3/31 2:55P

Chapter No. 455
10/SS26/R160SG
JN / IBLN

SENATE BILL NO. 2344

Originated in Senate Jessica Yupes Secretary

SENATE BILL NO. 2344

AN ACT TO PROHIBIT UNFAIR DISCRIMINATION AGAINST SUBJECTS OF ABUSE IN HEALTH BENEFIT PLANS; TO DEFINE CERTAIN TERMS; TO PRESCRIBE UNFAIR DISCRIMINATORY ACTS RELATING TO HEALTH BENEFIT PLANS; TO REQUIRE JUSTIFICATION OF ADVERSE INSURANCE DECISIONS WHICH AFFECT AN APPLICANT OR INSURED ON THE BASIS OF A MEDICAL CONDITION THAT THE HEALTH CARRIER KNOWS OR HAS REASON TO KNOW IS ABUSE-RELATED; TO REQUIRE HEALTH CARRIERS TO DEVELOP AND ADHERE TO PROTOCOLS FOR SUBJECTS OF ABUSE; TO AUTHORIZE THE COMMISSIONER OF INSURANCE TO ENFORCE THE PROVISIONS OF THIS ACT; TO PROHIBIT UNFAIR DISCRIMINATION IN LIFE INSURANCE AGAINST PERSONS WHO ARE SUBJECTS OF ABUSE; TO DEFINE CERTAIN TERMS; TO PRESCRIBE UNFAIR DISCRIMINATORY ACTS RELATING TO LIFE INSURANCE; TO REQUIRE JUSTIFICATION OF ADVERSE INSURANCE DECISIONS WHICH AFFECT AN APPLICANT OR INSURED ON THE BASIS OF A MEDICAL CONDITION THAT THE INSURER KNOWS OR HAS REASON TO KNOW IS ABUSE-RELATED; TO REQUIRE INSURERS TO DEVELOP AND ADHERE TO PROTOCOLS FOR PERSONS WHO ARE SUBJECTS OF ABUSE; TO AUTHORIZE THE COMMISSIONER OF INSURANCE TO ENFORCE THE PROVISIONS OF THIS ACT; TO PROHIBIT UNFAIR DISCRIMINATION AGAINST SUBJECTS OF ABUSE IN DISABILITY INCOME INSURANCE; TO DEFINE CERTAIN TERMS; TO PRESCRIBE UNFAIR DISCRIMINATORY ACTS RELATING TO DISABILITY INCOME INSURANCE; TO REQUIRE JUSTIFICATION OF ADVERSE INSURANCE DECISIONS WHICH AFFECT AN APPLICANT OR INSURED ON THE BASIS OF A MEDICAL CONDITION THAT THE INSURER KNOWS OR HAS REASON TO KNOW IS ABUSE-RELATED; TO REQUIRE INSURERS TO DEVELOP AND ADHERE TO PROTOCOLS FOR SUBJECTS OF ABUSE; TO AUTHORIZE THE COMMISSIONER OF INSURANCE TO ENFORCE THE PROVISIONS OF THIS ACT; TO AMEND SECTION 83-5-35, MISSISSIPPI CODE OF 1972, TO CONFORM TO THE PROVISIONS OF THIS ACT; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. The purpose of Sections 1 through 8 of this act is to prohibit unfair discrimination by health carriers and insurance professionals on the basis of abuse status. Nothing in Sections 1 through 8 of this act shall be construed to create or imply a private cause of action for a violation of Sections 1 through 8 of this act.

SECTION 2. Sections 1 through 8 of this act apply to all health carriers and insurance professionals involved in issuing or

renewing in this state a policy or certificate of health insurance.

SECTION 3. As used in Sections 1 through 8 of this act, unless the context clearly indicates otherwise:

(a) "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:

(i) Attempting to cause or intentionally, knowingly or recklessly causing another person bodily injury, physical harm, severe emotional distress, psychological trauma, rape, sexual assault or involuntary sexual intercourse;

(ii) Knowingly engaging in a course of conduct or repeatedly committing acts toward another person, including following the person or minor child without proper authority, under circumstances that place the person or minor child in reasonable fear of bodily injury or physical harm;

(iii) Subjecting another person to false imprisonment; or

(iv) 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.

(b) "Abuse-related medical condition" means a medical condition sustained by a subject of abuse which arises in whole or part out of abuse.

(c) "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.

(d) "Commissioner" means the Commissioner of Insurance of the State of Mississippi.

