

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 788

SPONSOR: Banking and Insurance Committee and Senator Silver

SUBJECT: Insurance-Unfair Methods of Competition and Unfair or Deceptive Trade Practices

DATE: March 13, 2001 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Emrich</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Favorable/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Committee Substitute for Senate Bill 788 adds disability, property and casualty, and automobile insurance companies to the list of insurers (health and life insurers and managed care providers) that are currently prohibited from refusing to issue a policy or deny a claim to applicants or insureds who have been, or are likely to become, victims of domestic abuse by a family or household member. Specifically, the bill declares that it is an unfair or deceptive act for disability, property and casualty, and automobile insurers to underwrite a policy, refuse to issue or renew a policy, refuse to pay a claim, terminate a policy or increase rates based on the fact that the insured or applicant who is also the proposed insured, has made a claim or sought medical or psychological treatment in the past for abuse, or that a claim might occur as a result of any future abuse, by a family or household member upon another family or household member. It clarifies that a health insurer, life insurer, disability insurer, or managed care provider may refuse to underwrite, issue, or renew a policy based on the applicant’s medical condition, but the company shall not consider whether such condition was caused by an act of abuse.

The law under s. 626.9541, F.S., currently defines “abuse” to mean the occurrence of one or more of the following acts:

- attempting or committing assault, battery, sexual assault, or sexual battery;
- placing another in fear of imminent serious bodily injury by physical menace;
- false imprisonment;
- physically or sexually abusing a minor child; or
- an act of domestic violence

The bill also deletes the term “solely” as that term applies to facts insurers consider as to domestic violence. This would clarify that an insurer could not base its decision to deny a claim or policy based on the fact that the insured made a claim as a result of domestic violence.

Under current law, insurers and managed care providers may be subject to fines for nonwillful or willful violations of the unfair or deceptive trade practice provisions (s. 626.9521, F.S.). Also, such entities may be subject to criminal prosecution (e.g., a second degree misdemeanor) for willfully violating the unfair or deceptive trade practice act (s. 624.15, F.S.).

This bill substantially amends section 626.9541, Florida Statutes.

II. Present Situation:

Insurance Discrimination-Victims of Domestic Violence

In 1995, the Florida Legislature enacted legislation making it an unfair or deceptive trade practice for health insurers, life insurers, or managed care providers to deny, terminate, cancel or refuse to renew coverage because the person is or has been a victim of domestic abuse or because a medical condition or claim resulted from domestic abuse (s. 626.9541(1)(g), F.S.; ch. 95-187, Laws of Florida). The intent of such legislation was beneficial, e.g., to provide insurance protection for these individuals. The Legislature recognized that violence against individuals, particularly women, and particularly against women in their own homes, is significant in our society. Two years earlier, the Governor established the Task Force on Domestic Violence which was charged with recommending programs and resources in Florida for victims of such abuse.

Presently, Florida along with 40 other states has enacted domestic violence insurance protection laws. Many of these provisions were passed because insurance companies denied victims of domestic violence access to insurance by using domestic abuse as an underwriting criterion, e.g., as a basis for determining who to cover, what to cover, and how much to charge. For example, when applying for insurance, individuals often sign releases permitting the insurance company to obtain medical records. Usually, it is the medical records that reveal the prior abuse information. Such discrimination may occur in all lines of insurance--health, life, disability, property and casualty and automobile.

Proponents of this bill assert that it is important to add property and casualty, disability, and automobile insurance to the present domestic violence law in order to prohibit potential discriminatory practices as to those lines of insurance.

Currently, the law does not prohibit an insurer from denying a claim under the intrafamily intentional act exclusion which is a standard provision in property and casualty contracts. That exclusion states that the insurance company is not required to pay any claim resulting from an intentional act by the insured as to covered property. For example, if a battered woman's spouse burns down their house, the insurer would not cover the loss since it was an intentional act by the co-insured. The intentional act exclusion is necessary otherwise an individual could gain economically by intentionally destroying his or her property. Similarly, automobile insurers do

not provide liability coverage for insureds who intentionally cause bodily injury or property damage.

The National Association of Insurance Commissioners (NAIC), an association of state insurance regulators, has completed work on a model law that would pay for property and casualty claims resulting from an abusive spouse damaging property under certain circumstances.¹ Under that provision, an “innocent” party claimant could be compensated to the extent of his or her legal interest in the property if the loss is caused by the intentional act of the co-insured. However, “reasonable standards of proof” as to the claim would have to be given to the insurer. The National Conference of Insurance Legislators (NCOIL) has likewise adopted a model property and casualty domestic abuse law, however, it is more restrictive than the NAIC provision. The NCOIL law states that an insurer cannot deny payment to an innocent co-insured who did not contribute to the loss if the loss arose out of a pattern of criminal domestic violence and the perpetrator of the loss is criminally prosecuted for the act causing the loss. Payment to the innocent co-insured is limited to his or her ownership interest in the property.

