

105TH CONGRESS  
1ST SESSION

# H. R. 1117

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

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 18, 1997

Mr. SANDERS (for himself, Mrs. MORELLA, Mr. DEFazio, Mr. SCHUMER, Mr. ACKERMAN, Mr. BALDACC, Mr. BARRETT of Wisconsin, Mr. BISHOP, Mr. BLUMENAUER, Mr. DAVIS of Illinois, Ms. DEGETTE, Mr. DELLUMS, Mr. EVANS, Mr. FALEOMAVAEGA, Mr. FILNER, Mr. FLAKE, Mr. GEJD-ENSON, Mr. GREEN, Mr. HINCHEY, Mr. HOLDEN, Ms. JACKSON-LEE of Texas, Mr. JEFFERSON, Mr. LAFALCE, Ms. LOFGREN, Mr. MANTON, Mr. McDERMOTT, Mr. McHUGH, Mr. MEEHAN, Mrs. MINK of Hawaii, Mr. NADLER, Mr. OWENS, Ms. ROYBAL-ALLARD, Ms. SLAUGHTER, Mr. STARK, and Ms. WATERS) introduced the following bill; which was referred to the Committee on Commerce, and in addition to the Committee on Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## 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 In-  
5       surance Protection Act”.

1 **SEC. 2. DEFINITIONS.**

2 As used in this Act:

3 (1) The term “abuse” means the occurrence of  
4 one or more of the following acts by a current or  
5 former household or family member, intimate part-  
6 ner, or caretaker:

7 (A) Attempting to cause or causing an-  
8 other person bodily injury, physical harm, sub-  
9 stantial emotional distress, psychological trau-  
10 ma, rape, sexual assault, or involuntary sexual  
11 intercourse.

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

18 (C) Subjecting another person to false im-  
19 prisonment or kidnapping.

20 (D) Attempting to cause or causing dam-  
21 age to property so as to intimidate or attempt  
22 to control the behavior of another person.

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

1           (3) The term “abuse status” means the fact or  
2           perception that a person is, has been, or may be a  
3           subject of abuse, irrespective of whether the person  
4           has sustained abuse-related medical conditions or  
5           has incurred abuse-related claims.

6           (4) The term “health benefit plan” means any  
7           public or private entity or program that provides for  
8           payments for health care, including—

9                   (A) a group health plan (as defined in sec-  
10                  tion 607 of the Employee Retirement Income  
11                  Security Act of 1974) or a multiple employer  
12                  welfare arrangement (as defined in section  
13                  3(40) of such Act) that provides health bene-  
14                  fits;

15                   (B) any other health insurance arrange-  
16                  ment, including any arrangement consisting of  
17                  a hospital or medical expense incurred policy or  
18                  certificate, hospital or medical service plan con-  
19                  tract, or health maintenance organization sub-  
20                  scriber contract;

21                   (C) workers’ compensation or similar in-  
22                  surance to the extent that it relates to workers’  
23                  compensation medical benefits (as defined by  
24                  the Federal Trade Commission); and

1 (D) automobile medical insurance to the  
2 extent that it relates to medical benefits (as de-  
3 fined by the Federal Trade Commission).

4 (5) The term “health carrier” means a person  
5 that contracts or offers to contract on a risk-assum-  
6 ing basis to provide, deliver, arrange for, pay for or  
7 reimburse any of the cost of health care services, in-  
8 cluding a sickness and accident insurance company,  
9 a health maintenance organization, a nonprofit hos-  
10 pital and health service corporation or any other en-  
11 tity providing a plan of health insurance, health ben-  
12 efits or health services.

13 (6) The term “insured” means a party named  
14 on a policy, certificate, or health benefit plan, in-  
15 cluding an individual, corporation, partnership, asso-  
16 ciation, unincorporated organization or any similar  
17 entity, as the person with legal rights to the benefits  
18 provided by the policy, certificate, or health benefit  
19 plan. For group insurance, such term includes a per-  
20 son who is a beneficiary covered by a group policy,  
21 certificate, or health benefit plan. For life insurance,  
22 the term refers to the person whose life is covered  
23 under an insurance policy.

