(122nd General Assembly)
(Amended Substitute Senate Bill Number 70)

AN ACT

To amend section 3901.21 of the Revised Code to make it an unfair practice for an insurer to take certain adverse actions against policies and contracts of life and health insurance based on an applicant's or insured's status as a victim of domestic violence, and to provide civil and criminal immunity to an insurer acting in compliance with this act.

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

SECTION 1. That section 3901.21 of the Revised Code be amended to read as follows:

Sec. 3901.21. The following are hereby defined as unfair and deceptive acts or practices in the business of insurance:

(A) Making, issuing, circulating, or causing or permitting to be made, issued, or circulated, or preparing with intent to so use, any estimate, illustration, circular, or statement misrepresenting the terms of any policy issued or to be issued or the benefits or advantages promised thereby or the dividends or share of the surplus to be received thereon, or making any false or misleading statements as to the dividends or share of surplus previously paid on similar policies, or making any misleading representation or any misrepresentation as to the financial condition of any insurer as shown by the last preceding verified statement made by it to the insurance department of this state, or as to the legal reserve system upon which any life insurer operates, or using any name or title of any policy or class of policies misrepresenting the true nature thereof, or making any misrepresentation or incomplete comparison to any person for the purpose of inducing or tending to induce such person to purchase, amend, lapse, forfeit, change, or surrender insurance.

Any written statement concerning the premiums for a policy which refers to the net cost after credit for an assumed dividend, without an accurate written statement of the gross premiums, cash values, and dividends based on the insurer's current dividend scale, which are used to

compute the net cost for such policy, and a prominent warning that the rate of dividend is not guaranteed, is a misrepresentation for the purposes of this division.

(B) Making, publishing, disseminating, circulating, or placing before the public or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio station, or in any other way, or preparing with intent to so use, an advertisement, announcement, or statement containing any assertion, representation, or statement, with respect to the business of insurance or with respect to any person in the conduct of ~~his~~ the person's insurance business, which is untrue, deceptive, or misleading.

(C) Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting, or encouraging the making, publishing, disseminating, or circulating, or preparing with intent to so use, any statement, pamphlet, circular, article, or literature, which is false as to the financial condition of an insurer and which is calculated to injure any person engaged in the business of insurance.

(D) Filing with any supervisory or other public official, or making, publishing, disseminating, circulating, or delivering to any person, or placing before the public, or causing directly or indirectly to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false statement of financial condition of an insurer.

Making any false entry in any book, report, or statement of any insurer with intent to deceive any agent or examiner lawfully appointed to examine into its condition or into any of its affairs, or any public official to whom such insurer is required by law to report, or who has authority by law to examine into its condition or into any of its affairs, or, with like intent, willfully omitting to make a true entry of any material fact pertaining to the business of such insurer in any book, report, or statement of such insurer, or mutilating, destroying, suppressing, withholding, or concealing any of its records.

(E) Issuing or delivering or permitting agents, officers, or employees to issue or deliver agency company stock or other capital stock or benefit certificates or shares in any common-law corporation or securities or any special or advisory board contracts or other contracts of any kind promising returns and profits as an inducement to insurance.

(F) Making or permitting any unfair discrimination among 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 thereon, or in any other of the terms and conditions of such contract.

(G)(1) Except as otherwise expressly provided by law, knowingly permitting or offering to make or making any contract of life insurance, life annuity or accident and health insurance, or agreement as to such contract other than as plainly expressed in the contract issued thereon, or paying or allowing, or giving or offering to pay, allow, or give, directly or indirectly, as inducement to such insurance, or annuity, any rebate of premiums payable on the contract, or any special favor or advantage in the dividends or other benefits thereon, or any valuable consideration or inducement whatever not specified in the contract; or giving, or selling, or purchasing, or offering to give, sell, or purchase, as inducement to such insurance or annuity or in connection therewith, any stocks, bonds, or other securities, or other obligations of any insurance company or other corporation, association, or partnership, or any dividends or profits accrued thereon, or anything of value whatsoever not specified in the contract.

(2) Nothing in division (F) or division (G)(1) of this section shall be construed as prohibiting any of the following practices: (a) in the case of any contract of life insurance or life annuity, paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance, provided that any such bonuses or abatement of premiums shall be fair and equitable to policyholders and for the best interests of the company and its policyholders; (b) in the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expenses; (c) readjustment of the rate of premium for a group insurance policy based on the loss or expense experience thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactive only for such policy year.

(H) Making, issuing, circulating, or causing or permitting to be made, issued, or circulated, or preparing with intent to so use, any statement to the effect that a policy of life insurance is, is the equivalent of, or represents shares of capital stock or any rights or options to subscribe for or otherwise acquire any such shares in the life insurance company issuing that policy or any other company.

