SENATE BILL 1100

AN ACT

AMENDING SECTION 20-448, ARIZONA REVISED STATUTES; RELATING TO UNFAIR INSURANCE PRACTICES.

(TEXT OF BILL BEGINS ON NEXT PAGE)
Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 20-448, Arizona Revised Statutes, is amended to read:

20-448. Unfair discrimination; definitions

A. A person shall not make or permit any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable or in any other of the terms and conditions of the contract.

B. A person shall not make or permit any unfair discrimination respecting hemophiliacs or between individuals of the same class and of essentially the same hazard in the amount of premium, policy fees or rates charged for any policy or contract of disability insurance or in the benefits payable or in any of the terms or conditions of the contract, or in any other manner whatever. The provisions of this subsection regarding hemophiliacs do not apply to any policy or subscription contract which provides only benefits for specific diseases or for accidental injuries or which provides only indemnity for blood transfusion services or replacement of whole blood products, fractions or derivatives.

C. As to kinds of insurance other than life and disability, a person shall not make or permit any unfair discrimination in favor of particular persons or between insureds or subjects of insurance having substantially like insuring, risk and exposure factors, or expense elements, in the terms or conditions of any insurance contract, or in the rate or amount of premium charged.

D. An insurer shall not refuse to consider an application for life or disability insurance on the basis of a genetic condition, developmental delay or developmental disability.

E. The rejection of an application or the determining of rates, terms or conditions of a life or disability insurance contract on the basis of a genetic condition, developmental delay or developmental disability constitutes unfair discrimination, unless the applicant's medical condition and history and either claims experience or actuarial projections establish that substantial differences in claims are likely to result from the genetic condition, developmental delay or developmental disability.

F. In addition to the provisions in subsection E of this section, the rejection of an application or the determination of rates, terms or conditions of a disability insurance contract on the basis of a genetic condition constitutes unfair discrimination in the absence of a diagnosis of the condition related to information obtained as a result of a genetic test.

G. AN INSURER THAT OFFERS LIFE, DISABILITY OR LONG-TERM CARE INSURANCE CONTRACTS MAY NOT UNFAIRLY DISCRIMINATE AGAINST A LIVING ORGAN DONOR IN THE OFFERING, ISSUANCE, PRICE OR CONDITIONS OF AN INSURANCE
POLICY BASED SOLELY, AND WITHOUT ADDITIONAL ACTUARIAL RISKS, ON THAT PERSON'S STATUS AS A LIVING ORGAN DONOR.

G. H. An insurer that offers life, disability, property or liability insurance contracts shall not deny a claim incurred or deny, refuse, refuse to renew, restrict, cancel, exclude or limit coverage or charge a different rate for the same coverage solely on the basis that the insured or proposed insured is or has been a victim of domestic violence or is an entity or individual that provides counseling, shelter, protection or other services to victims of domestic violence. If an insurer that offers life, disability, property or liability insurance contracts denies a claim incurred or denies, refuses, refuses to renew, restricts, cancels, excludes or limits coverage or charges a different rate for the same coverage on the basis of a mental or physical condition and the insured or the proposed insured is or has been a victim of domestic violence, the insurer shall submit a written explanation to the insured or proposed insured of the reasons for the insurer's actions, in accordance with section 20-2110. The fact that an insured or proposed insured is or has been the victim of domestic violence is not a mental or physical condition. Nothing contained in This subsection is NOT intended to provide any private right or cause of action to or on behalf of any applicant or insured. It is the specific intent of this subsection to provide solely an administrative remedy to the director for any violation of this section. Nothing in This subsection prevents DOES NOT PREVENT an insurer from refusing to issue a life insurance policy insuring a person who has been the victim of domestic violence if either of the following is true:

1. The family or household member who commits the act of domestic violence is the applicant for or prospective owner of the policy or would be the beneficiary of the policy and any of the following is true:
   (a) The applicant or prospective beneficiary of the policy is known, on the basis of police or court records, to have committed an act of domestic violence.
   (b) The insurer has knowledge of an arrest or conviction for a domestic violence related offense by the family or household member.
   (c) The insurance company has other reasonable grounds to believe, and those grounds are corroborated, that the applicant or proposed beneficiary of a policy is a family or household member committing acts of domestic violence.