(e) "Confidential abuse information" means information about acts of abuse or abuse status of a subject of abuse, a person's medical condition that the carrier knows or has reason to know is abuse-related, the address and telephone number (home and

work) of a subject of abuse or the status of an applicant or insured as a family member, employer or associate of, or a person in a relationship with, a subject of abuse.

(f) "Health benefit plan" or "plan" means a policy, contract, certificate or agreement offered by a carrier or insurance professional to provide, deliver, arrange for, pay for or reimburse any of the costs of health care services. Health benefit plan includes accident only, credit health, dental, vision, Medicare supplement or long-term care insurance, coverage issued as a supplement to liability insurance, short-term and catastrophic health insurance policies and a policy that pays on a cost-incurred basis. Health benefit plan does not include workers' compensation or similar insurance.

(g) "Health carrier" means an entity subject to the insurance laws and regulations of this state, or subject to the jurisdiction of the commissioner, that contracts or offers to contract to provide, deliver, arrange for, pay for or reimburse any of the costs of health care services, including a sickness and accident insurance company, a health maintenance organization, a nonprofit hospital and health service corporation or any other entity providing a plan of health insurance, health benefits or health services.

(h) "Insurance professional" means an agent, insurance producer, adjuster or third-party administrator as defined in the insurance laws of this state.

(i) "Insured" means a party named on a health benefit plan as the person with legal rights to the benefits provided by the health benefit plan. For group plans, "insured" includes a person who is a beneficiary covered by a group health benefit plan.

(j) "Subject of abuse" means a person: against whom an act of abuse has been directed; who has current or prior injuries, illnesses 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, court-ordered protection or shelter from abuse.

SECTION 4. (1) It is unfairly discriminatory to:

(a) Deny, refuse to issue, renew or reissue, cancel or otherwise terminate a health benefit plan or restrict or exclude health benefit plan coverage or add a premium differential to any health benefit plan on the basis of the applicant's or insured's abuse status; or

(b) Exclude or limit coverage for losses or deny a claim incurred by an insured on the basis of the insured's abuse status;

(2) When the health carrier or insurance professional has information in its possession that clearly indicates that the insured or applicant is a subject of abuse, the disclosure or transfer of the confidential abuse information by a person employed by or contracting with a health carrier or insurance professional for any purpose or to any person is unfairly discriminatory, except disclosure or transfer:

(a) To the subject of abuse or an individual specifically designated in writing by the subject of abuse;

(b) To a health care provider for the direct provision of health care services;

(c) To a licensed physician identified and designated by the subject of abuse;

(d) When ordered by the commissioner or a court of competent jurisdiction or otherwise required by law; or

(e) When necessary for a valid business purpose to transfer information that includes confidential abuse information that cannot reasonably be segregated without undue hardship. Confidential abuse information may be disclosed only if the recipient has executed a written agreement to be bound by the prohibitions of Sections 1 through 8 of this act in all respects

and to be subject to the enforcement of Sections 1 through 8 of this act by the courts of this state for the benefit of the applicant or the insured and only to the following persons:

(i) A reinsurer that seeks to indemnify or indemnifies all or any part of a policy covering a subject of abuse and that cannot underwrite or satisfy its obligations under the reinsurance agreement without that disclosure;

(ii) A party to a proposed or consummated sale, transfer, merger or consolidation of all or part of the business of the health carrier or insurance professional;

(iii) Medical or claims personnel contracting with the health carrier or insurance professional, only where necessary to process an application or perform the health carrier's or insurance professional's duties under the policy or to protect the safety or privacy of a subject of abuse (also includes parent or affiliate companies of the health carrier or insurance professional that have service agreements with the health carrier or insurance professional); or

(iv) With respect to address and telephone number, to entities with whom the health carrier or insurance professional transacts business when the business cannot be transacted without the address and telephone number;

(f) To an attorney who needs the information to represent the health carrier or insurance professional effectively, if the health carrier or insurance professional notifies the attorney of its obligations under Sections 1 through 8 of this act and requests that the attorney exercise due diligence to protect the confidential abuse information consistent with the attorney's obligation to represent the health carrier or insurance professional;

(g) To the policy owner or assignee, in the course of delivery of the policy, if the policy contains information about abuse status; or

(h) To any other entities deemed appropriate by the commissioner.

