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**HOUSE OF REPRESENTATIVES
COMMITTEE ON
INSURANCE
ANALYSIS**

BILL #: HB 247
RELATING TO: Unfair Discrimination in the Business of Insurance
SPONSOR(S): Representative(s) Harrell
TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) INSURANCE
 - (2) COUNCIL FOR COMPETITIVE COMMERCE
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

The Florida "Unfair Insurance Trade Practices Act" prohibits unfair methods of competition and unfair or deceptive acts or practices. The act specifically prohibits life insurers, health insurers, and managed care providers from unfairly discriminating solely on the basis that an insured or applicant is the victim of abuse.

The bill would add disability insurers, property and casualty insurers, and automobile insurers to those insurers specifically prohibited from discriminating unfairly against victims of abuse. Also, the bill would prohibit those insurers, as amended by the bill, from considering abuse as a factor at all when adjusting claims, increasing rates, or writing, renewing, or canceling policies.

The bill does not appear to have a fiscal impact on state or local government.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |

As to individual freedom, the bill would prohibit insurers from considering certain presently permitted underwriting factors in rating risks.

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|-----------------------------------|---|-----------------------------|---|
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |

B. PRESENT SITUATION:

The Florida "Unfair Insurance Trade Practices Act"¹ prohibits unfair methods of competition and unfair or deceptive acts or practices. The act specifically prohibits unfair discrimination² by life or health insurers, or by managed care providers, based on abuse, including domestic violence.³ It does not apply to other types of insurers, including property and casualty insurers. This precludes insurers from taking certain actions⁴ if those actions are based solely upon the fact that a claim has resulted from abuse, might result from abuse, or that someone has, or should have, sought shelter from or treatment for abuse. Insurers are not precluded from refusing a policy on the basis of a medical condition, but may not consider whether abuse was the cause of the medical condition.⁵

"Abuse" is defined for this purpose as:

- 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 as defined in s. 741.28.⁶

¹ Part IX, Ch. 626, F.S.

² S. 626.9541(1)(g), F.S.

³ S. 626.9541(1)(g)3., F.S. Other sections of the Insurance Code prohibit unfair discrimination based on the presence of the sickle-cell trait (s. 626.9706) or severe disabilities (s. 626.9705).

⁴ Prohibited acts include: writing, issuing, reissuing, renewing, and canceling or terminating policies, refusing to pay claims, or raising rates. Id.

⁵ Id.

⁶ S. 741.28(1), F.S., defines domestic violence as " any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in

Abuse may be evidenced by repetitive injuries, behavioral and psychological problems, chronic disease and disabilities. Also, domestic abuse may result in damage or destruction of property. Insurers may learn of abuse through client interviews, medical providers or records, reporting agencies, court records, or other sources.

Insurers evaluate risks to assess their potential liability or exposure. In doing this, insurers use a variety of risk factors. The nature and degree of the risk influences the insurer's decision to insure the risk and the amount of premium charged.

Although staff contacted only a handful of insurer representatives, all of these claimed not to use abuse as a rating factor. Representatives of the Department of Insurance indicated that they are not aware of insurers using abuse as a factor when adjusting claims, increasing rates, or writing, renewing, or canceling policies.

A 1998 report issued by the Pennsylvania Coalition Against Domestic Violence and the Women's Law Project entitled "Insurance Discrimination Against Victims of Domestic Violence," identifies several examples of discrimination based upon abuse can lead to a loss or denial of insurance:

- In health and disability insurance, abuse-related injuries may be excluded as pre-existing conditions or the individual may be considered too high a risk to insure.
- In life insurance, insurance may be refused based upon the risk of death at the hands of an abuser.
- In property and casualty insurance, a policy may not be issued or claims may be denied based upon the intentional destruction of property by an abuser (e.g., burning a home or wrecking a car).

Under Florida law, unfair discrimination based upon abuse is punishable by a fine of up to \$2,500 per non-willful violation and \$10,000 maximum for all non-willful violations, and up to \$20,000 per willful violation, with a \$100,000 maximum for all willful violations.⁷ Also, a licensee (e.g., insurer, agent, adjuster) may be suspended for a period of six months.⁸ According to the Department of Insurance, no one in the business of insurance in Florida has been prosecuted based upon unfair discrimination related to abuse.

C. EFFECT OF PROPOSED CHANGES:

The bill would effect two changes in law:

- 1) insurers writing disability, property and casualty, and automobile insurance would be included among the insurers now prohibited from discriminating unfairly against persons who are victims of abuse; and,
- 2) rather than being precluded from considering abuse as the sole factor when adjusting claims, increasing rates, or writing, renewing, or canceling policies, those insurers, as amended

physical injury or death of one family or household member by another who is or was residing in the same single dwelling unit."

⁷ S. 626.9521, F.S.

⁸ Rule 4-231.100, F.A.C.

by the bill, would not be allowed to consider abuse as a factor, at all, when adjusting claims, increasing rates, or writing, renewing, or canceling policies.

D. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Disability insurers, property and casualty insurers, and automobile insurers may alter underwriting and claims practices to whatever extent they presently use abuse as a factor in writing policies and adjusting claims.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None noted.

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

The section of statute amended by the bill specifically lists the insurers affected by the law. The section uses the term "insurer" as a general reference back to the insurers already specified in the section (i.e., life insurers, health insurers, and managed care providers). This may cause some unintended results when other types of insurers are amended into the statute because the statute specifically authorizes "insurers" to consider medical conditions when underwriting policies. "Insurer" is defined by s. 624.03, F.S., as including "every person engaged as indemnitor, surety, or contractor in the business of entering into contracts of insurance or of annuity." The Department of Insurance states that not all insurers are permitted to use medical conditions in underwriting.

The Department of Insurance recommends an amendment to the bill on page 2, line 13, to prevent property and casualty insurers, and automobile insurers, from receiving unintended authority. The statute provides that "[a]n insurer may refuse to underwrite, issue, or renew a policy based on the applicant's medical condition. . . ." The Department states that property and casualty insurers and automobile insurers are not permitted to take those actions based on medical conditions and that this ability should not be allowed inadvertently. The Department suggests that, in this instance, "insurer" should be replaced with the phrase "health insurer, life insurer, disability insurer, or managed care provider." This would prevent property and casualty insurers and automobile insurers from using medical conditions in the issuance of policies. This does not appear to conflict with the sponsor's intent.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON INSURANCE:

Prepared by:

Staff Director:

Eric Lloyd

Stephen Hogge