(I) Making, issuing, circulating, or causing or permitting to be made, issued or circulated, or preparing with intent to so issue, any statement to the effect that payments to a policyholder of the principal amounts of a pure

endowment are other than payments of a specific benefit for which specific premiums have been paid.

(J) Making, issuing, circulating, or causing or permitting to be made, issued, or circulated, or preparing with intent to so use, any statement to the effect that any insurance company was required to change a policy form or related material to comply with Title XXXIX of the Revised Code or any regulation of the superintendent of insurance, for the purpose of inducing or intending to induce any policyholder or prospective policyholder to purchase, amend, lapse, forfeit, change, or surrender insurance.

(K) Aiding or abetting another to violate this section.

(L) Refusing to issue any policy of insurance, or canceling or declining to renew such policy because of the sex or marital status of the applicant, prospective insured, insured, or policyholder.

(M) Making or permitting any unfair discrimination 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 insurance, other than life insurance, or in the benefits payable thereunder, or in underwriting standards and practices or eligibility requirements, or in any of the terms or conditions of such contract, or in any other manner whatever.

(N) Refusing to make available disability income insurance solely because the applicant's principal occupation is that of managing a household.

(O) Refusing, when offering maternity benefits under any individual or group sickness and accident insurance policy, to make maternity benefits available to the policyholder for the individual or individuals to be covered under any comparable policy to be issued for delivery in this state, including family members if the policy otherwise provides coverage for family members. Nothing in this division shall be construed to prohibit an insurer from imposing a reasonable waiting period for such benefits, but in no event shall such waiting period exceed two hundred seventy days.

(P) Using, or permitting to be used, a pattern settlement as the basis of any offer of settlement. As used in this division, "pattern settlement" means a method by which liability is routinely imputed to a claimant without an investigation of the particular occurrence upon which the claim is based and by using a predetermined formula for the assignment of liability arising out of occurrences of a similar nature. Nothing in this division shall be construed to prohibit an insurer from determining a claimant's liability by applying formulas or guidelines to the facts and circumstances disclosed by the insurer's investigation of the particular occurrence upon which a claim is based.

(Q) Refusing to insure, or refusing to continue to insure, or limiting the amount, extent, or kind of life or sickness and accident insurance or annuity coverage available to an individual, or charging an individual a different rate for the same coverage solely because of blindness or partial blindness. With respect to all other conditions, including the underlying cause of blindness or partial blindness, persons who are blind or partially blind shall be subject to the same standards of sound actuarial principles or actual or reasonably anticipated actuarial experience as are sighted persons. Refusal to insure includes, but is not limited to, denial by an insurer of disability insurance coverage on the grounds that the policy defines "disability" as being presumed in the event that the eyesight of the insured is lost. However, an insurer may exclude from coverage disabilities consisting solely of blindness or partial blindness when such conditions existed at the time the policy was issued. To the extent that the provisions of this division may appear to conflict with any provision of section 3999.16 of the Revised Code, this division applies.

(R)(1) Directly or indirectly offering to sell, selling, or delivering, issuing for delivery, renewing, or using or otherwise marketing any policy of insurance or insurance product in connection with or in any way related to the grant of a student loan guaranteed in whole or in part by an agency or commission of this state or the United States, except insurance that is required under federal or state law as a condition for obtaining such a loan and the premium for which is included in the fees and charges applicable to the loan; or, in the case of an insurer or insurance agent, knowingly permitting any lender making such loans to engage in such acts or practices in connection with the insurer's or agent's insurance business.

(2) Except in the case of a violation of division (G) of this section, division (R)(1) of this section does not apply to either of the following:

(a) Acts or practices of an insurer, its agents, representatives, or employees in connection with the grant of a guaranteed student loan to its insured or the insured's spouse or dependent children where such acts or practices take place more than ninety days after the effective date of the insurance;

(b) Acts or practices of an insurer, its agents, representatives, or employees in connection with the solicitation, processing, or issuance of an insurance policy or product covering the student loan borrower or ~~his~~ the borrower's spouse or dependent children, where such acts or practices take place more than one hundred eighty days after the date on which the borrower is notified that the student loan was approved.

(S) Denying coverage, under any health insurance or health care policy,

contract, or plan providing family coverage, to any natural or adopted child of the named insured or subscriber solely on the basis that the child does not reside in the household of the named insured or subscriber.

