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Senate BILL NO. 234

INTRODUCED BY Bradley Mahlon Hall
Castell Herke Shen Doherty Green

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING DISCRIMINATION AGAINST VICTIMS OF ABUSE IN ALL LINES OF INSURANCE; PROVIDING FOR AN INDEPENDENT CAUSE OF ACTION; AMENDING SECTION 33-18-242, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Unfair discrimination against victims of abuse prohibited. (1) An insurer, health maintenance organization, or health service corporation may not, in any manner, engage in an unfair discriminatory act or practice against a victim of abuse.

(2) For purposes of this section, "abuse" means the occurrence of one or more of the following:

(a) purposely, knowingly, recklessly, or negligently subjecting or attempting to subject another person, including a minor child, to bodily injury, substantial emotional distress, psychological trauma, sexual assault, or sexual intercourse without consent;

(b) purposely or knowingly engaging in a course of conduct toward another person that constitutes stalking in violation of 45-5-220;

(c) subjecting another person, including a minor child, to false imprisonment or unlawful restraint or confinement; or

(d) purposely, knowingly, recklessly, or negligently causing or attempting to cause damage to property so as to intimidate or attempt to control the behavior of another person, including a minor child.

(3) The following acts are prohibited as unfairly discriminatory:

(a) denying, refusing to issue, renew, or reissue, canceling, or otherwise terminating an insurance policy, certificate of coverage, subscriber contract, or health care services agreement;

(b) restricting or excluding coverage under an insurance policy or certificate;

(c) adding a premium differential to any insurance policy or certificate on the basis that the applicant or insured has been the victim of abuse; or

(d) excluding or limiting coverage for losses or denying a claim incurred by an individual, insured, or participant as a result of abuse on the basis of the individual's, insured's, or participant's status as a

1 victim of abuse.

2 (4) An insurer that takes an action that adversely affects a victim of abuse on the basis of a
3 medical condition that the insurer knows or has reason to know is related to abuse shall explain the reason
4 for its action to the applicant or insured in writing and must be able to demonstrate that its action and any
5 applicable policy provisions:

6 (a) do not have the purpose or effect of treating abuse victim status as a medical condition or
7 underwriting criterion;

8 (b) are not based upon any actual or perceived correlation between a medical condition and abuse
9 victim status;

10 (c) are otherwise permissible by law and apply in the same manner and to the same extent to all
11 applicants and insureds with similar medical conditions or property and casualty risk without regard to
12 whether the condition or claim is related to abuse; and

13 (d) are based on a determination made in conformance with sound actuarial principles and
14 supported by actual or reasonably anticipated experience that demonstrates a correlation between the
15 medical condition or the type of property and casualty risk and a material increase in insurance risk.

16 (5) An applicant or insured claiming to be adversely affected by an act or practice of an insurer in
17 violation of this section may maintain an action against the insurer. Upon proof of a violation of this
18 section, the court may award appropriate relief, including temporary, preliminary, or permanent injunctive
19 relief, compensatory and punitive damages, and costs including reasonable attorney and expert witness
20 fees.

21 (6) (a) This section does not prohibit an insurer from underwriting, classifying risk, or administering
22 a contract of insurance as otherwise allowed by law based on medical information that the insurer knows
23 or should know is related to abuse as long as the insurer underwrites, classifies risk, or administers the
24 contract of insurance on the basis of the applicant's or insured's medical condition and not on the
25 applicant's or insured's status as a victim of abuse.

26 (b) This section does not prohibit or otherwise limit an insurer's ability to elicit information from
27 or about an applicant's or insured's medical history as otherwise provided by law.

28

29 **Section 2.** Section 33-18-242, MCA, is amended to read:

30 **"33-18-242. Independent cause of action -- burden of proof.** (1) An insured or a third-party

1 claimant has an independent cause of action against an insurer for actual damages caused by the insurer's
2 violation of ~~subsection 33-18-201(1), (4), (5), (6), (9), or (13) of 33-18-201~~ or [section 1].

3 (2) In an action under this section, a plaintiff is not required to prove that the violations were of
4 such frequency as to indicate a general business practice.

