

CHAPTER 39

INSURANCE

SENATE BILL 97-072

BY SENATORS Reeves, Feeley, Hernandez, Johnson, Linkhart, Martinez, Matsunaka, Pascoe, Phillips, Rupert, Thiebaut, and Wham;
also REPRESENTATIVES Schauer, Allen, Bacon, Clarke, Dean, Epps, Gordon, Gotlieb, Grossman, Hagedorn, Leyba, Mace, Nichol, Reeser, Saliman, Schwarz, Snyder, Takis, Tupa, Udall, Veiga, and S. Williams.

AN ACT

CONCERNING PROHIBITION OF DISCRIMINATION BY INSURANCE PROVIDERS AGAINST VICTIMS OF DOMESTIC ABUSE.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Part 11 of article 3 of title 10, Colorado Revised Statutes, 1994 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

10-3-1104.8. Domestic abuse discrimination - prohibited. (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "DOMESTIC ABUSE" MEANS THE OCCURRENCE OF ONE OR MORE OF THE FOLLOWING ACTS BETWEEN FAMILY MEMBERS, CURRENT OR FORMER HOUSEHOLD MEMBERS, OR PERSONS WHO ARE OR HAVE BEEN INVOLVED IN AN INTIMATE RELATIONSHIP:

(I) COMMITTING AN ACT OF UNLAWFUL SEXUAL BEHAVIOR, AS DESCRIBED IN PART 4 OF ARTICLE 3 OF TITLE 18, C.R.S., OR OTHERWISE INTENTIONALLY, KNOWINGLY, OR RECKLESSLY CAUSING OR ATTEMPTING TO CAUSE ANOTHER PERSON, INCLUDING A MINOR, BODILY INJURY OR PHYSICAL OR PSYCHOLOGICAL HARM; OR

(II) KNOWINGLY ENGAGING IN REPEATED ACTS UNDER CIRCUMSTANCES THAT PLACE THE PERSON TOWARD WHICH SUCH ACTS ARE DIRECTED IN REASONABLE FEAR

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

OF BODILY INJURY OR PHYSICAL OR PSYCHOLOGICAL HARM; OR

(III) SUBJECTING ANOTHER PERSON TO FALSE IMPRISONMENT; OR

(IV) INTENTIONALLY, KNOWINGLY, OR RECKLESSLY CAUSING OR ATTEMPTING TO CAUSE DAMAGE TO PROPERTY SO AS TO INTIMIDATE OR ATTEMPT TO CONTROL THE BEHAVIOR OF ANOTHER PERSON.

(b) "DOMESTIC ABUSE RELATED MEDICAL CONDITION" MEANS A MEDICAL CONDITION SUSTAINED BY A VICTIM OF DOMESTIC ABUSE THAT ARISES IN WHOLE OR IN PART OUT OF AN ACT OR PATTERN OF DOMESTIC ABUSE.

(c) "DOMESTIC ABUSE STATUS" MEANS THE FACT OR PERCEPTION THAT A PERSON IS OR HAS BEEN A VICTIM OF DOMESTIC ABUSE, IRRESPECTIVE OF WHETHER THE PERSON HAS SUSTAINED A DOMESTIC ABUSE RELATED MEDICAL CONDITION.

(d) "VICTIM OF DOMESTIC ABUSE" MEANS A PERSON AGAINST WHOM ANY OF THE ACTS SPECIFIED IN PARAGRAPH (a) OF THIS SUBSECTION (1) HAS BEEN DIRECTED BY ANY OF THE PERSONS SPECIFIED IN SAID PARAGRAPH (a).

(2) THE FOLLOWING ARE UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS OR PRACTICES IN THE BUSINESS OF INSURANCE BY INSURERS LICENSED IN THIS STATE, THEIR EMPLOYEES, OR THEIR PRODUCERS:

(a) DENYING, REFUSING TO ISSUE, REFUSING TO RENEW, REFUSING TO REISSUE, CANCELING, OR OTHERWISE TERMINATING AN INSURANCE POLICY OR RESTRICTING COVERAGE ON ANY PERSON SOLELY BECAUSE OF THAT PERSON'S DOMESTIC ABUSE STATUS; OR

(b) ADDING ANY SURCHARGE OR RATING FACTOR TO A PREMIUM OF AN INSURANCE POLICY SOLELY BECAUSE OF AN INSURED'S DOMESTIC ABUSE STATUS; OR

