

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 610

Short Title: Insurer Discrimination/Abused Persons.

(Public)

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Sponsors: Senator Miller.

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Referred to: Judiciary.

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April 1, 1997

A BILL TO BE ENTITLED

AN ACT TO SPECIFICALLY MAKE UNFAIR DISCRIMINATION AGAINST  
ABUSED PERSONS AN UNFAIR TRADE PRACTICE IN THE BUSINESS OF  
INSURANCE.

The General Assembly of North Carolina enacts:

Section 1. Article 63 of Chapter 58 of the General Statutes is amended by  
adding a new section to read:

**"§ 58-63-17. Unfair discrimination against subjects of abuse.**

(a) Definitions. – As used in this section:

(1) 'Abuse' means the occurrence of one or more of the following acts:

a. 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.

b. 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 or minor child in reasonable fear of bodily injury or  
physical harm.

c. Subjecting another person to false imprisonment.

1           d.     Attempting to cause or intentionally, knowingly, or recklessly  
2                 causing damage to property so as to intimidate or attempt to  
3                 control the behavior of another person.

4           (2)   'Abuse-related medical condition' means a medical condition sustained  
5                 by a subject of abuse that arises in whole or part out of an act or pattern  
6                 of abuse.

7           (3)   'Abuse status' means the fact or perception that a person is, has been, or  
8                 may be a subject of abuse, irrespective of whether the person has  
9                 sustained abuse-related medical conditions.

10          (4)   'Carrier' means an insurer, MEWA (as defined in G.S. 58-49-30),  
11                 service corporation, or health maintenance organization subject to this  
12                 Chapter.

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

22          (6)   'Health carrier' means a carrier that contracts or offers to contract to  
23                 provide, deliver, arrange for, pay for, or reimburse any of the cost of  
24                 health care services.

25          (7)   'Insured' means a party named on a policy as the person with legal rights  
26                 to the benefits provided by the policy. For group health benefit plans,  
27                 'insured' includes a person who is a beneficiary covered by a group  
28                 health benefit plan.

29          (8)   'Subject of abuse' means a person to whom a family member, or a  
30                 current or former household member, intimate partner, or caretaker, or a  
31                 perpetrator of sexual assault, a stalker, or a sex offender has directed an  
32                 act defined in subsection (a) of this section; who has current or prior  
33                 injuries, illnesses, or disorders that resulted from abuse; or who seeks,  
34                 may have sought, or had reason to seek medical or psychological  
35                 treatment for abuse or protection, court-ordered protection, or shelter  
36                 from abuse.

37          (b)   Unfair Discrimination Against Subjects of Abuse Prohibited. – A carrier shall  
38                 not engage, directly or indirectly, in an unfairly discriminatory act or practice against a  
39                 subject of abuse.

40          (c)   Unfairly Discriminatory Acts Relating to Insurance Policies. – The following  
41                 acts are prohibited as unfairly discriminatory:

42                 (1)   On the basis of an applicant's or insured's abuse status, denying,  
43                 refusing to issue, renew, or reissue a policy; canceling or otherwise

1 terminating a policy; restricting or excluding coverage; or unilaterally  
2 adding a premium differential to any policy.

3 (2) On the basis of the insured's abuse status, excluding or limiting  
4 coverage for losses or denying a claim incurred by an insured as a result  
5 of abuse.

6 (3) Terminating group health insurance coverage for a subject of abuse  
7 because coverage was originally issued in the name of the abuser and  
8 the abuser has divorced, separated from, or lost custody of the subject of  
9 abuse, or the abuser's coverage has terminated voluntarily or  
10 involuntarily. Nothing in this subsection prohibits the health carrier  
11 from requiring the subject of abuse to pay the full premium for coverage  
12 under the health plan or from requiring as a condition of coverage that  
13 the subject of abuse reside or work within its service area, if the  
14 requirements are applied to all insureds of the health carrier. The health  
15 carrier may terminate group coverage after the continuation coverage  
16 required by this subsection has been in force for 18 months, if it offers  
17 conversion to an equivalent individual plan. The continuation coverage  
18 required by this section shall be satisfied by coverage required under  
19 P.L. 99-272, the Consolidated Omnibus Budget Reconciliation Act of  
20 1985 (COBRA), provided to a subject of abuse and is not intended to be  
21 in addition to coverage provided under COBRA.

