

FYI

INSURANCE DISCRIMINATION AGAINST VICTIMS OF DOMESTIC VIOLENCE

2002 Supplement



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DISCRIMINATORY ACTIONS

Property and Casualty Insurance

- In 2001, a woman was denied auto coverage by Erie Insurance after she relocated to a new state and availed herself of a Social Security Administration policy allowing her to change her Social Security number in order to prevent her abuser from finding her. The insurer refused to insure her unless she provided her former Social Security number, which was her driver's license number in her former state. Only after the woman remarried was she able to obtain insurance through her spouse's policy.
- In 2000, American National Property and Casualty denied a Pennsylvania woman's claim for property damage caused by a her abusive husband who set fire to their home. The insurance company filed suit in federal court seeking a declaratory judgment that it was not liable for the claim based on the intentional act exclusion in the policy. The husband had battered his wife throughout their marriage and the couple had separated, with the husband moving out of the marital residence. After the woman's plight was reported in the newspaper, the insurer entered into a settlement to repair the damages and replace belongings.
- According to an April 13, 1998, article in the National Underwriter Magazine, a Tennessee woman, who had fled her home following an abusive incident, was denied coverage for damages after her batterer burned their house down. Moreover, she was also sued by her insurer to recover the monies paid to the holder of a second mortgage on the house. The husband was arrested (and is expected to be convicted). The woman was born and raised in the home, held title to the property, and was the sole named insured on the policy. Following the intervention of the state insurance commissioner, the insurer paid the claim.

State Legislative Activity

Since 1994, 41 states have adopted some form of legislation prohibiting insurance discrimination against victims of domestic violence. These laws were adopted during the years when the learning curve about types of insurance practices that affect victims was continuously rising and the NAIC model laws were in development. This accounts for the variation in state laws.

State Legislation to Prohibit Insurance Discrimination on the Basis of Domestic Violence

