

110TH CONGRESS
1ST SESSION

H. R. 4014

To prohibit discrimination in insurance coverage to victims of domestic violence, dating violence, sexual assault, or stalking.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 31, 2007

Ms. ROYBAL-ALLARD (for herself and Mr. POE) introduced the following bill; which was referred to the Committee on Financial Services, and in addition to the Committee on Energy and Commerce, 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

A BILL

To prohibit discrimination in insurance coverage to victims of domestic violence, dating violence, sexual assault, or stalking.

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 “Insurance Non-Dis-
5 crimination for Survivors Act”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act, except as otherwise expressly provided:

1 (1) COURSE OF CONDUCT.—The term “course
2 of conduct” means a course of repeatedly maintain-
3 ing a visual or physical proximity to a person or con-
4 veying verbal or written threats, including threats
5 conveyed through electronic communications, or
6 threats implied by conduct.

7 (2) ELECTRONIC COMMUNICATIONS.—The term
8 “electronic communications” includes communica-
9 tions via telephone (including mobile phone), com-
10 puter, e-mail, video recorder, fax machine, telex, or
11 pager.

12 (3) EMPLOY; STATE.—The terms “employ” and
13 “State” have the meanings given the terms in sec-
14 tion 3 of the Fair Labor Standards Act of 1938 (29
15 U.S.C. 203).

16 (4) EMPLOYEE.—

17 (A) IN GENERAL.—The term “employee”
18 means any person employed by an employer. In
19 the case of an individual employed by a public
20 agency, such term means an individual em-
21 ployed as described in section 3(e)(2) of the
22 Fair Labor Standards Act of 1938 (29 U.S.C.
23 203(e)(2)).

24 (B) BASIS.—The term includes a person
25 employed as described in subparagraph (A) on

1 a full- or part-time basis, for a fixed time pe-
2 riod, on a temporary basis, pursuant to a detail,
3 or as a participant in a work assignment as a
4 condition of receipt of Federal or State income-
5 based public assistance.

6 (5) EMPLOYER.—The term “employer”—

7 (A) means any person engaged in com-
8 merce or in any industry or activity affecting
9 commerce who employs 15 or more individuals;
10 and

11 (B) includes any person acting directly or
12 indirectly in the interest of an employer in rela-
13 tion to an employee, and includes a public agen-
14 cy that employs individuals as described in sec-
15 tion 3(e)(2) of the Fair Labor Standards Act of
16 1938, but does not include any labor organiza-
17 tion (other than when acting as an employer) or
18 anyone acting in the capacity of officer or agent
19 of such labor organization.

20 (6) EMPLOYMENT BENEFITS.—The term “em-
21 ployment benefits” means all benefits provided or
22 made available to employees by an employer, includ-
23 ing group life insurance, health insurance, disability
24 insurance, sick leave, annual leave, educational bene-
25 fits, and pensions, regardless of whether such bene-

1 fits are provided by a practice or written policy of
2 an employer or through an “employee benefit plan”,
3 as defined in section 3(3) of the Employee Retirement
4 Income Security Act of 1974 (29 U.S.C.
5 1002(3)).

6 (7) PERSON.—The term “person” has the
7 meaning given the term in section 3 of the Fair
8 Labor Standards Act of 1938 (29 U.S.C. 203).

9 (8) REPEATEDLY.—The term “repeatedly”
10 means on 2 or more occasions.

11 (9) SEXUAL ASSAULT.—The term “sexual as-
12 sault” has the meaning given the term in section
13 40002 of the Violence Against Women Act of 1994
14 (42 U.S.C. 13925).

15 (10) VICTIM OF DOMESTIC VIOLENCE, DATING
16 VIOLENCE, SEXUAL ASSAULT, OR STALKING.—The
17 term “victim of domestic violence, dating violence,
18 sexual assault, or stalking” includes a person who
19 has been a victim of domestic violence, dating vio-
20 lence, sexual assault, or stalking and a person whose
21 family or household member has been a victim of do-
22 mestic violence, dating violence, sexual assault, or
23 stalking.

24 **SEC. 3. DEFINITIONS.**

25 In this Act:

1 (1) ABUSE.—The term “abuse” means the oc-
2 currence of 1 or more of the following acts by a cur-
3 rent or former household or family member, intimate
4 partner, or caretaker:

5 (A) Attempting to cause or causing an-
6 other person bodily injury, physical harm, sub-
7 stantial emotional distress, or psychological
8 trauma.

9 (B) Attempting to engage in or engaging
10 in rape, sexual assault, or involuntary sexual
11 intercourse.