5 (3) An insured who has suffered damages as a result of the handling of an insurance claim may
6 bring an action against the insurer for breach of the insurance contract, for fraud, or pursuant to this
7 section, but not under any other theory or cause of action. An insured may not bring an action for bad faith
8 in connection with the handling of an insurance claim.

9 (4) In an action under this section, the court or jury may award ~~such~~ damages ~~as were~~ proximately
10 caused by the violation of ~~subsection 33-18-201(1), (4), (5), (6), (9), or (13) of 33-18-201~~ or [section 1].
11 Exemplary damages may also be assessed in accordance with 27-1-221.

12 (5) An insurer may not be held liable under this section if the insurer had a reasonable basis in law
13 or in fact for contesting the claim or the amount of the claim, whichever is in issue.

14 (6) (a) An insured may file an action under this section, together with any other cause of action
15 that the insured has against the insurer. Actions may be bifurcated for trial ~~where~~ when justice ~~so~~ requires.

16 (b) A third-party claimant may not file an action under this section until after the underlying claim
17 has been settled or a judgment entered in favor of the claimant on the underlying claim.

18 (7) The period prescribed for commencement of an action under this section is:

19 (a) for an insured, within 2 years from the date of the violation of 33-18-201 or [section 1]; and

20 (b) for a third-party claimant, within 1 year from the date of the settlement of or the entry of
21 judgment on the underlying claim.

22 (8) As used in this section, an insurer includes a person, firm, or corporation utilizing self-insurance
23 to pay claims made against them."
24

25 **NEW SECTION.** **Section 3. Codification instruction.** [Section 1] is intended to be codified as an
26 integral part of Title 33, chapter 18, part 2, and the provisions of Title 33, chapter 18, part 2, apply to
27 [section 1].
28

29 **NEW SECTION.** **Section 4. Saving clause.** [This act] does not affect rights and duties that
30 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this

1 act].

2

3 **NEW SECTION. Section 5. Severability.** If a part of [this act] is invalid, all valid parts that are
4 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
5 applications, the part remains in effect in all valid applications that are severable from the invalid
6 applications.

7

8 **NEW SECTION. Section 6. Effective date.** [This act] is effective July 1, 1997.

9

-END-

SENATE BILL NO. 234

INTRODUCED BY BROOKE, MAHLUM, HALLIGAN, BARTLETT, SHEA, DOHERTY, SQUIRES,
ELLINGSON, FRANKLIN, SANDS

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING DISCRIMINATION AGAINST VICTIMS OF ABUSE
IN ALL LINES OF INSURANCE; ~~PROVIDING FOR AN INDEPENDENT CAUSE OF ACTION; AMENDING
SECTION 33-18-242, MCA; AND PROVIDING AN EFFECTIVE DATE.~~"

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Unfair discrimination against victims of abuse prohibited.** (1) An
insurer, health maintenance organization, or health service corporation may not, ~~in any manner, engage in~~
~~an unfair discriminatory act or practice~~ UNFAIRLY DISCRIMINATE against a victim of abuse.

(2) For purposes of this section, "abuse" means the occurrence BETWEEN FAMILY MEMBERS,
CURRENT OR FORMER HOUSEHOLD MEMBERS, OR INTIMATE PARTNERS of one or more of the following:

(a) ~~purposely, knowingly, OR recklessly, or negligently~~ subjecting ~~or attempting to subject~~ another
person, including a minor child, to bodily injury, ~~substantial~~ SEVERE emotional distress, psychological
trauma, sexual assault, or sexual intercourse without consent;

~~(b) purposely or knowingly engaging in a course of conduct toward another person that constitutes
stalking in violation of 45-5-220;~~

~~(c) (B) subjecting another person, including a minor child, to false imprisonment or unlawful restraint
or confinement; or,~~

~~(d) purposely, knowingly, recklessly, or negligently causing or attempting to cause damage to
property so as to intimidate or attempt to control the behavior of another person, including a minor child.~~

(3) FOR PURPOSES OF THIS SECTION, "ABUSE" INCLUDES PURPOSELY OR KNOWINGLY
ENGAGING IN A COURSE OF CONDUCT TOWARD A FAMILY MEMBER, CURRENT OR FORMER
HOUSEHOLD MEMBER, OR INTIMATE PARTNER THAT CONSTITUTES STALKING IN VIOLATION OF
45-5-220.