24 (7) The term “insurer” means any person, re-  
25 ciprocal exchange, interinsurer, Lloyds insurer, fra-

1        ternal benefit society, or other legal entity engaged  
2        in the business of insurance, including agents, bro-  
3        kers, adjusters, and third party administrators. The  
4        term also includes health carriers, health benefit  
5        plans, and life, disability, and property and casualty  
6        insurers.

7            (8) The term “policy” means a contract of in-  
8        surance, certificate, indemnity, suretyship, or annu-  
9        ity issued, proposed for issuance or intended for is-  
10      suance by an insurer, including endorsements or rid-  
11      ers to an insurance policy or contract.

12           (9) The term “subject of abuse” means a per-  
13      son against whom an act of abuse has been directed,  
14      a person who has prior or current injuries, illnesses,  
15      or disorders that resulted from abuse, or a person  
16      who seeks, may have sought, or had reason to seek  
17      medical or psychological treatment for abuse, protec-  
18      tion, court-ordered protection, or shelter from abuse.

19   **SEC. 3. DISCRIMINATORY ACTS PROHIBITED.**

20           (a) IN GENERAL.—No insurer or health carrier may,  
21      directly or indirectly, engage in any of the following acts  
22      or practices on the basis that the applicant or insured,  
23      or any person employed by the applicant or insured or  
24      with whom the applicant or insured is known to have a

1 relationship or association, is, has been, or may be the  
2 subject of abuse:

3 (1) Denying, refusing to issue, renew or reissue,  
4 or canceling or otherwise terminating an insurance  
5 policy or health benefit plan.

6 (2) Restricting, excluding, or limiting insurance  
7 or health benefit plan coverage for losses incurred as  
8 a result of abuse or denying a claim incurred by an  
9 insured as a result of abuse, except as otherwise per-  
10 mitted or required by State laws relating to life in-  
11 surance beneficiaries.

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

14 (4) Terminating health coverage for a subject  
15 of abuse because coverage was originally issued in  
16 the name of the abuser and the abuser has divorced,  
17 separated from, or lost custody of the subject of  
18 abuse or the abuser's coverage has terminated volun-  
19 tarily or involuntarily and the subject of abuse does  
20 not qualify for extension of coverage under part 6 of  
21 subtitle B of title I or the Employee Retirement In-  
22 come Security Act of 1974 (29 U.S.C. 1161 et seq.)  
23 or 4980B of the Internal Revenue Code of 1986.  
24 Nothing in this paragraph prohibits the insurer from  
25 requiring the subject of abuse to pay the full pre-

1 mium for the subject's coverage under the health  
2 plan if the requirements are applied to all insureds  
3 of the health carrier. The insurer may terminate  
4 group coverage after the continuation coverage re-  
5 quired by this paragraph has been in force for 18  
6 months if it offers conversion to an equivalent indi-  
7 vidual plan. The continuation of health coverage re-  
8 quired by this paragraph shall be satisfied by any  
9 extension of coverage under part 6 of subtitle B of  
10 title I or the Employee Retirement Income Security  
11 Act of 1974 (29 U.S.C. 1161 et seq.) or 4980B of  
12 the Internal Revenue Code of 1986 provided to a  
13 subject of abuse and is not intended to be in addi-  
14 tion to any extension of coverage provided under  
15 part 6 of subtitle B of title I or the Employee Re-  
16 tirement Income Security Act of 1974 (29 U.S.C.  
17 1161 et seq.) or 4980B of the Internal Revenue  
18 Code of 1986.

