

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

March 14, 1985

The forty-ninth meeting of the Senate Judiciary Committee was called to order at 10:05 a.m. on March 14, 1985, by Chairman Joe Mazurek in Room 325 of the Capitol Building.

ROLL CALL: All committee members were present. In addition, Senator Fred VanValkenburg sat with the committee during the hearing.

Chairman Mazurek announced HB 366 and HB 507 would be heard together due to the similar nature of the subject matter of the bills.

CONSIDERATION OF HB 366 AND HB 507: Representative Kerry Keyser, sponsor of HB 507, stated he introduced the bill because the bill that was passed last session setting up Section 49-2-309, MCA, is blatantly unfair to women, to men, and to the insurance industry in the area of life and automobile insurance. He testified the Women's Lobbyist Group does not represent the majority of women in the state of Montana. He stated this is not a civil rights issue; it is an economic issue. Representative Keyser stated that when we talk about life insurance, sure, we're talking about sex and male and female, but we're also talking about the factors of a driver's age, the horsepower of the car, whether the car is used for pleasure or work, whether it is used in business or farming, and whether the young driver has driver's training. The fact young males have one and a half times as many accidents, six times as many fatal accidents, two times as many moving violations, four times as many license suspensions and revocations are reasons why they pay more. Mileage is not an effective substitute for gender because women driving the same number of miles per year as men still demonstrate a much lower rate of accidents than men. In 1983, males were 53% of the driving percent of the driving population and had 68% of the accidents that year. What they're talking about is facts, costs to women, and changing the tools the industry does use. He recognizes there was a problem existing in the retirement benefit, and that problem has been taken care of by the U.S. Supreme Court and is no longer a factor.

Representative Jack Ramirez, sponsor of HB 366, stated he introduced the bill for the purpose of trying to find some middle ground between the outright repealer and the law that will become effective in October if nothing is done. He then walked the committee through the bill. Page 1, lines 12-18, guarantees there will be no discrimination in availability of insurance. It indicates no insurer may refuse to insure,

refuse to continue to insure, or limit the amount of coverage available because of sex or marital status. If there is any discrimination in the insurance business, that's the type of thing we're talking about. What we are talking about goes beyond that with the unisex laws which will become effective in October. What we are talking about there is the inability to make actuarial distinctions which can save women money on their insurance rates. He doesn't believe that should be prohibited; it is an economic issue, and it's not something the state should be involved in. The way this compromise is basically today, with businesses that are subject to the federal Employee Retirement Income Security Act (ERISA), as far as group employee plans are concerned, they are required to be unisex in nature. Distinctions cannot be made on an actuarial basis within those group employee plans. ERISA does not apply to all employers. In fact, it applies to only employers with 15 or more employees. For the smaller employers, there is no such requirement. In ERISA situations, the woman can't make a choice as to whether she wants unisex coverage or some other coverage. This bill would extend the unisex requirements to all employers in the state of Montana. According to the University of Montana business statistics, there are about 75,000 Montana employees who are employed in establishments of 14 or fewer employees. You would be extending unisex provisions for employee plans to 75,000 private employees. The second thing you would be doing, since federal, state, and local employers are not subject to ERISA, you would also extend the protection of unisex to all of those employees as well, and there are about 50,000 government employees. You must keep in mind the state does have a unisex plan. We are not doing anything as a matter of fact with them, but as a matter of right. This bill would extend for employee plans the protection or at least the concept to over 100,000 Montana employees. It is significant, and it is not the equivalent of a repealer in any sense of the word. If a woman is involved in an employee situation where she cannot make a choice, then it will be unisex, but we should not require that for individual policies. If a woman wants to go out in the market and make a choice, she has the freedom to make that choice. If there is a demand for unisex policies, insurance companies who want to sell policies will make those policies available in the market place. Representative Ramirez stated he does not believe the state of Montana should deprive people, male or female, of going into the market, purchasing the policy they want to purchase, and getting the best price they can get.

PROPOSERS: The following testified in support of the bills and, where indicated, presented written testimony or made additional testimonial remarks: Bonnie Tippy, representing The Alliance of American Insurers (Exhibit 1). Mavis Walters, Senior Vice President, Insurance Services Office, a not-for-profit corporation which provides a wide range of technical services to property liability insurers (Exhibit 2). Lester Loble II, representing the American Council of Life Insurance (Exhibit 3).

Carol Mosher, representing Montana Cowbells (Exhibit 4). Ann Allen supported HB 507 (Exhibit 5). Sherry Daniels (Exhibit 6). Marie Deonier (Exhibit 7). Elmer Hausken, lobbyist for Montana Association of Life Underwriters (Exhibit 8). Lois Halsey, representing Montana State Eagle Forum (Exhibit 9). Beverly Glueckert supported HB 507 (Exhibit 10). Helen Sasek, representing the Helena Eagle Forum (Exhibit 11). Judy Mintel, representing State Farm Insurance Companies (Exhibit 12). She stated the major reason for their support is without the enactment of one of these two bills, State Farm will be forced to make major pricing changes which will result in large rate increases for both young women of this state and young married couples. The examples submitted with her testimony were prepared by their actuarial department. In addition, Linda McCluskey presented written testimony in support of HB 366 and Margaier Tripplehorn presented written testimony in support of HB 507, although they did not testify orally before the committee (Exhibit 13).