22 (4) Disclosure or transfer by a person employed by or contracting with a  
23 health carrier of any information relating to (i) a person's abuse status,  
24 (ii) a person's medical condition which the health carrier knows or has  
25 reason to know is abuse-related, or (iii) a person's family, household,  
26 social, or employment relationship with a subject of abuse; except to the  
27 extent necessary for the direct provision of health care services,  
28 compliance with abuse reporting laws, or compliance with an order of  
29 the Commissioner or a court of competent jurisdiction. This subsection  
30 does not preclude a person who is the subject of abuse from obtaining  
31 that person's own medical records. This subsection does not prohibit a  
32 health carrier from asking an applicant or insured about a medical  
33 condition, even if the condition is abuse-related, or from using  
34 information obtained from the applicant or insured for the purpose of  
35 acts or practices permitted by this section. A subject of abuse may  
36 provide evidence of abuse to a health carrier for the limited purpose of  
37 facilitating treatment of an abuse-related condition or demonstrating that  
38 a medical condition is abuse-related; and this section does not authorize  
39 the health carrier to disregard that information.

40 (d) A violation of this section is an unfair trade practice."

41 Section 2. G.S. 58-63-25(a) reads as rewritten:

42 "(a) When the Commissioner has reason to believe that any person has been  
43 engaged or is engaging in this State in any unfair method of competition or any unfair or

1 deceptive act or practice defined in G.S. 58-63-15 or G.S. 58-63-17 or under G.S. 58-63-  
2 65, and that a proceeding by the Commissioner on the matter would be in the interest of  
3 the public, the Commissioner shall issue and serve upon the person a statement of the  
4 charges in that respect and a notice of the hearing on the matter to be held at the time and  
5 place fixed in the notice, which shall not be less than 10 days after the date of the service  
6 of the notice."

7 Section 3. G.S. 58-63-35(a) reads as rewritten:

8 "(a) Any person required by an order of the Commissioner under G.S. 58-63-32 to  
9 cease and desist from engaging in any unfair method of competition or any unfair or  
10 deceptive act or practice defined in G.S. 58-63-15 or G.S. 58-63-17 or under G.S. 58-63-  
11 65 may obtain a review of the order by filing in the Superior Court of Wake County,  
12 within 30 days from the date of the service of such order, a written petition praying that  
13 the order of the Commissioner be set aside. A copy of the petition shall be immediately  
14 served upon the Commissioner, and at that time the Commissioner immediately shall  
15 certify and file in the court a transcript of the entire record in the proceeding, including  
16 all the evidence taken and the report and order of the Commissioner. Upon the filing of  
17 the petition and transcript, the court has jurisdiction of the proceeding and of the question  
18 determined therein, shall determine whether the filing of the petition shall operate as a  
19 stay of the Commissioner's order, and has power to make and enter upon the pleadings,  
20 evidence, and proceedings set forth in the transcript a decree modifying, affirming or  
21 reversing the order of the Commissioner, in whole or in part. The findings of the  
22 Commissioner as to the facts, if supported by substantial evidence, are conclusive."

23 Section 4. This act applies to all insurance policies and health benefit plans  
24 that are delivered, issued for delivery, or renewed on and after October 1, 1997. For the  
25 purposes of this act, renewal of a health benefit plan is presumed to occur on each  
26 anniversary of the date on which coverage was first effective on the person or persons  
27 covered by the health benefit plan.

28 Section 5. This act becomes effective October 1, 1997, and applies to all acts  
29 regarding insurance coverage occurring on or after that date.