~~(3)(4)~~ (4) The following acts, WHEN BASED ON THE INSURED'S STATUS AS A VICTIM OF ABUSE,
are prohibited as unfairly discriminatory:

1 (a) denying, refusing to issue, renew, or reissue, canceling, or otherwise terminating an insurance
 2 policy, certificate of coverage DELIVERED OR ISSUED FOR DELIVERY IN MONTANA, subscriber contract,
 3 or health care services agreement;

4 (b) restricting or excluding coverage under an insurance policy or certificate DELIVERED OR ISSUED
 5 FOR DELIVERY IN MONTANA;

6 (c) adding a premium differential to any insurance policy or certificate DELIVERED OR ISSUED FOR
 7 DELIVERY IN MONTANA on the basis that the applicant or insured has been the victim of abuse; or

8 (d) excluding or limiting coverage for losses or denying a claim ~~incurred by an individual, insured,~~
 9 ~~or participant as a result of abuse on the basis of the individual's, insured's, or participant's status as a~~
 10 ~~victim of abuse.~~

11 ~~(4)(5) An~~ UPON WRITTEN REQUEST OF THE INSURED OR AN APPLICANT, AN insurer that takes
 12 an UNDERWRITING action that adversely affects a victim of abuse on the basis of a medical condition OR
 13 PROPERTY OR CASUALTY RISK that the insurer knows ~~or has reason to know~~ is related to abuse shall
 14 explain TO THE INSURED OR APPLICANT IN WRITING the reason for ~~its~~ THE INSURER'S action ~~to the~~
 15 ~~applicant or insured in writing and must be able to demonstrate that its action and any applicable policy~~
 16 ~~provisions:~~

17 ~~(a) do not have the purpose or effect of treating abuse victim status as a medical condition or~~
 18 ~~underwriting criterion;~~

19 ~~(b) are not based upon any actual or perceived correlation between a medical condition and abuse~~
 20 ~~victim status;~~

21 ~~(c) are otherwise permissible by law and apply in the same manner and to the same extent to all~~
 22 ~~applicants and insureds with similar medical conditions or property and casualty risk without regard to~~
 23 ~~whether the condition or claim is related to abuse; and~~

24 ~~(d) are based on a determination made in conformance with sound actuarial principles and~~
 25 ~~supported by actual or reasonably anticipated experience that demonstrates a correlation between the~~
 26 ~~medical condition or the type of property and casualty risk and a material increase in insurance risk.~~

27 ~~(5) An applicant or insured claiming to be adversely affected by an act or practice of an insurer in~~
 28 ~~violation of this section may maintain an action against the insurer. Upon proof of a violation of this~~
 29 ~~section, the court may award appropriate relief, including temporary, preliminary, or permanent injunctive~~
 30 ~~relief, compensatory and punitive damages, and costs including reasonable attorney and expert witness~~

1 fees.

2 (6) (a) This section does not prohibit an insurer from underwriting, classifying risk, or administering
3 a contract of insurance as otherwise allowed by law based on PROPERTY OR CASUALTY RISK OR medical
4 information that the insurer knows ~~or should know~~ is related to abuse as long as the insurer underwrites,
5 classifies risk, or administers the contract of insurance on the basis of the applicant's or insured's
6 PROPERTY OR CASUALTY RISK OR medical condition and not on the applicant's or insured's status as a
7 victim of abuse.

8 (b) This section does not prohibit or otherwise limit an insurer's ability to elicit information from
9 or about an applicant's APPLICANT or insured's ~~medical history~~ INSURED as otherwise provided by law.