2. The applicant or prospective owner of the policy lacks an insurable interest in the insured.

H. I. Nothing in Subsection G–H of this section prevents DOES NOT PREVENT an insurer that:

1. Offers life or disability insurance contracts from underwriting coverage on the basis of an insured's or proposed insured's mental or physical condition if the underwriting:
(a) Does not consider whether or not the mental or physical condition was caused by an act of domestic violence.

(b) Is the same for an insured or proposed insured who is not the victim of domestic violence as it is for an insured or proposed insured who is the victim of domestic violence.

(c) Does not violate any other rule or law.

2. Offers property or liability insurance contracts from underwriting coverage on the basis of the insured's claims history or characteristics of the insured's property and using rating criteria consistent with section 20-384.

J. Any determination made pursuant to section 20-2537 by the external independent review organization shall not be considered in connection with the evaluation of whether any person subject to this article has complied with this section.

K. A property or liability insurer may exclude coverage for losses caused by an insured's intentional or fraudulent act. The exclusion shall not deny an insured's otherwise covered property loss if the property loss is caused by an act of domestic violence by another insured under the policy and the insured who claims the property loss cooperates in any investigation relating to the loss and did not cooperate in or contribute to the creation of the property loss. The insurer may apply reasonable standards of proof for claims filed under this subsection. The insurer may limit the payment to the insured's insurable interest in the property minus any payment made to any mortgagee or other party with a secured interest in the property. This subsection does not require an insurer to pay any amount that is more than the amount of the loss or property coverage limits. An insurer who pays a claim under this subsection has the right of subrogation against any person except the victim of the domestic violence.

L. All insurers shall adopt and adhere to written policies that are consistent with chapter 11 of this title and that specify the procedures to be followed by employees, contractors, producers, agents and brokers to ensure the privacy of and to help protect the safety of a victim of domestic violence when taking an application, investigating a claim, pursuing subrogation or taking any other action relating to a policy or claim involving a victim of domestic violence. Insurers shall distribute the written policies to employees, contractors, producers, agents and brokers who have access to personal or privileged information regarding domestic violence.

M. For the purposes of this section:

1. "Developmental delay" means a delay of at least one and one-half standard deviations from the norm.

2. "Developmental disability" has the same meaning prescribed in section 36-551.
3. "Domestic violence" means any act that is a dangerous crime against children as defined in section 13-705 or an offense defined in section 13-1201 through 13-1204, 13-1302 through 13-1304, 13-1502 through 13-1504 or 13-1602, section 13-2810, section 13-2904, subsection A, paragraph 1, 2, 3 or 6, section 13-2916 or section 13-2921, 13-2921.01, 13-2923 or 13-3623, if any of the following applies:
(a) The relationship between the victim and the defendant is one of marriage or former marriage or of persons residing or having resided in the same household.
(b) The victim and the defendant have a child in common.
(c) The victim or the defendant is pregnant by the other party.
(d) The victim is related to the defendant or the defendant's spouse by blood or court order as a parent, grandparent, child, grandchild, brother or sister, or by marriage as a parent-in-law, grandparent-in-law, stepparent, step-grandparent, stepchild, step-grandchild, brother-in-law or sister-in-law.
(e) The victim is a child who resides or has resided in the same household as the defendant and is related by blood to a former spouse of the defendant or to a person who resides or has resided in the same household as the defendant.

4. "Gene products" means gene fragments, nucleic acids or proteins derived from deoxyribonucleic acids that would be a reflection of or indicate DNA sequence information.

5. "Genetic condition" means a specific chromosomal or single-gene genetic condition.

6. "Genetic test" means an analysis of an individual's DNA, gene products or chromosomes that indicates a propensity for or susceptibility to illness, disease, impairment or other disorders, whether physical or mental, or that demonstrates genetic or chromosomal damage due to environmental factors, or carrier status for a disease or disorder.

7. "LIVING ORGAN DONOR" MEANS A LIVING PERSON WHO DONATES AN ORGAN TO ANOTHER LIVING PERSON.