(3) It is unfairly discriminatory to request information relating to acts of abuse or an applicant's or insured's abuse status or make use of that information, however obtained, except for the limited purposes of complying with legal obligations or verifying a person's claim to be a subject of abuse.

(4) It is unfairly discriminatory to 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. Nothing in this subsection prohibits the health carrier or insurance professional from requiring the subject of abuse to pay the full premium for coverage under the health plan or from requiring as a condition of coverage that the subject of abuse reside or work within its service area, if the requirements are applied to all insureds of the health carrier or insurance professional. The health carrier or insurance professional may terminate group coverage after the continuation coverage required by this subsection has been in force for eighteen (18) months, if it offers conversion to an equivalent individual plan. The continuation coverage required by this section shall be satisfied by coverage required under Public Law 99-272, the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985, provided to a subject of abuse and is not intended to be in addition to coverage provided under COBRA.

(5) Subsection (2) of this section does not preclude a subject of abuse from obtaining his or her insurance records.

(6) Subsection (3) of this section does not prohibit a health carrier 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 insurer or insurance professional knows or has reason to know is abuse-related, to the extent otherwise permitted under this act and other applicable law.

SECTION 5. A health carrier or insurance professional that takes an action that adversely affects an applicant or insured on the basis of a medical condition that the health carrier or insurance professional knows or has reason to know is abuse-related shall explain the reason for its action to the applicant or insured in writing and shall be able to demonstrate that its action, and any applicable plan provision:

(a) Does not have the purpose or effect of treating abuse status as a medical condition or underwriting criterion;

(b) Is not based upon any actual or perceived correlation between a medical condition and abuse;

(c) Is otherwise permissible by law and applies in the same manner and to the same extent to all applicants and insureds with a similar medical condition without regard to whether the condition or claim is abuse-related; and

(d) Except for claim actions, is based on a determination, made in conformance with sound actuarial principles and supported by reasonable statistical evidence, that there is a correlation between the medical condition and a material increase in insurance risk.

SECTION 6. Health carriers 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 Sections 1 through 8 of this act when taking an application, investigating a claim, pursuing subrogation or taking any other action relating to a policy or claim involving a subject of abuse. Insurers shall

distribute their written policies to employees and insurance professionals.

SECTION 7. The commissioner shall conduct a reasonable investigation based on a written and signed complaint received by the commissioner and shall issue a prompt determination as to whether a violation of Sections 1 through 8 of this act may have occurred. If the commissioner finds from the investigation that a violation of Sections 1 through 8 of this act may have occurred, the commissioner shall promptly begin an adjudicatory proceeding. The commissioner may address a violation through means appropriate to the nature and extent of the violation, which may include suspension or revocation of certificates of authority or licenses, imposition of civil penalties, issuance of cease and desist orders, injunctive relief, a requirement for restitution, referral to prosecutorial authorities or any combination of these. The powers and duties set forth in this section are in addition to all other authority of the commissioner.

SECTION 8. Sections 1 through 8 of this act apply to every health benefit plan or plan that is issued, reissued, renewed or continued on or after July 1, 2010, and to every application that is submitted on or after July 1, 2010, for coverage under a health benefit plan or plan.

SECTION 9. The purpose of Sections 9 through 16 of this act is to prohibit unfair discrimination by life insurers or insurance professionals on the basis of abuse status. Nothing in Sections 9 through 16 of this act shall be construed to create or imply a private cause of action for a violation of Sections 9 through 16 of this act.

SECTION 10. Sections 9 through 16 of this act apply to all life insurers and insurance professionals involved in issuing or renewing in this state a policy or certificate of life insurance.

SECTION 11. As used in Sections 9 through 16 of this act, unless the context clearly indicates otherwise:

(a) "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:

(i) Attempting to cause or intentionally, knowingly or recklessly causing another person bodily injury, physical harm, severe emotional distress, psychological trauma, rape, sexual assault or involuntary sexual intercourse;

(ii) Knowingly engaging in a course of conduct or repeatedly committing acts toward another person, including following the person without proper authority, under circumstances that place the person in reasonable fear of bodily injury or physical harm;

(iii) Subjecting another person to false imprisonment; or

(iv) 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.

(b) "Abuse-related medical condition" means a medical condition sustained by a subject of abuse which arises, in whole or in part, out of abuse.

(c) "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.

(d) "Commissioner" means the Commissioner of Insurance of the State of Mississippi.