10 (7) AN INSURER MAY NOT BE HELD CIVILLY OR CRIMINALLY LIABLE FOR THE DEATH OF OR
11 PHYSICAL INJURY TO AN INSURED THAT IS RELATED TO ACTS OF ABUSE RESULTING FROM ANY
12 ACTION TAKEN IN A GOOD FAITH EFFORT TO COMPLY WITH THE REQUIREMENTS OF THIS SECTION.

13

14 ~~Section 2. Section 33-18-242, MCA, is amended to read:~~

15 ~~"33-18-242. Independent cause of action — burden of proof. (1) An insured or a third party~~
16 ~~claimant has an independent cause of action against an insurer for actual damages caused by the insurer's~~
17 ~~violation of subsection 33-18-201(1), (4), (5), (6), (9), or (13) of 33-18-201 or [section 1].~~

18 ~~(2) In an action under this section, a plaintiff is not required to prove that the violations were of~~
19 ~~such frequency as to indicate a general business practice.~~

20 ~~(3) An insured who has suffered damages as a result of the handling of an insurance claim may~~
21 ~~bring an action against the insurer for breach of the insurance contract, for fraud, or pursuant to this~~
22 ~~section, but not under any other theory or cause of action. An insured may not bring an action for bad faith~~
23 ~~in connection with the handling of an insurance claim.~~

24 ~~(4) In an action under this section, the court or jury may award such damages as were proximately~~
25 ~~caused by the violation of subsection 33-18-201(1), (4), (5), (6), (9), or (13) of 33-18-201 or [section 1].~~
26 ~~Exemplary damages may also be assessed in accordance with 27-1-221.~~

27 ~~(5) An insurer may not be held liable under this section if the insurer had a reasonable basis in law~~
28 ~~or in fact for contesting the claim or the amount of the claim, whichever is in issue.~~

29 ~~(6) (a) An insured may file an action under this section, together with any other cause of action~~
30 ~~that the insured has against the insurer. Actions may be bifurcated for trial where when justice so requires.~~

1 ~~(b) A third party claimant may not file an action under this section until after the underlying claim~~
2 ~~has been settled or a judgment entered in favor of the claimant on the underlying claim.~~

3 ~~(7) The period prescribed for commencement of an action under this section is:~~

4 ~~(a) for an insured, within 2 years from the date of the violation of 33-18-201 or [section 1]; and~~

5 ~~(b) for a third party claimant, within 1 year from the date of the settlement of or the entry of~~
6 ~~judgment on the underlying claim.~~

7 ~~(8) As used in this section, an insurer includes a person, firm, or corporation utilizing self insurance~~
8 ~~to pay claims made against them."~~

9

10 **NEW SECTION. Section 2. Codification instruction.** [Section 1] is intended to be codified as an
11 integral part of Title 33, chapter 18, part 2, and the provisions of Title 33, chapter 18, part 2, apply to
12 [section 1].

13

14 **NEW SECTION. Section 3. Saving clause.** [This act] does not affect rights and duties that
15 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this
16 act].

17

18 **NEW SECTION. Section 4. Severability.** If a part of [this act] is invalid, all valid parts that are
19 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
20 applications, the part remains in effect in all valid applications that are severable from the invalid
21 applications.

22

23 **NEW SECTION. Section 6. Effective date.** ~~[This act] is effective July 1, 1997.~~

24

-END-

SENATE BILL NO. 234

INTRODUCED BY BROOKE, MAHLUM, HALLIGAN, BARTLETT, SHEA, DOHERTY, SQUIRES,
ELLINGSON, FRANKLIN, SANDS

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING DISCRIMINATION AGAINST VICTIMS OF ABUSE
IN ALL LINES OF INSURANCE; ~~PROVIDING FOR AN INDEPENDENT CAUSE OF ACTION; AMENDING
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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Unfair discrimination against victims of abuse prohibited.** (1) An
insurer, health maintenance organization, or health service corporation may not, ~~in any manner, engage in
an unfair discriminatory act or practice~~ UNFAIRLY DISCRIMINATE against a victim of abuse.