(T)(1) Using any underwriting standard or engaging in any other act or practice that, directly or indirectly, due solely to the actual or expected health condition of one or more individuals, does either of the following:

(a) Terminates or fails to renew an existing individual policy, contract, or plan of health benefits, or a health benefit plan issued to a small employer as those terms are defined in section 3924.01 of the Revised Code, for which an individual would otherwise be eligible;

(b) With respect to a health benefit plan issued to a small employer, as those terms are defined in section 3924.01 of the Revised Code, excludes or causes the exclusion of an individual from coverage under an existing employer-provided policy, contract, or plan of health benefits, except that an insurer may exclude, on the basis of health status, a late enrollee as defined in section 3924.01 of the Revised Code.

(2) The superintendent of insurance may adopt rules in accordance with Chapter 119. of the Revised Code for purposes of implementing division (T)(1) of this section.

(U) With respect to a health benefit plan issued to a small employer, as those terms are defined in section 3924.01 of the Revised Code, negligently or willfully placing coverage for adverse risks with a certain carrier, as defined in section 3924.01 of the Revised Code.

(V) Using any program, scheme, device, or other unfair act or practice that, directly or indirectly, causes or results in the placing of coverage for adverse risks with another carrier, as defined in section 3924.01 of the Revised Code.

(W) Failing to comply with section 3923.23, 3923.231, 3923.232, 3923.233, or 3923.234 of the Revised Code by engaging in any unfair, discriminatory reimbursement practice.

(X) Intentionally establishing an unfair premium for, or misrepresenting the cost of, any insurance policy financed under a premium finance agreement of an insurance premium finance company.

(Y)(1)(a) LIMITING COVERAGE UNDER, REFUSING TO ISSUE, CANCELING, OR REFUSING TO RENEW, ANY INDIVIDUAL POLICY OR CONTRACT OF LIFE INSURANCE, OR LIMITING COVERAGE UNDER OR REFUSING TO ISSUE ANY INDIVIDUAL POLICY OR CONTRACT OF HEALTH INSURANCE, FOR THE REASON THAT THE INSURED OR APPLICANT FOR INSURANCE IS OR HAS BEEN A VICTIM OF DOMESTIC VIOLENCE;

(b) ADDING A SURCHARGE OR RATING FACTOR TO A PREMIUM OF ANY INDIVIDUAL POLICY OR CONTRACT OF LIFE OR HEALTH INSURANCE FOR THE REASON THAT THE INSURED OR APPLICANT FOR INSURANCE IS OR HAS BEEN A VICTIM OF DOMESTIC VIOLENCE;

(c) DENYING COVERAGE UNDER, OR LIMITING COVERAGE UNDER, ANY POLICY OR CONTRACT OF LIFE OR HEALTH INSURANCE, FOR THE REASON THAT A CLAIM UNDER THE POLICY OR CONTRACT ARISES FROM AN INCIDENT OF DOMESTIC VIOLENCE;

(d) INQUIRING, DIRECTLY OR INDIRECTLY, OF AN INSURED UNDER, OR OF AN APPLICANT FOR, A POLICY OR CONTRACT OF LIFE OR HEALTH INSURANCE, AS TO WHETHER THE INSURED OR APPLICANT IS OR HAS BEEN A VICTIM OF DOMESTIC VIOLENCE, OR INQUIRING AS TO WHETHER THE INSURED OR APPLICANT HAS SOUGHT SHELTER OR PROTECTION FROM DOMESTIC VIOLENCE OR HAS SOUGHT MEDICAL OR PSYCHOLOGICAL TREATMENT AS A VICTIM OF DOMESTIC VIOLENCE.

(2) NOTHING IN DIVISION (Y)(1) OF THIS SECTION SHALL BE CONSTRUED TO PROHIBIT AN INSURER FROM INQUIRING AS TO, OR FROM UNDERWRITING OR RATING A RISK ON THE BASIS OF, A PERSON'S PHYSICAL OR MENTAL CONDITION, EVEN IF THE CONDITION HAS BEEN CAUSED BY DOMESTIC VIOLENCE, PROVIDED THAT ALL OF THE FOLLOWING APPLY:

(a) THE INSURER ROUTINELY CONSIDERS THE CONDITION IN UNDERWRITING OR IN RATING RISKS, AND DOES SO IN THE SAME MANNER FOR A VICTIM OF DOMESTIC VIOLENCE AS FOR AN INSURED OR APPLICANT WHO IS NOT A VICTIM OF DOMESTIC VIOLENCE;

(b) THE INSURER DOES NOT REFUSE TO ISSUE ANY POLICY OR CONTRACT OF LIFE OR HEALTH INSURANCE OR CANCEL OR REFUSE TO RENEW ANY POLICY OR CONTRACT OF LIFE INSURANCE, SOLELY ON THE BASIS OF THE CONDITION, EXCEPT WHERE SUCH REFUSAL TO ISSUE, CANCELLATION, OR REFUSAL TO RENEW IS BASED ON SOUND ACTUARIAL PRINCIPLES OR IS RELATED TO ACTUAL OR REASONABLY ANTICIPATED EXPERIENCE;