(e) "Confidential abuse information" means information about acts of abuse or abuse status of a subject of abuse, the address and telephone number (home and work) of a subject of abuse or the status of an applicant or insured as a family member, employer or associate of, or a person in a relationship with, a subject of abuse.

(f) "Insurance professional" means an agent, insurance producer, adjuster or third-party administrator as defined in the insurance laws of this state.

(g) "Insured" means the person whose life is covered under an insurance policy.

(h) "Insurer" means a person or other legal entity engaged in the business of life insurance in this state.

(i) "Policy" or "certificate" means a contract of insurance or annuity including endorsements, riders or binders issued, proposed for issuance or intended for issuance by an insurer or insurance professional.

(j) "Subject of abuse" means a person: against whom an act of abuse has been directed; who has current or prior injuries, illnesses 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, court-ordered protection or shelter from abuse.

SECTION 12. (1) It is unfairly discriminatory to:

(a) Deny, refuse to issue, refuse to renew or reissue, cancel or otherwise terminate, restrict or exclude insurance coverage on or add a premium differential to a policy for an applicant or insured on the basis of the applicant's or insured's abuse status; or

(b) Exclude, limit or deny benefits on a life insurance policy on the basis of an insured'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.

(2) When the insurer or insurance professional has information in its possession that clearly indicates that the insured or applicant is a subject of abuse, the disclosure or transfer of confidential abuse information by a person employed by or contracting with an insurer or insurance professional for any

purpose or to any person is unfairly discriminatory, except disclosure or transfer:

(a) To the subject of abuse or an individual specifically designated in writing by the subject of abuse;

(b) To a health care provider for the direct provision of health care services;

(c) To a licensed physician identified and designated by the subject of abuse;

(d) When ordered by the commissioner or a court of competent jurisdiction or otherwise required by law;

(e) When necessary for a valid business purpose to transfer information that includes confidential abuse information that cannot reasonably be segregated without undue hardship. Confidential abuse information may be disclosed only if the recipient has executed a written agreement to be bound by the prohibitions of Sections 9 through 16 of this act in all respects and to be subject to the enforcement of Sections 9 through 16 of this act by the courts of this state for the benefit of the applicant or the insured, and only to the following persons:

(i) A reinsurer that seeks to indemnify or indemnifies all or any part of a policy covering a subject of abuse and that cannot underwrite or satisfy its obligations under the reinsurance agreement without that disclosure;

(ii) A party to a proposed or consummated sale, transfer, merger or consolidation of all or part of the business of the insurer or insurance professional;

(iii) Medical or claims personnel contracting with the insurer or insurance professional, only where necessary to process an application or perform the insurer's or insurance professional's duties under the policy or to protect the safety or privacy of a subject of abuse (also includes parent or affiliate companies of the insurer or insurance professional that have service agreements with the insurer or insurance professional); or

(iv) With respect to address and telephone number, to entities with whom the insurer or insurance professional transacts business when the business cannot be transacted without the address and telephone number;

(f) To an attorney who needs the information to represent the insurer or insurance professional effectively, if the insurer or insurance professional notifies the attorney of its obligations under Sections 9 through 16 of this act and requests that the attorney exercise due diligence to protect the confidential abuse information consistent with the attorney's obligation to represent the insurer or insurance professional;

(g) To the policy owner or assignee, in the course of delivery of the policy, if the policy contains information about abuse status; or

(h) To any other entities deemed appropriate by the commissioner.

(3) It is unfairly discriminatory to request information about acts of abuse or abuse status or make use of that information, however obtained.

(4) Subsection (2) of this section does not preclude a subject of abuse from obtaining his or her insurance records.

(5) Subsection (1) of this section does not prohibit an insurer 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:

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

(b) 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 proposed insured; or

(c) 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.

(6) Subsection (3) of this section does not prohibit an insurer 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 insurer or insurance professional knows or has reason to know is abuse-related, to the extent otherwise permitted under Sections 9 through 16 of this act and other applicable law.

(7) An insurer or insurance professional shall not be held civilly or criminally liable for the death of or injury to an insured resulting from any action taken in a good faith effort to comply with the requirements of Sections 9 through 16 of this act. However, this subsection does not prevent an action to investigate or enforce a violation of Sections 9 through 16 of this act or to assert any other claims authorized by law.