(2) For purposes of this section, "abuse" means the occurrence BETWEEN FAMILY MEMBERS,
CURRENT OR FORMER HOUSEHOLD MEMBERS, OR INTIMATE PARTNERS of one or more of the following:

(a) purposely, knowingly, OR recklessly, ~~or negligently~~ subjecting ~~or attempting to subject~~ another
person, including a minor child, to bodily injury, ~~substantial~~ SEVERE emotional distress, psychological
trauma, sexual assault, or sexual intercourse without consent;

~~(b) purposely or knowingly engaging in a course of conduct toward another person that constitutes
stalking in violation of 45-5-220;~~

~~(c)(B) subjecting another person, including a minor child, to false imprisonment or unlawful restraint
or confinement; or,~~

~~(d) purposely, knowingly, recklessly, or negligently causing or attempting to cause damage to
property so as to intimidate or attempt to control the behavior of another person, including a minor child.~~

(3) FOR PURPOSES OF THIS SECTION, "ABUSE" INCLUDES PURPOSELY OR KNOWINGLY
ENGAGING IN A COURSE OF CONDUCT TOWARD A FAMILY MEMBER, CURRENT OR FORMER
HOUSEHOLD MEMBER, OR INTIMATE PARTNER THAT CONSTITUTES STALKING IN VIOLATION OF
45-5-220.

~~(3)(4)~~ (4) The following acts, WHEN BASED ON THE INSURED'S STATUS AS A VICTIM OF ABUSE,
are prohibited as unfairly discriminatory:

1 (a) denying, refusing to issue, renew, or reissue, canceling, or otherwise terminating an insurance
2 policy, certificate of coverage DELIVERED OR ISSUED FOR DELIVERY IN MONTANA, subscriber contract,
3 or health care services agreement;

4 (b) restricting or excluding coverage under an insurance policy or certificate DELIVERED OR ISSUED
5 FOR DELIVERY IN MONTANA;

6 (c) adding a premium differential to any insurance policy or certificate DELIVERED OR ISSUED FOR
7 DELIVERY IN MONTANA on the basis that the applicant or insured has been the victim of abuse; or

8 (d) excluding or limiting coverage for losses or denying a claim ~~incurred by an individual, insured,~~
9 ~~or participant as a result of abuse on the basis of the individual's, insured's, or participant's status as a~~
10 ~~victim of abuse.~~

11 ~~(4)(5) An UPON WRITTEN REQUEST OF THE INSURED OR AN APPLICANT, AN insurer that takes~~
12 ~~an UNDERWRITING action that adversely affects a victim of abuse on the basis of a medical condition OR~~
13 ~~PROPERTY OR CASUALTY RISK that the insurer knows ~~or has reason to know~~ is related to abuse shall~~
14 ~~explain TO THE INSURED OR APPLICANT IN WRITING the reason for its THE INSURER'S action ~~to the~~~~
15 ~~applicant or insured in writing and must be able to demonstrate that its action and any applicable policy~~
16 ~~provisions:~~

17 ~~(a) do not have the purpose or effect of treating abuse victim status as a medical condition or~~
18 ~~underwriting criterion;~~

19 ~~(b) are not based upon any actual or perceived correlation between a medical condition and abuse~~
20 ~~victim status;~~

21 ~~(c) are otherwise permissible by law and apply in the same manner and to the same extent to all~~
22 ~~applicants and insureds with similar medical conditions or property and casualty risk without regard to~~
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27 ~~(5) An applicant or insured claiming to be adversely affected by an act or practice of an insurer in~~
28 ~~violation of this section may maintain an action against the insurer. Upon proof of a violation of this~~
29 ~~section, the court may award appropriate relief, including temporary, preliminary, or permanent injunctive~~
30 ~~relief, compensatory and punitive damages, and costs including reasonable attorney and expert witness~~

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2 (6) (a) This section does not prohibit an insurer from underwriting, classifying risk, or administering
3 a contract of insurance as otherwise allowed by law based on PROPERTY OR CASUALTY RISK OR medical
4 information that the insurer knows ~~or should know~~ is related to abuse as long as the insurer underwrites,
5 classifies risk, or administers the contract of insurance on the basis of the applicant's or insured's
6 PROPERTY OR CASUALTY RISK OR medical condition and not on the applicant's or insured's status as a
7 victim of abuse.