(c) DIRECTLY OR INDIRECTLY ASKING AN INSURED OR AN INSURANCE APPLICANT ABOUT THAT PERSON'S DOMESTIC ABUSE STATUS UNLESS RELATED TO THE PROVISION OF APPROPRIATE MEDICAL OR MENTAL HEALTH SERVICES TO AN INSURED AS PROVIDED BY THE INSURANCE CONTRACT OR HEALTH MAINTENANCE ORGANIZATION, BUT SAID INFORMATION SHALL NOT BE RELEASED WITHOUT SPECIFIC, SEPARATE AUTHORIZATION FROM THE INSURED; OR

(d) DISCLOSING OR TRANSFERRING BY INSURERS LICENSED IN THIS STATE, THEIR EMPLOYEES, OR THEIR PRODUCERS ANY INFORMATION RELATING TO A PERSON'S DOMESTIC ABUSE STATUS OR A PERSON'S DOMESTIC ABUSE RELATED MEDICAL CONDITION AS IT RELATES TO A PERSON'S FAMILY, HOUSEHOLD, SOCIAL, OR EMPLOYMENT RELATIONSHIP WITH A VICTIM OF DOMESTIC ABUSE, EXCEPT:

(I) TO THE EXTENT REQUIRED IN THE ORDINARY COURSE OF BUSINESS AND CONSISTENT WITH PARAGRAPH (a), (b), OR (c) OF THIS SUBSECTION (2);

(II) TO THE EXTENT REQUIRED FOR COMPLIANCE WITH DOMESTIC ABUSE REPORTING LAWS OR WITH AN ORDER OF A COURT OF COMPETENT JURISDICTION; OR

(III) AT THE WRITTEN REQUEST OF THE COMMISSIONER FOR THE PURPOSE OF DETERMINING THE INSURER'S COMPLIANCE WITH THIS SECTION. THIS PARAGRAPH (d) SHALL NOT PRECLUDE A VICTIM OF DOMESTIC ABUSE FROM OBTAINING HIS OR HER RECORDS, INCLUDING MEDICAL RECORDS.

(3) AN INSURER THAT TAKES AN ACTION THAT ADVERSELY AFFECTS AN INSURED OR AN APPLICANT WHO IS A VICTIM OF DOMESTIC ABUSE, SHALL DEMONSTRATE TO THE APPLICANT OR THE INSURED, UPON THE WRITTEN REQUEST OF THE INSURED OR APPLICANT, THAT SUCH ACTION IS NOT BASED SOLELY UPON THE DOMESTIC ABUSE STATUS OF THE INSURED OR THE APPLICANT BUT THAT THE ACTION IS BASED ON UNDERWRITING CRITERIA RELATED TO THE CONDITION, PROPERTY, OR CLAIM HISTORY OF THE INSURED OR THE APPLICANT AND THAT THE DECISION TO TAKE SUCH ACTION WAS BASED ON SOUND UNDERWRITING AND ACTUARIAL PRINCIPLES RELATED TO ACTUAL OR ANTICIPATED LOSS EXPERIENCE.

(4) AN INSURER THAT COMPLIES WITH THIS SECTION AND ACTS IN GOOD FAITH SHALL NOT BE HELD CIVILLY LIABLE IN ANY CAUSE OF ACTION THAT MAY BE BROUGHT BECAUSE OF COMPLIANCE WITH THIS SECTION.

(5) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO ALTER OR MODIFY ANY POLICY CONDITIONS, EXCLUSIONS, OR LIMITATIONS THAT ARE CONSISTENT WITH PARAGRAPHS (a), (b), AND (c) OF SUBSECTION (2) OF THIS SECTION AND ARE CLEARLY STATED IN THE CONTRACT.

(6) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO ESTABLISH A PROTECTED CLASS FOR VICTIMS OF DOMESTIC ABUSE.

SECTION 2. The introductory portion to 10-3-1108 (1), Colorado Revised Statutes, 1994 Repl. Vol., is amended to read:

10-3-1108. Orders. (1) If, after a hearing conducted under section 10-3-1107, the commissioner determines that the person charged has engaged in an unfair method of competition or an unfair or deceptive act or practice, the commissioner shall reduce the findings to writing and shall issue and cause to be served on such person a copy of such findings and an order requiring such person to cease and desist from engaging in such method of competition, act, or practice, and, if such act or practice is a violation of section 10-3-1104, 10-3-1104.7, 10-3-1104.8, 10-3-1105, or 10-18-106, the commissioner may, at his or her discretion, order any one or more of the following:

SECTION 3. Effective date - applicability. This act shall take effect January 1, 1998, and shall apply to acts or omissions occurring on or after said date.

SECTION 4. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: March 24, 1997