SECTION 13. An insurer or insurance professional that takes an action that adversely affects an applicant or insured on the basis of a medical condition that the insurer or insurance professional knows or has reason to know is abuse-related shall explain the reason for its action to the applicant or insured in writing and shall be able to demonstrate that its action, and any applicable policy provision:

(a) Does not have the purpose or effect of treating abuse status as a medical condition or underwriting criterion;

(b) Is not based upon any actual or perceived correlation between a medical condition and abuse;

(c) Is otherwise permissible by law and applies in the same manner and to the same extent to all applicants and insureds with a similar medical condition without regard to whether the condition or claim is abuse-related; and

(d) Except for claims actions, is based on a determination, made in conformance with sound actuarial principles and otherwise supported by actual or reasonably anticipated experience, that there is a correlation between the medical condition and a material increase in insurance risk.

SECTION 14. Insurers shall develop and adhere to written policies specifying procedures to be followed by employees and by insurance professionals with which they contract for the purpose of protecting the safety and privacy of a subject of abuse and shall otherwise implement the provisions of Sections 9 through 16 of this act when taking an application, investigating a claim, pursuing subrogation or taking any other action relating to a policy or claim involving a subject of abuse. Insurers shall distribute their written policies to employees and insurance professionals.

SECTION 15. The commissioner shall conduct a reasonable investigation based on a written and signed complaint received by the commissioner and shall issue a prompt determination as to whether a violation of Sections 9 through 16 of this act may have occurred. If the commissioner finds from the investigation that a violation of Sections 9 through 16 of this act may have occurred, the commissioner shall promptly begin an adjudicatory proceeding. The commissioner may address a violation through means appropriate to the nature and extent of the violation, which may include suspension or revocation of certificates of authority or licenses, imposition of civil penalties, issuance of cease and desist orders, injunctive relief, a requirement for restitution, referral to prosecutorial authorities or any combination of these. The powers and duties set forth in this section are in addition to all other authority of the commissioner.

SECTION 16. Sections 9 through 16 of this act apply to every policy or certificate that is issued, reissued, renewed or continued on or after July 1, 2010, and to every application that

is submitted on or after July 1, 2010, for coverage under a policy or certificate.

SECTION 17. The purpose of Sections 17 through 24 of this act is to prohibit unfair discrimination by disability income insurers and insurance professionals on the basis of abuse status. Nothing in Sections 17 through 24 of this act shall be construed to create or imply a private cause of action for a violation of Sections 17 through 24 of this act.

SECTION 18. Sections 17 through 24 of this act apply to all disability income insurers and insurance professionals involved in issuing or renewing in this state a policy or certificate of disability income insurance.

SECTION 19. As used in Sections 17 through 24 of this act, unless the context clearly indicates otherwise:

(a) "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:

(i) Attempting to cause or intentionally, knowingly or recklessly causing another person bodily injury, physical harm, severe emotional distress, psychological trauma, rape, sexual assault or involuntary sexual intercourse;

(ii) Knowingly engaging in a course of conduct or repeatedly committing acts toward another person, including following the person without proper authority, under circumstances that place the person in reasonable fear of bodily injury or physical harm;

(iii) Subjecting another person to false imprisonment; or

(iv) 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.

(b) "Abuse-related medical condition" means a medical condition sustained by a subject of abuse which arises in whole or in part out of abuse.

(c) "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.

(d) "Commissioner" means the Commissioner of Insurance of the State of Mississippi.

(e) "Confidential abuse information" means information about acts of abuse or abuse status of a subject of abuse, the address and telephone number (home and work) of a subject of abuse or the status of an applicant or insured as a family member, employer or associate of, or a person in a relationship with, a subject of abuse.

(f) "Insurance professional" means an agent, insurance producer, adjuster or third-party administrator as defined in the insurance laws of this state.

(g) "Insured" means a party named on a disability income policy or certificate as the person with legal rights to the benefits provided by the policy or certificate. For group insurance, "insured" includes a person who is a beneficiary covered by a group policy or certificate.

(h) "Insurer" means a person or other legal entity engaged in the business of disability income insurance in this state.

(i) "Policy" or "certificate" means a contract of insurance or indemnity, including endorsements, riders or binders issued, proposed for issuance or intended for issuance by an insurer or insurance professional.

(j) "Subject of abuse" means a person: against whom an act of abuse has been directed; who has current or prior injuries, illnesses 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, court-ordered protection or shelter from abuse.

SECTION 20. (1) It is unfairly discriminatory to:

(a) Deny, refuse to issue or renew, cancel or otherwise terminate, restrict or exclude insurance coverage on or add a premium differential to any disability income insurance policy on the basis of the applicant's or insured's abuse status; or

(b) Exclude or limit coverage for losses or deny a claim under a disability income insurance policy on the basis of an insured's abuse status.