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9 or about an ~~applicant's~~ APPLICANT or ~~insured's medical history~~ INSURED as otherwise provided by law.

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11 PHYSICAL INJURY TO AN INSURED THAT IS RELATED TO ACTS OF ABUSE RESULTING FROM ANY
12 ACTION TAKEN IN A GOOD FAITH EFFORT TO COMPLY WITH THE REQUIREMENTS OF THIS SECTION.

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17 ~~violation of subsection 33-18-201(1), (4), (5), (6), (9), or (13) of 33-18-201 or [section 1].~~

18 ~~(2) In an action under this section, a plaintiff is not required to prove that the violations were of~~
19 ~~such frequency as to indicate a general business practice.~~

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21 ~~bring an action against the insurer for breach of the insurance contract, for fraud, or pursuant to this~~
22 ~~section, but not under any other theory or cause of action. An insured may not bring an action for bad faith~~
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25 ~~caused by the violation of subsection 33-18-201(1), (4), (5), (6), (9), or (13) of 33-18-201 or [section 1].~~
26 ~~Exemplary damages may also be assessed in accordance with 27-1-221.~~

27 ~~(5) An insurer may not be held liable under this section if the insurer had a reasonable basis in law~~
28 ~~or in fact for contesting the claim or the amount of the claim, whichever is in issue.~~

29 ~~(6) (a) An insured may file an action under this section, together with any other cause of action~~
30 ~~that the insured has against the insurer. Actions may be bifurcated for trial where when justice so requires.~~

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stalking in violation of 45-5-220;~~

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or confinement; or,~~

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~~(3)(4)~~ (4) The following acts, WHEN BASED ON THE INSURED'S STATUS AS A VICTIM OF ABUSE,
are prohibited as unfairly discriminatory:

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 3 or health care services agreement;

4 (b) restricting or excluding coverage under an insurance policy or certificate DELIVERED OR ISSUED
 5 FOR DELIVERY IN MONTANA;

6 (c) adding a premium differential to any insurance policy or certificate DELIVERED OR ISSUED FOR
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 12 an UNDERWRITING action that adversely affects a victim of abuse on the basis of a medical condition OR
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 16 ~~provisions;~~

17 ~~(a) do not have the purpose or effect of treating abuse victim status as a medical condition or~~
 18 ~~underwriting criterion;~~

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 25 ~~supported by actual or reasonably anticipated experience that demonstrates a correlation between the~~
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27 ~~(5) An applicant or insured claiming to be adversely affected by an act or practice of an insurer in~~
 28 ~~violation of this section may maintain an action against the insurer. Upon proof of a violation of this~~
 29 ~~section, the court may award appropriate relief, including temporary, preliminary, or permanent injunctive~~
 30 ~~relief, compensatory and punitive damages, and costs including reasonable attorney and expert witness~~

1 ~~fees.~~

2 (6) (a) This section does not prohibit an insurer from underwriting, classifying risk, or administering
3 a contract of insurance as otherwise allowed by law based on PROPERTY OR CASUALTY RISK OR medical
4 information that the insurer knows ~~or should know~~ is related to abuse as long as the insurer underwrites,
5 classifies risk, or administers the contract of insurance on the basis of the applicant's or insured's
6 PROPERTY OR CASUALTY RISK OR medical condition and not on the applicant's or insured's status as a
7 victim of abuse.

8 (b) This section does not prohibit or otherwise limit an insurer's ability to elicit information from
9 or about an ~~applicant's~~ APPLICANT or ~~insured's medical history~~ INSURED as otherwise provided by law.

10 (7) THIS SECTION MAY NOT BE CONSTRUED TO ALTER OR MODIFY ANY CONDITIONS,
11 EXCLUSIONS, OR LIMITATIONS CLEARLY STATED IN AN INSURANCE POLICY OR CERTIFICATE
12 DELIVERED OR ISSUED FOR DELIVERY IN MONTANA THAT ARE NOT OTHERWISE INCONSISTENT WITH
13 THE PROVISIONS OF SUBSECTION (4).