Under Florida law, “domestic violence” is defined to mean assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another who is or was residing in the same single dwelling unit (s. 741.28(1), F.S.). The term “family” or “household member” means spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as a family or who have resided together in the past as a family, and persons who have a child in common regardless of whether they have been married or have resided together at any time (s. 741.28(2), F.S.).

Unfair or Deceptive Acts

Under current law, insurers are prohibited from committing various activities defined under the unfair methods of competition and unfair or deceptive practices acts (s. 626.9541, F.S.). Such activities range from misrepresentations in advertising of insurance policies and making false statements to defamation and illegal dealings in premiums. Under current law, insurers may be subject to suspension or revocation of their certificates of authority or fines for violations of the unfair trade practice provisions. The department may suspend or revoke the certificate of authority of an insurer for a violation of any provision of the Insurance Code (s. 624.418, F.S.). The department may impose an administrative fine on an insurer that violates any unfair trade practice of up to \$2,500 for each nonwillful violation, not to exceed \$10,000 for all nonwillful violations arising out of the same action. For willful violations, the maximum fine is \$20,000 for each violation, not to exceed \$100,000 for all knowing and willful violations arising out of the same action (s. 626.9521, F.S.).

Further, the unfair trade practice laws authorize the department to issue cease and desist orders against insurers that violate those provisions (s. 626.9581, F.S.). If an insurer violates the department’s cease and desist order, the department may impose a penalty not to exceed \$50,000

¹ The NAIC has adopted model laws dealing with unfair discrimination against subjects of abuse in three other areas: Health Benefit Plans, Disability, and Life Insurance.

(s. 626.9601, F.S.). Also, insurers may be subject to criminal prosecution (e.g., a second degree misdemeanor) for willfully violating the unfair trade practice acts (s. 624.15, F.S.).

III. Effect of Proposed Changes:

Section 1. Amends s. 626.9541, F.S., relating to unfair methods of competition and unfair or deceptive acts. This provision declares that it is an unfair or deceptive act for disability, property and casualty, and automobile insurers to underwrite a policy, refuse to issue or renew a policy, refuse to pay a claim, terminate a policy or increase rates based on the fact that the insured or applicant who is also the proposed insured, has made a claim or sought medical or psychological treatment in the past for abuse, or that a claim might occur as a result of any future abuse, by a family or household member upon another family or household member.

The bill clarifies that a health insurer, life insurer, disability insurer, or managed care provider may refuse to underwrite, issue, or renew a policy based on the applicant's medical condition, but the company shall not consider whether such condition was caused by an act of abuse. Under current law, an individual's medical condition may not be used to underwrite, issue, or renew a policy for property and casualty insurers. And such condition may not be used to underwrite, issue, or renew a policy for automobile insurance except under s. 626.9541(o)6, F.S., which expressly applies to handicapped or physically disabled persons obtaining motor vehicle insurance.

The law under s. 626.9541, F.S., currently defines "abuse" to mean the occurrence of one or more of the following acts:

- attempting or committing assault, battery, sexual assault, or sexual battery;
- placing another in fear of imminent serious bodily injury by physical menace;
- false imprisonment;
- physically or sexually abusing a minor child; or
- an act of domestic violence

The bill also deletes the term "solely" as that term applies to facts insurers consider as to domestic violence. This would clarify that an insurer could not base its decision to deny a claim or policy based on the fact that the insured made a claim as a result of domestic violence.

It appears that the bill would not prohibit a property and casualty or motor vehicle insurer from continuing to exclude coverage for intentional acts by the insured as to covered property. For example, if a battered woman's spouse burns down their house, the bill does not appear to require that the insurer pay this claim because the bill prohibits insurers from refusing to pay claims or making underwriting decisions based on the fact that the insured has made a claim *in the past for abuse* or that a claim might occur as a result of any *future abuse* by a family or household member. But, the bill would appear to prohibit the insurer from canceling or refusing to renew the coverage of the wife, or refusing to issue new coverage to the wife, based on the past act of domestic violence.

Section 2. Provides that the act shall take effect July 1, 2001.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Victims of domestic violence will benefit from this legislation because disability, property and casualty, and automobile insurers will be prohibited from refusing to issue coverage or deny claims to such victims under the specified circumstances noted above.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.