(2) When the insurer or insurance professional has information in its possession that clearly indicates that the insured or applicant is a subject of abuse, the disclosure or transfer of confidential abuse information for any purpose or to any person is unfairly discriminatory, except disclosure or transfer:

(a) To the subject of abuse or an individual specifically designated in writing by the subject of abuse;

(b) To a health care provider for the direct provision of health care services;

(c) To a licensed physician identified and designated by the subject of abuse;

(d) When ordered by the commissioner or a court of competent jurisdiction or otherwise required by law;

(e) When necessary for a valid business purpose to transfer information that includes confidential abuse information that cannot reasonably be segregated without undue hardship. Confidential abuse information may be disclosed only if the recipient has executed a written agreement to be bound by the prohibitions of Sections 17 through 24 of this act in all respects and to be subject to the enforcement of Sections 17 through 24 of this act by the courts of this state for the benefit of the applicant or insured and only to the following persons:

(i) A reinsurer that seeks to indemnify or indemnifies all or any part of a policy covering a subject of abuse and that cannot underwrite or satisfy its obligations under the reinsurance agreement without that disclosure;

(ii) A party to a proposed or consummated sale, transfer, merger or consolidation of all or part of the business of the insurer or insurance professional;

(iii) Medical or claims personnel contracting with the insurer, only where necessary to process an application or perform the insurer's or insurance professional's duties under the policy or to protect the safety or privacy of a subject of abuse (also includes parent or affiliate companies of the insurer that have service agreements with the insurer or insurance professional); or

(iv) With respect to address and telephone number, to entities with whom the insurer or insurance professional transacts business when the business cannot be transacted without the address and telephone number;

(f) To an attorney who needs the information to represent the insurer or insurance professional effectively, provided the insurer or insurance professional notifies the attorney of its obligations under Sections 17 through 24 of this act and requests that the attorney exercise due diligence to protect the confidential abuse information consistent with the attorney's obligation to represent the insurer or insurance professional;

(g) To the policyowner or assignee, in the course of delivery of the policy, if the policy contains information about the abuse status; or

(h) To any other entities deemed appropriate by the commissioner.

(3) It is unfairly discriminatory to request information about acts of abuse or abuse status or make use of that information, however obtained.

(4) Subsection (2) of this section does not preclude a subject of abuse from obtaining his or her insurance records.

(5) Subsection (3) of this section does not prohibit a disability income insurer 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 insurer knows or has reason to know is abuse-related, to the extent otherwise permitted under Sections 17 through 24 of this act and other applicable law.

(6) A disability income insurer or insurance professional shall not be held civilly or criminally liable for the death of or injury to an insured resulting from an action taken in a good faith effort to comply with the requirements of Sections 17 through 24 of this act. However, this subsection does not prevent an action to investigate or enforce a violation of Sections 17 through 24 of this act or to assert any other claims authorized by law.

SECTION 21. An insurer or insurance professional that takes an action that adversely affects an applicant or insured on the basis of a medical condition that the insurer or insurance professional knows or has reason to know is abuse-related shall explain the reason for its action to the applicant or insured in writing and shall be able to demonstrate that its action and any applicable policy provision:

(a) Does not have the purpose or effect of treating abuse status as a medical condition or underwriting criterion;

(b) Is not based upon any actual or perceived correlation between a medical condition and abuse;

(c) Is otherwise permissible by law and applies in the same manner and to the same extent to all applicants and insureds with a similar medical condition or disability without regard to whether the condition is abuse-related; and

(d) Except for claims actions, is based on a determination, made in conformance with sound actuarial principles and otherwise supported by actual or reasonably anticipated experience, that there is a correlation between the medical condition and a material increase in insurance risk.

SECTION 22. Insurers 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 Sections 17 through 24 of this act when taking an application, investigating a claim, pursuing subrogation or taking any other action relating to a policy or claim involving a subject of abuse. Insurers shall distribute their written policies to employees and insurance professionals.