| STATE (ADOPTED) | | HEALTH | LIFE | DISABILITY | PROPERTY |
|-----------------|--|--------|------|------------|----------|
| Alabama | Ala. Code § 10-4-115 | ✓ | ✓ | ✓ | ✓ |
| Alaska | Alaska Stat. §§21.36.430, §21.36.440, §21.36.450 | ✓ | ✓ | ✓ | ✓ |
| Arizona | Ariz. Rev. Stat. Ann. § 20-448G-L | ✓ | ✓ | ✓ | ✓ |
| California | Cal. Health & Safety Code § 1374.75; Cal. Ins. Code §§ 675, 676.9, 10144.2, 10144.3 | ✓ | ✓ | ✓ | ✓ |
| Colorado | Colo. Rev. Stat. §§ 10-3-1104.8, 10-3-1108 | ✓ | ✓ | ✓ | ✓ |
| Connecticut | Conn. Gen. Stat. § 38a-816(18), 38a-469 | ✓ | | | |
| Delaware | Del. Code Ann. tit. 18 §§ 2302(5), 2304(24), (25) | ✓ | ✓ | ✓ | ✓ |
| Florida | Fla. Stat. Ann. § 626.9541(g)(3); S.B. 716, 17th Leg., 2d Sess. (Fla. 2002) | ✓ | ✓ | ✓ | ✓ |
| Georgia | Ga. Code Ann. § 33-6-4(b)(15) | ✓ | ✓ | ✓ | ✓ |
| Hawaii | Haw. Rev. Stat. §§ 431:10-217.5, 432:1-101.6, 432:2-103.5, 432D-27 | ✓ | ✓ | ✓ | ✓ |
| Illinois | 215 Ill. Comp. Stat. 5/155.22a, 5/155.22b | ✓ | ✓ | ✓ | |
| Indiana | Ind. Code Ann. § 27-8-24.3-1 through 27-8-24.3-10 | ✓ | ✓ | ✓ | |
| Iowa | Iowa Code § 507B.4(7)(c) | ✓ | ✓ | ✓ | ✓ |
| Kansas | Kan. Stat. Ann. § 40-2404(7)(d) | ✓ | ✓ | ✓ | |
| Kentucky | Ky. Rev. Stat. Ann. §§ 304.12-211, 304.17A-155; | ✓ | | | ✓ |
| Louisiana | La. Rev. Stat. § 22:250.19 | ✓ | | | |
| Maine | Me. Rev. Stat. Ann. tit. 24-A, § 2159-B | ✓ | ✓ | ✓ | |
| Maryland | Md. Insurance Code Ann. § 7-504 | ✓ | ✓ | | |
| Massachusetts | Mass. Gen. Laws ch. 175, §§95B, 108G, 120D; ch. 176A, §3A; ch. 176B, §5A; ch. 176 G, § 19 | ✓ | ✓ | ✓ | ✓ |
| Michigan | Mich. Comp. Laws §§ 500.2246, 500.3406j, 550.1401 (d) | ✓ | ✓ | | |
| Minnesota | Minn. Stat. Ann. § 72A.20 Subd. 8(d) | ✓ | ✓ | | |
| Missouri | Mo. Rev. Stat. § 375.1312 | ✓ | ✓ | ✓ | ✓ |
| Montana | Mont. Code Ann. §§33-18-242, 33-18-216 | ✓ | ✓ | ✓ | ✓ |
| Nebraska | Neb. Rev. Stat. §§44-7401 through 44-7410 | ✓ | ✓ | ✓ | ✓ |
| Nevada | Nev. Rev. Stat., §§ 689A.413, 689B.068, 689C.076, 689C.015, 689C.196, 695A.195, 675B.316, 695C.203, 695D.217, 695F.090 | ✓ | | | |
| New Hampshire | N.H. Rev. Stat. Ann. §417:4 VIII(f) | ✓ | ✓ | ✓ | ✓ |
| New Jersey | N.J. Stat. Ann. §§ 17:48-6t, 17:48A-7s, 17:48E-35.18, 17B:26-2.1q, 17B:27-46.1t, N.J.A.C. § 11:4-42.5 | ✓ | ✓ | | |
| New Mexico | N.M. Stat. Ann. §59A-16B-1 through 59A-16B-10 | ✓ | ✓ | ✓ | ✓ |
| New York | N.Y. Ins. Law §2612 | ✓ | ✓ | ✓ | ✓ |
| North Dakota | N.D. Cent. Code § 26.1-39-24 | | | | ✓ |
| Ohio | Ohio Rev. Code Ann. § 3901.21(Y) | ✓ | ✓ | | |
| Oregon | Or. Rev. Stat. §746.015(4) | ✓ | ✓ | ✓ | ✓ |
| Pennsylvania | Pa. Stat. Ann. tit. 40, §§1171.3, 1171.5 (14) | ✓ | ✓ | ✓ | ✓ |
| Rhode Island | R.I. Gen. Laws §§ 27-60-1 through 27-60-7, 27-60-1 through 27-61-7 | ✓ | ✓ | | |
| Tennessee | Tenn. Code Ann. §§ 56-8-301 through 56-8-306 | ✓ | | | |
| Texas | Tex. Rev. Civ. Stat. Ann. § 21.21-5 | ✓ | ✓ | | |
| Utah | Utah Code Ann. § 31A-21-501 through 31A-21-506 | ✓ | ✓ | ✓ | |
| Virginia | Va. Code Ann. §38.2-508(7) | ✓ | ✓ | ✓ | ✓ |
| Washington | Wash. Rev. Code Ann. § 48.18.550 | ✓ | ✓ | ✓ | ✓ |
| West Virginia | W. Va. Code §§33-4-20, 33-25A-24 | ✓ | ✓ | ✓ | |
| Wisconsin | Wis. Stat. § 631.95 | ✓ | ✓ | ✓ | ✓ |

Federal Legislative Activity

Legislation prohibiting insurance discrimination against victims of abuse has been introduced in the U.S. Congress every year since 1995. Initial federal legislation targeted health insurance practices,¹ but initiatives were soon broadened to encompass all lines of insurance,² and have been reintroduced each Congressional session.³ Starting in 1998 and continuing every year thereafter, insurance protection for victims of domestic violence was included as a subtitle in several packages of bills aimed at providing comprehensive solutions to domestic violence. These included the **Violence Against Women Acts**⁴ and the **Battered Women's Economic Security Act**.⁵