14 ~~(7)(8) AN INSURER MAY NOT BE HELD CIVILLY OR CRIMINALLY LIABLE FOR THE DEATH OF OR~~
15 ~~PHYSICAL INJURY TO AN INSURED THAT IS RELATED TO ACTS OF ABUSE RESULTING FROM ANY~~
16 ~~ACTION TAKEN IN A GOOD FAITH EFFORT TO COMPLY WITH THE REQUIREMENTS OF THIS SECTION.~~

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18 **Section 2.** ~~Section 33-18-242, MCA, is amended to read:~~

19 ~~"33-18-242. Independent cause of action — burden of proof. (1) An insured or a third party~~
20 ~~claimant has an independent cause of action against an insurer for actual damages caused by the insurer's~~
21 ~~violation of subsection 33-18-201(1), (4), (5), (6), (9), or (13) of 33-18-201 or [section 1].~~

22 ~~(2) In an action under this section, a plaintiff is not required to prove that the violations were of~~
23 ~~such frequency as to indicate a general business practice.~~

24 ~~(3) An insured who has suffered damages as a result of the handling of an insurance claim may~~
25 ~~bring an action against the insurer for breach of the insurance contract, for fraud, or pursuant to this~~
26 ~~section, but not under any other theory or cause of action. An insured may not bring an action for bad faith~~
27 ~~in connection with the handling of an insurance claim.~~

28 ~~(4) In an action under this section, the court or jury may award such damages as were proximately~~
29 ~~caused by the violation of subsection 33-18-201(1), (4), (5), (6), (9), or (13) of 33-18-201 or [section 1].~~

30 ~~Exemplary damages may also be assessed in accordance with 27-1-221.~~

SENATE BILL NO. 234

INTRODUCED BY BROOKE, MAHLUM, HALLIGAN, BARTLETT, SHEA, DOHERTY, SQUIRES,
ELLINGSON, FRANKLIN, SANDS

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING DISCRIMINATION AGAINST VICTIMS OF ABUSE
IN ALL LINES OF INSURANCE; ~~PROVIDING FOR AN INDEPENDENT CAUSE OF ACTION; AMENDING
SECTION 33-18-242, MCA; AND PROVIDING AN EFFECTIVE DATE.~~"

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Unfair discrimination against victims of abuse prohibited. (1) An
insurer, health maintenance organization, or health service corporation may not, ~~in any manner, engage in
an unfair discriminatory act or practice~~ **UNFAIRLY DISCRIMINATE** against a victim of abuse.

(2) For purposes of this section, "abuse" means the occurrence **BETWEEN FAMILY MEMBERS,
CURRENT OR FORMER HOUSEHOLD MEMBERS, OR INTIMATE PARTNERS** of one or more of the following:

(a) purposely, knowingly, **OR** recklessly, ~~or negligently~~ subjecting ~~or attempting to subject~~ another
person, including a minor child, to bodily injury, ~~substantial~~ **SEVERE** emotional distress, psychological
trauma, sexual assault, or sexual intercourse without consent;

~~(b) purposely or knowingly engaging in a course of conduct toward another person that constitutes
stalking in violation of 45-5-220;~~

~~(c)(B) subjecting another person, including a minor child, to false imprisonment or unlawful restraint
or confinement; or,~~

~~(d) purposely, knowingly, recklessly, or negligently causing or attempting to cause damage to
property so as to intimidate or attempt to control the behavior of another person, including a minor child.~~

**(3) FOR PURPOSES OF THIS SECTION, "ABUSE" INCLUDES PURPOSELY OR KNOWINGLY
ENGAGING IN A COURSE OF CONDUCT TOWARD A FAMILY MEMBER, CURRENT OR FORMER
HOUSEHOLD MEMBER, OR INTIMATE PARTNER THAT CONSTITUTES STALKING IN VIOLATION OF
45-5-220.**