SECTION 23. The commissioner shall conduct a reasonable investigation based on a written and signed complaint received by the commissioner and shall issue a prompt determination as to whether a violation of Sections 17 through 24 of this act may have occurred. If the commissioner finds from the investigation that a violation of Sections 17 through 24 of this act may have occurred, the commissioner shall promptly begin an adjudicatory proceeding. The commissioner may address a violation through means appropriate to the nature and extent of the violation, which may include suspension or revocation of certificates of authority or licenses, imposition of civil penalties, issuance of cease and desist orders, injunctive relief, a requirement for restitution, referral to prosecutorial authorities or any combination of these. The

powers and duties set forth in this section are in addition to all other authority of the commissioner.

SECTION 24. Sections 17 through 24 of this act apply to every policy or certificate that is issued, reissued, renewed or continued on or after July 1, 2010, and to every application that is submitted on or after July 1, 2010, for coverage under a policy or certificate.

SECTION 25. Section 83-5-35, Mississippi Code of 1972, is amended as follows:

83-5-35. The following are hereby defined as unfair methods of competition and unfair and deceptive acts or practices in the business of insurance:

(a) **Misrepresentations and false advertising of policy contracts.** Making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, illustration, circular, or statement misrepresenting the terms of any policy issued or to be issued, or the benefits or advantages promised thereby, or the dividends or share of the surplus to be received thereon; or making any false or misleading statement as to the dividends or share of surplus previously paid on similar policies; or making any misleading representation or any misrepresentation as to the financial condition of any insurer, or as to the legal reserve system upon which any life insurer operates; or using any name or title of any policy or class of policies misrepresenting the true nature thereof; or making any misrepresentation to any policyholder insured in any company for the purpose of inducing or tending to induce such policyholder to lapse, forfeit, or surrender his insurance.

(b) **False information and advertising generally.** Making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of

a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way, an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the business of insurance, or with respect to any person in the conduct of his insurance business, which is untrue, deceptive, or misleading.

(c) **Defamation.** Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting, or encouraging the making, publishing, disseminating, or circulating of any oral or written statement or any pamphlet, circular, article, or literature which is false and maliciously critical of or derogatory to the financial condition of an insurer, and which is calculated to injure any person engaged in the business of insurance.

(d) **Boycott, coercion and intimidation.** Entering into any agreement to commit, or by any concerted action committing, any act of boycott, coercion, or intimidation resulting in or tending to result in unreasonable restraint of, or monopoly in, the business of insurance.

(e) **False financial statements.** Filing with any supervisory or other public official, or making, publishing, disseminating, circulating, or delivering to any person, or placing before the public, or causing directly or indirectly to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false statement of financial condition of an insurer, with intent to deceive.

Making any false entry in any book, report, or statement of any insurer with intent to deceive any agent or examiner lawfully appointed to examine into its condition or into any of its affairs, or any public official to whom such insurer is required by law to report or file, or who has authority by law to examine into its condition or into any of its affairs, or, with like intent, willfully omitting to make a true entry of any material

fact pertaining to the business of such insurer in any book, report, or statement of such insurer.

(f) **Stock operations and insurance company advisory board contracts.** Issuing or delivering, or permitting agents, officers, or employees to issue or deliver, agency company stock or other capital stock, or benefit certificates or shares in any corporation, or securities, or any special or any insurance company advisory board contracts or other contracts of any kind promising returns and profit as an inducement to insurance.

(g) **Unfair discrimination.** (i) Making or permitting any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract.

(ii) Making or permitting any unfair discrimination between individuals of the same class and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of accident or health insurance or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever.

(iii) Any violation of Section 4, 12 or 20 of this act.

(h) **Designation of agent, solicitor, or insurer.** Requiring as a condition precedent to the purchase or the lending of money upon the security of real or personal property that any insurance covering such property or liability arising from the ownership, maintenance, or use thereof, to be procured by or on behalf of the vendee or by borrower in connection with such purchase or loan, be so procured through any particular person, agent, solicitor, or in any particular insurer.

This section shall not prevent the reasonable exercise by any such vendor or lender of his right to approve or disapprove the insurer selected to underwrite the insurance, and to determine the adequacy of the insurance offered.

(i) Any violation of Sections 83-3-33 and 83-3-121, Mississippi Code of 1972.

SECTION 26. This act shall take effect and be in force from and after July 1, 2010.

PASSED BY THE SENATE
February 3, 2010

PRESIDENT OF THE SENATE

PASSED BY THE HOUSE OF REPRESENTATIVES
February 25, 2010

SPEAKER OF THE HOUSE OF REPRESENTATIVES

APPROVED BY THE GOVERNOR

GOVERNOR

3/31/10 2:55 pm