity or insurance professional determines that the fees assessed are unreasonable in relation to the examination performed, the insurer or insurance entity may appeal the assessments to the Administrative Law Court. Examination fees must be retained by the department and are considered ‘other’ funds.

(J) 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 contracted insurance professionals. An insurance entity or insurance professional shall provide these policies and procedures upon request to the director or his designee. Information received pursuant to this subsection is strictly confidential.

(K) An insurance entity or insurance professional may not be held criminally liable for the death of or injury to an applicant or covered person resulting from any action taken in a good faith effort to comply with the requirements of this section. However, this subsection does not prevent an action by the director to investigate or enforce a violation of this section or to assert any other claims authorized by law.

(L) The Department of Insurance may promulgate regulations necessary for implementation of this section.”

SECTION 3. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 4. Section 38‑57‑10 of the 1976 Code is amended to read:

“Section 38‑57‑10. The purpose of this chapter is to regulate trade practices in the business of insurance in accordance with the intent of Congress as expressed in the act of Congress of March 9, 1945, (Public Law 15, 79th Congress), by defining, or providing for the determination of, all the practices in this State which constitute unfair methods of competition or unfair or deceptive acts or practices and by prohibiting the trade practices so defined or determined. The provisions of this chapter do not prevent a private cause of action brought for a violation of the ‘Unfair Discrimination Against Subjects of Abuse in Insurance Act’ found in Section 38‑57‑115.”

SECTION 5. Article 1, Chapter 59, Title 38 is amended by adding:

“Section 38‑59‑15. Notwithstanding the provisions of this chapter or another provision of law, the provisions of this chapter do not prevent a cause of action brought for a violation of the ‘Unfair Discrimination Against Subject of Abuse in Insurance Act’ found in Section 38‑57‑115.”

SECTION 6. Nothing in this act requires an insurance entity or insurance professional to conduct a comprehensive search of its contract files existing on the effective date of this act solely to determine which applicants or covered persons are subjects of abuse, as defined in Section 38‑57‑115 of the 1976 Code, as added by Section 2 of this act.

SECTION 7. Subsection (I) of Section 38‑57‑115 of the 1976 Code, as added by SECTION 2 of this act, takes effect January 1, 2012. The remaining provisions of this act take effect upon approval by the Governor.

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