~~(3)(4)~~ (4) The following acts, **WHEN BASED ON THE INSURED'S STATUS AS A VICTIM OF ABUSE,**
are prohibited as unfairly discriminatory:

1 (a) denying, refusing to issue, renew, or reissue, canceling, or otherwise terminating an insurance
2 policy, certificate of coverage DELIVERED OR ISSUED FOR DELIVERY IN MONTANA, subscriber contract,
3 or health care services agreement;

4 (b) restricting or excluding coverage under an insurance policy or certificate DELIVERED OR ISSUED
5 FOR DELIVERY IN MONTANA;

6 (c) adding a premium differential to any insurance policy or certificate DELIVERED OR ISSUED FOR
7 DELIVERY IN MONTANA on the basis that the applicant or insured has been the victim of abuse; or

8 (d) excluding or limiting coverage for losses or denying a claim ~~incurred by an individual, insured,~~
9 ~~or participant as a result of abuse on the basis of the individual's, insured's, or participant's status as a~~
10 ~~victim of abuse.~~

11 ~~(4)(5) An~~ UPON WRITTEN REQUEST OF THE INSURED OR AN APPLICANT, AN insurer that takes
12 an UNDERWRITING action that adversely affects a victim of abuse on the basis of a medical condition OR
13 PROPERTY OR CASUALTY RISK that the insurer knows ~~or has reason to know~~ is related to abuse shall
14 explain TO THE INSURED OR APPLICANT IN WRITING the reason for ~~its~~ THE INSURER'S action ~~to the~~
15 ~~applicant or insured in writing and must be able to demonstrate that its action and any applicable policy~~
16 ~~provisions;~~

17 ~~(a) do not have the purpose or effect of treating abuse victim status as a medical condition or~~
18 ~~underwriting criterion;~~

19 ~~(b) are not based upon any actual or perceived correlation between a medical condition and abuse~~
20 ~~victim status;~~

21 ~~(c) are otherwise permissible by law and apply in the same manner and to the same extent to all~~
22 ~~applicants and insureds with similar medical conditions or property and casualty risk without regard to~~
23 ~~whether the condition or claim is related to abuse; and~~

24 ~~(d) are based on a determination made in conformance with sound actuarial principles and~~
25 ~~supported by actual or reasonably anticipated experience that demonstrates a correlation between the~~
26 ~~medical condition or the type of property and casualty risk and a material increase in insurance risk.~~

27 ~~(5) An applicant or insured claiming to be adversely affected by an act or practice of an insurer in~~
28 ~~violation of this section may maintain an action against the insurer. Upon proof of a violation of this~~
29 ~~section, the court may award appropriate relief, including temporary, preliminary, or permanent injunctive~~
30 ~~relief, compensatory and punitive damages, and costs including reasonable attorney and expert witness~~

1 ~~fees.~~

2 (6) (a) This section does not prohibit an insurer from underwriting, classifying risk, or administering
3 a contract of insurance as otherwise allowed by law based on PROPERTY OR CASUALTY RISK OR medical
4 information that the insurer knows ~~or should know~~ is related to abuse as long as the insurer underwrites,
5 classifies risk, or administers the contract of insurance on the basis of the applicant's or insured's
6 PROPERTY OR CASUALTY RISK OR medical condition and not on the applicant's or insured's status as a
7 victim of abuse.

8 (b) This section does not prohibit or otherwise limit an insurer's ability to elicit information from
9 or about an applicant's APPLICANT or insured's ~~medical history~~ INSURED as otherwise provided by law.

10 (7) THIS SECTION MAY NOT BE CONSTRUED TO ALTER OR MODIFY ANY CONDITIONS,
11 EXCLUSIONS, OR LIMITATIONS CLEARLY STATED IN AN INSURANCE POLICY OR CERTIFICATE
12 DELIVERED OR ISSUED FOR DELIVERY IN MONTANA THAT ARE NOT OTHERWISE INCONSISTENT WITH
13 THE PROVISIONS OF SUBSECTION (4).

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15 PHYSICAL INJURY TO AN INSURED THAT IS RELATED TO ACTS OF ABUSE RESULTING FROM ANY
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