19 (b) USE OF INFORMATION.—

20 (1) IN GENERAL.—No person employed by or  
21 contracting with an insurer or health benefit plan  
22 may use, disclose, or transfer information relating to  
23 an applicant's or insured's abuse status or abuse-re-  
24 lated medical condition or the applicant's or  
25 insured's status as a family member, employer, or

1       associate, person in a relationship with a subject of  
2       abuse for any purpose unrelated to the direct provi-  
3       sion of health care services unless such use, disclo-  
4       sure, or transfer is required by an order of an entity  
5       with authority to regulate insurance or an order of  
6       a court of competent jurisdiction. In addition, such  
7       a person may not disclose or transfer information re-  
8       lating to an applicant's or insured's location or tele-  
9       phone number. Nothing in this paragraph shall be  
10      construed as limiting or precluding a subject of  
11      abuse from obtaining the subject's own insurance  
12      records from an insurer.

13           (2) AUTHORITY OF SUBJECT OF ABUSE.—A  
14      subject of abuse, at the absolute discretion of the  
15      subject of abuse, may provide evidence of abuse to  
16      an insurer for the limited purpose of facilitating  
17      treatment of an abuse-related condition or dem-  
18      onstrating that a condition is abuse-related. Nothing  
19      in this paragraph shall be construed as authorizing  
20      an insurer or health carrier to disregard such pro-  
21      vided evidence.

22   **SEC. 4. INSURANCE PROTOCOLS FOR SUBJECTS OF ABUSE.**

23      Insurers shall develop and adhere to written policies  
24      specifying procedures to be followed by employees, con-  
25      tractors, producers, agents and brokers for the purpose



1 of protecting the safety and privacy of a subject of abuse  
2 and otherwise implementing the provisions of this Act  
3 when taking an application, investigating a claim, or tak-  
4 ing any other action relating to a policy or claim involving  
5 a subject of abuse.

6 **SEC. 5. REASONS FOR ADVERSE ACTIONS.**

7 An insurer that takes an action that adversely affects  
8 a subject of abuse, shall advise the subject of abuse appli-  
9 cant or insured of the specific reasons for the action in  
10 writing. Reference to general underwriting practices or  
11 guidelines does not constitute a specific reason.

12 **SEC. 6. LIFE INSURANCE.**

13 Nothing in this Act shall be construed to prohibit a  
14 life insurer from declining to issue a life insurance policy  
15 if the applicant or prospective owner of the policy is or  
16 would be designated as a beneficiary of the policy, and  
17 if—

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

20 (2) the applicant or prospective owner of the  
21 policy is known, on the basis of police or court  
22 records, to have committed an act of abuse against  
23 the proposed insured.

1 **SEC. 7. SUBROGATION WITHOUT CONSENT PROHIBITED.**

2 Subrogation of claims resulting from abuse is prohib-  
3 ited without the informed consent of the subject of abuse.

4 **SEC. 8. ENFORCEMENT.**

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

18 (b) **PRIVATE CAUSE OF ACTION.**—An applicant or in-  
19 sured who believes that the applicant or insured has been  
20 adversely affected by an act or practice of an insurer in  
21 violation of this Act may maintain an action against the  
22 insurer in a Federal or State court of original jurisdiction.  
23 Upon proof of such conduct by a preponderance of the  
24 evidence, the court may award appropriate relief, includ-  
25 ing temporary, preliminary, and permanent injunctive re-  
26 lief and compensatory and punitive damages, as well as

1 the costs of suit and reasonable fees for the aggrieved indi-  
2 vidual's attorneys and expert witnesses. With respect to  
3 compensatory damages, the aggrieved individual may  
4 elect, at any time prior to the rendering of final judgment,  
5 to recover in lieu of actual damages, an award of statutory  
6 damages in the amount of \$5,000 for each violation.

7 **SEC. 9. EFFECTIVE DATE.**

8 This Act shall apply with respect to any action taken  
9 on or after the date of the enactment of this Act, except  
10 that section 4 shall only apply to actions taken after the  
11 expiration of 60 days after such date.