The most recent federal legislation is the **Victims of Abuse Insurance Protection Act** which was introduced in July 2001. This bill provides comprehensive protection by:

- prohibiting adverse insurance actions on the basis of abuse status, abuse-related medical conditions, and abuse-related claims
- extending protection to third parties who experience adverse actions because of a relationship with the victim and by broadly defining abuse to include physical, emotional, and property damage
- prohibiting the full gamut of adverse actions that harm battered women, including the denial, refusal to issue, renew or reissue, cancellation or other termination of a policy, as well as restricting, excluding or limiting insurance losses for claims and adding a premium differential
- prohibiting denial or limitation of claims incurred by innocent victims of abuse and therefore encompassing the specific problems faced when property insurers deny claims to all innocent co-insureds based on intentional act exclusions
- including strong confidentiality provisions, prohibiting disclosure of information relating to "abuse status, acts of abuse, abuse-related medical conditions or the applicant's or insured's status as a family member, employer, associate, or person in a relationship with a subject of abuse," except in specific situations, and protecting the address and phone number of applicants, insureds, and domestic violence shelters
- requiring insurers to develop protocols to protect the abuse victim's safety and privacy
- requiring insurers to provide written notice of reasons for adverse actions that affect victims of abuse
- adding to the enforcement provisions an administrative remedy through the Federal Trade Commission as well as a private cause of action that includes individual relief

Continued on the next page

1. S. 524, 104th Cong. (1995); H.R. 1191, 104th Cong. (1995); H.R. 120, 104th Cong. (1995); H.R. 1920, 104th Cong. (1995); H.R. 314, 104th Cong. (1996); Women's Health Equity Act of 1996, Title II, Subtitles E, F, & G, H.R. 3178, 104th Cong. (1996); Women's Health Equity Act of 1996, Title II, Subtitles E, F, & G; S. 1799, 104th Cong. (1996).

2. H.R. 2654, 104th Cong. (1995); S. 1630, 104th Cong. (1996); H.R. 3590, 104th Cong. (1996).

3. S. 467, 105th Cong. (1997); H.R. 1117, 105th Cong. (1997).

4. H.R. 3514, 105th Cong. (1998); S. 2110, 105th Cong. (1998); S. 51, 106th Cong. (1999); H.R. 357, 106th Cong. (1999); S. 2787, 106th Cong. (2000).

5. S. 1069, 106th Cong., Title I, Subtitle C (1999).

Federal Legislative Activity (continued)

Since July 1998, Congress has adopted two laws related to insurance discrimination against victims of domestic violence.

■ The Violence Against Women Act of 2000 (VAWA 2000), Division B, Victims of Trafficking and Violence Protection Act of 2000⁶

This Act requires the U.S. Attorney General to “conduct a national study to identify state laws that address discrimination against victims of domestic violence and sexual assault related to issuance or administration of insurance policies.” This report is expected to be submitted to Congress in the near future.

■ The Gramm-Leach-Bliley Act⁷

This Act applies to the financial services industry and permits banks to sell insurance subject to state regulation. It also includes a prohibition against domestic violence discrimination among its consumer protections. Based on insurer treatment of domestic violence victims, this law prohibits banks from considering status as a victim of domestic violence or as a provider of services to victims of domestic violence as a criterion in insurance underwriting, pricing, renewal, scope of coverage or payment of claims. It applies to health and life insurance only.

In addition, pursuant to the **Health Insurance Portability and Accountability Act of 1996**, federal regulations regarding confidentiality of health information have been adopted that include protections for domestic violence victims.⁸ The Final Privacy Rule includes the right to request health plans to restrict uses and disclosures of individually identifiable information. This is critically important to a victim of domestic violence who, for example, may wish to prevent an explanation of benefits form – containing information about treatment for abuse or her address – from being sent to her batterer. Health plans are also required to honor reasonable requests to receive communications of protected health information by alternative means or locations, if the individual states that the disclosure could endanger her.

6. Pub. L. No. 106-386, 114 Stat. 1464.

7. 12 U.S.C. § 1831x(e).

8. 45 C.F.R. pts. 160 & 164.

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