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

20 (E) 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) HEALTH CARRIER.—The term “health car-
24 rier” means a person that contracts or offers to con-
25 tract on a risk-assuming basis to provide, deliver, ar-

1 range for, pay for, or reimburse any of the cost of
2 health care services, including a sickness and acci-
3 dent insurance company, a health maintenance orga-
4 nization, a nonprofit hospital and health service cor-
5 poration, or any other entity providing a plan of
6 health insurance, health benefits, or health services.

7 (3) INSURED.—The term “insured” means a
8 party named on a policy, certificate, or health ben-
9 efit plan, including an individual, corporation, part-
10 nership, association, unincorporated organization, or
11 any similar entity, as the person with legal rights to
12 the benefits provided by the policy, certificate, or
13 health benefit plan. For group insurance, the term
14 includes a person who is a beneficiary covered by a
15 group policy, certificate, or health benefit plan. For
16 life insurance, the term refers to the person whose
17 life is covered under an insurance policy.

18 (4) INSURER.—The term “insurer” means any
19 person, reciprocal exchange, inter insurer, Lloyds in-
20 surer, fraternal benefit society, or other legal entity
21 engaged in the business of insurance, including
22 agents, brokers, adjusters, and third-party adminis-
23 trators. The term includes employers who provide or
24 make available employment benefits through an em-
25 ployee benefit plan, as defined in section 3(3) of the

1 Employee Retirement Income Security Act of 1974
2 (29 U.S.C. 102(3)). The term also includes health
3 carriers, health benefit plans, and life, disability, and
4 property and casualty insurers.

5 (5) POLICY.—The term “policy” means a con-
6 tract of insurance, certificate, indemnity, suretyship,
7 or annuity issued, proposed for issuance, or intended
8 for issuance by an insurer, including endorsements
9 or riders to an insurance policy or contract.

10 (6) SUBJECT OF ABUSE.—The term “subject of
11 abuse” means—

12 (A) a person against whom an act of abuse
13 has been directed;

14 (B) a person who has prior or current in-
15 juries, illnesses, or disorders that resulted from
16 abuse; or

17 (C) a person who seeks, may have sought,
18 or had reason to seek medical or psychological
19 treatment for abuse, protection, court-ordered
20 protection, or shelter from abuse.

21 **SEC. 4. DISCRIMINATORY ACTS PROHIBITED.**

22 (a) IN GENERAL.—No insurer may, directly or indi-
23 rectly, engage in any of the following acts or practices on
24 the basis that the applicant or insured, or any person em-
25 ployed by the applicant or insured or with whom the appli-

1 cant or insured is known to have a relationship or associa-
2 tion, is, has been, or may be the subject of abuse or has
3 incurred or may incur abuse-related claims:

4 (1) Denying, refusing to issue, renew, or re-
5 issue, or canceling or otherwise terminating an in-
6 surance policy or health benefit plan.

7 (2) Restricting, excluding, or limiting insurance
8 coverage for losses or denying a claim, except as oth-
9 erwise permitted or required by State laws relating
10 to life insurance beneficiaries.

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

13 (b) PROHIBITION ON LIMITATION OF CLAIMS.—No
14 insurer may, directly or indirectly, deny or limit payment
15 to an insured who is a subject of abuse if the claim for
16 payment is a result of the abuse.

17 (c) PROHIBITION ON TERMINATION.—

18 (1) IN GENERAL.—No insurer or health carrier
19 may terminate health coverage for a subject of abuse
20 because coverage was originally issued in the name
21 of the abuser and the abuser has divorced, separated
22 from, or lost custody of the subject of abuse or the
23 abuser's coverage has terminated voluntarily or in-
24 voluntarily and the subject of abuse does not qualify
25 for an extension of coverage under part 6 of subtitle

1 B of title I of the Employee Retirement Income Se-
2 curity Act of 1974 (29 U.S.C. 1161 et seq.) or sec-
3 tion 4980B of the Internal Revenue Code of 1986.

4 (2) PAYMENT OF PREMIUMS.—Nothing in para-
5 graph (1) shall be construed to prohibit the insurer
6 from requiring that the subject of abuse pay the full
7 premium for the subject’s coverage under the health
8 plan if the requirements are applied to all insured of
9 the health carrier.

10 (3) EXCEPTION.—An insurer may terminate
11 group coverage to which this subsection applies after
12 the continuation coverage period required by this
13 subsection has been in force for 18 months if it of-
14 fers conversion to an equivalent individual plan.

15 (4) CONTINUATION COVERAGE.—The continu-
16 ation of health coverage required by this subsection
17 shall be satisfied by any extension of coverage under
18 part 6 of subtitle B of title I of the Employee Re-
19 tirement Income Security Act of 1974 (29 U.S.C.
20 1161 et seq.) or section 4980B of the Internal Rev-
21 enue Code of 1986 provided to a subject of abuse
22 and is not intended to be in addition to any exten-
23 sion of coverage otherwise provided for under such
24 part 6 or section 4980B.