(c) THE INSURER DOES NOT CONSIDER A PERSON'S STATUS AS BEING OR AS HAVING BEEN A VICTIM OF DOMESTIC

IOLENCE, IN ITSELF, TO BE A PHYSICAL OR MENTAL CONDITION;

(d) THE UNDERWRITING OR RATING OF A RISK ON THE BASIS OF THE CONDITION IS NOT USED TO EVADE THE INTENT OF DIVISION (Y)(1) OF THIS SECTION, OR OF ANY OTHER PROVISION OF THE REVISED CODE.

(3)(a) NOTHING IN DIVISION (Y)(1) OF THIS SECTION SHALL BE CONSTRUED TO PROHIBIT AN INSURER FROM REFUSING TO ISSUE A POLICY OR CONTRACT OF LIFE INSURANCE INSURING THE LIFE OF A PERSON WHO IS OR HAS BEEN A VICTIM OF DOMESTIC VIOLENCE IF THE PERSON WHO COMMITTED THE ACT OF DOMESTIC VIOLENCE IS THE APPLICANT FOR THE INSURANCE OR WOULD BE THE OWNER OF THE INSURANCE POLICY OR CONTRACT.

(b) NOTHING IN DIVISION (Y)(2) OF THIS SECTION SHALL BE CONSTRUED TO PERMIT AN INSURER TO CANCEL OR REFUSE TO RENEW ANY POLICY OR CONTRACT OF HEALTH INSURANCE IN VIOLATION OF THE "HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996," 110 STAT. 1955, 42 U.S.C.A. 300gg-41(b), AS AMENDED, OR IN A MANNER THAT VIOLATES OR IS INCONSISTENT WITH ANY PROVISION OF THE REVISED CODE THAT IMPLEMENTS THE "HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996."

(4) An insurer is immune from any civil or criminal liability that otherwise might be incurred or imposed as a result of any action taken by the insurer to comply with division (Y) of this section.

(5) AS USED IN DIVISION (Y) OF THIS SECTION, "DOMESTIC VIOLENCE" MEANS ANY OF THE FOLLOWING ACTS:

(a) KNOWINGLY CAUSING OR ATTEMPTING TO CAUSE PHYSICAL HARM TO A FAMILY OR HOUSEHOLD MEMBER;

(b) RECKLESSLY CAUSING SERIOUS PHYSICAL HARM TO A FAMILY OR HOUSEHOLD MEMBER;

(c) KNOWINGLY CAUSING, BY THREAT OF FORCE, A FAMILY OR HOUSEHOLD MEMBER TO BELIEVE THAT THE PERSON WILL CAUSE IMMINENT PHYSICAL HARM TO THE FAMILY OR HOUSEHOLD MEMBER.

FOR THE PURPOSE OF DIVISION (Y)(5) OF THIS SECTION, "FAMILY OR HOUSEHOLD MEMBER" HAS THE SAME MEANING AS IN SECTION 2919.25 OF THE REVISED CODE.

NOTHING IN DIVISION (Y)(5) OF THIS SECTION SHALL BE

CONSTRUED TO REQUIRE, AS A CONDITION TO THE APPLICATION OF DIVISION (Y) OF THIS SECTION, THAT THE ACT DESCRIBED IN DIVISION (Y)(5) OF THIS SECTION BE THE BASIS OF A CRIMINAL PROSECUTION.

With respect to private passenger automobile insurance, no insurer shall charge different premium rates to persons residing within the limits of any municipal corporation based solely on the location of the residence of the insured within those limits.

The enumeration in sections 3901.19 to 3901.26 of the Revised Code of specific unfair or deceptive acts or practices in the business of insurance is not exclusive or restrictive or intended to limit the powers of the superintendent of insurance to adopt rules to implement this section, or to take action under other sections of the Revised Code.

This section does not prohibit the sale of shares of any investment company registered under the "Investment Company Act of 1940," 54 Stat. 789, 15 U.S.C.A. 80a-1, as amended, or any policies, annuities, or other contracts described in section 3907.15 of the Revised Code.

As used in this section, "estimate," "statement," "representation," "misrepresentation," "advertisement," or "announcement" includes oral or written occurrences.

SECTION 2. That existing section 3901.21 of the Revised Code is hereby repealed.

_____

Speaker _____ *of the House of Representatives.*

_____

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

_____

Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

_____

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the ____ day of _____, A. D. 20____.

_____

Secretary of State.

File No. _____ Effective Date _____