25 (d) USE OF INFORMATION.—

1 (1) LIMITATION.—

2 (A) IN GENERAL.—In order to protect the
3 safety and privacy of subjects of abuse, no per-
4 son employed by or contracting with an insurer
5 or health benefit plan may (without the consent
6 of the subject)—

7 (i) use, disclose, or transfer informa-
8 tion relating to abuse status, acts of abuse,
9 abuse-related medical conditions, or the
10 applicant’s or insured’s status as a family
11 member, employer, associate, or person in
12 a relationship with a subject of abuse for
13 any purpose unrelated to the direct provi-
14 sion of health care services unless such
15 use, disclosure, or transfer is required by
16 an order of an entity with authority to reg-
17 ulate insurance or an order of a court of
18 competent jurisdiction; or

19 (ii) disclose or transfer information
20 relating to an applicant’s or insured’s mail-
21 ing address or telephone number or the
22 mailing address and telephone number of a
23 shelter for subjects of abuse, unless such
24 disclosure or transfer—

1 (I) is required in order to provide
2 insurance coverage; and

3 (II) does not have the potential
4 to endanger the safety of a subject of
5 abuse.

6 (B) RULE OF CONSTRUCTION.—Nothing in
7 this paragraph may be construed to limit or
8 preclude a subject of abuse from obtaining the
9 subject’s own insurance records from an in-
10 surer.

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

20 **SEC. 5. INSURANCE PROTOCOLS FOR SUBJECTS OF ABUSE.**

21 Insurers shall develop and adhere to written policies
22 specifying procedures to be followed by employees, con-
23 tractors, producers, agents, and brokers for the purpose
24 of protecting the safety and privacy of a subject of abuse
25 and otherwise implementing this Act when taking an ap-

1 plication, investigating a claim, or taking any other action
2 relating to a policy or claim involving a subject of abuse.

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

4 An insurer that takes an action that adversely affects
5 a subject of abuse, shall advise the applicant or insured
6 who is the subject of abuse of the specific reasons for the
7 action in writing. For purposes of this section, reference
8 to general underwriting practices or guidelines shall not
9 constitute a specific reason.

10 **SEC. 7. LIFE INSURANCE.**

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

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

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

22 **SEC. 8. SUBROGATION WITHOUT CONSENT PROHIBITED.**

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

1 **SEC. 9. ENFORCEMENT.**

2 (a) FEDERAL TRADE COMMISSION.—Any act or
3 practice prohibited by this Act shall be treated as an un-
4 fair and deceptive act or practice pursuant to section 5
5 of the Federal Trade Commission Act (15 U.S.C. 45) and
6 the Federal Trade Commission shall enforce this Act in
7 the same manner, by the same means, and with the same
8 jurisdiction, powers, and duties as though all applicable
9 terms and provisions of the Federal Trade Commission
10 Act were incorporated into and made a part of this Act,
11 including issuing a cease and desist order granting any
12 individual relief warranted under the circumstances, in-
13 cluding temporary, preliminary, and permanent injunctive
14 relief and compensatory damages.

15 (b) PRIVATE CAUSE OF ACTION.—

16 (1) IN GENERAL.—An applicant or insured who
17 believes that the applicant or insured has been ad-
18 versely affected by an act or practice of an insurer
19 in violation of this Act may maintain an action
20 against the insurer in a Federal or State court of
21 original jurisdiction.

22 (2) RELIEF.—Upon proof of such conduct by a
23 preponderance of the evidence in an action described
24 in paragraph (1), the court may award appropriate
25 relief, including temporary, preliminary, and perma-
26 nent injunctive relief and compensatory and punitive

1 damages, as well as the costs of suit and reasonable
2 fees for the aggrieved individual's attorneys and ex-
3 pert witnesses.

4 (3) STATUTORY DAMAGES.—With respect to
5 compensatory damages in an action described in
6 paragraph (1), the aggrieved individual may elect, at
7 any time prior to the rendering of final judgment, to
8 recover in lieu of actual damages, an award of statu-
9 tory damages in the amount of \$5,000 for each vio-
10 lation.

11 **SEC. 10. NO PREEMPTION.**

12 Nothing in this Act shall be construed as superseding
13 any law of a State or political subdivision of a State that
14 provides greater protection to victims of domestic violence
15 than provided in this Act.

16 **SEC. 11. EFFECTIVE DATE.**

17 This Act shall apply with respect to any action taken
18 on or after the date of enactment of this Act.

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