OPPONENTS: The following testified in opposition to the bills and, where indicated, presented written testimony or made additional testimonial remarks: Ann Brodsky, on behalf of the Women's Lobbyist Fund (Exhibit 14). In addition, Ms. Brodsky presented written testimony on behalf of Dr. Mary Gray, President, Women's Equity Action League, and Professor and Chair, Department of Mathematics, Statistics and Computer Science, American University, Washington, D.C., who was unable to attend the hearing (Exhibit 15). Karen Zollman, on behalf of Montana State NOW (Exhibit 16). Patrick Butler, representing the National Organization for Women's Insurance and Pension Project (Exhibit 17). Jan Siemers, on behalf of Montana NOW (Exhibit 18).

Mike Meloy, lawyer in Helena, testified all HB 366 does is extend the protections of Title 7, which prohibit employer-based discrimination, to existing employer plans in businesses that have 15 or fewer employees. He doesn't think you can afford to run a pension plan or health insurance plan for a business that small and submitted there aren't any. He testified the Human Rights Act picks up where Title 7 leaves off and prohibits employer discrimination regardless of the size of business, so the Human Rights Act already provides the kind of protection HB 366 would provide; otherwise it's a flat repealer. He handed out an analysis of his view of the constitutional problems with sex-based discrimination in insurance rates (Exhibit 19) and stated there are essentially two questions that would come up. First, whether the Montana Constitution or the federal Fourteenth Amendment prohibits private actions. He submitted the Montana constitution very clearly applies to private businesses and does so on its face. There's no question in Montana that the equal protection clause prohibits private discrimination as well as public discrimination. He submits that under the federal constitution, in the case of Reitman v. Mulkey cited in his brief, the actions of this legislature to repeal what was passed last session will constitute state

action. He submitted that if the legislature repeals the law passed last session, it is permitting discrimination in the field of rates after October 15, and there will be state action even under the federal constitution. He believes the problem with Mr. Garrity's opinion is it is based upon the assumption our Supreme Court and the U.S. Supreme Court will look at gender-based rates and apply a rational basis analysis, which is if you have a good reason for classification, you can discriminate, unless it impinges on a fundamental right. He believes another problem with Mr. Garrity's opinion is he applies the law that was in existence in the U.S. Supreme Court prior to 1975 and seizes on the Montana case of State v. Craig which was decided based on the old law. In 1976, the U.S. Supreme Court adopted what's been called the middle tier approach, that a governmental or private action, whatever is causing the discrimination, in order to meet a constitutional challenge based on sex, must serve important governmental objectives and must be substantially related to those objectives. What the Montana Supreme Court has done in those kinds of cases is say our constitution is broader than the federal constitution, and if there is a fundamental right in our constitution that may not be in the federal constitution, then we're going to apply the strict scrutiny test, which is the highest test that can be applied. It was developed in racial discrimination matters. The U.S. Supreme Court hasn't applied that test to sexual discrimination, because it hasn't considered discrimination on account of sex to be a fundamental right. He submits the Montana Supreme Court will. He doesn't think the Stone case Mr. Loble cited is applicable at all, because Stone involved a construction of the Montana Human Rights Act which followed Title VII, which permits bona fide occupational qualifications in defeating a Title VII or human rights claim. The Montana equal protection clause was never argued in that case and that case is back for rehearing. There are no cases that he knows of with the exception of Korematsu back in 1942 in which a state or federal government has been able to meet that strict scrutiny test. He believes it's impossible. In Montana, sex-based insurance rates would clearly not meet the constitutional challenge. He also cited the Hartford Accident v. Insurance Commissioner case decided in September by the Pennsylvania Supreme Court construing a constitutional provision just like Montana's equal rights amendment which found gender-based auto insurance rates violate the constitutional provision. He does not believe you can extricate constitutional considerations from economic considerations.

Joann Elliott, independent insurance agent, Bozeman, presented written testimony in opposition to the bills (Exhibit 20). Joan Jonkel, an attorney in Missoula and President of the Women's Law Section, testified that a major concern of those who belong to the Section is to combat discrimination on the basis of sex and to protect and advance women's rights (Exhibit 21). She urged the committee to vote against any bill

repealing or weakening Montana's gender-free insurance law. Kathy Karp, representing the Montana League of Women Voters (Exhibit 22). Harriet Meloy, representing the American Association of University Women (Exhibit 23).

Representative Kelly Addy appeared in opposition to the bills. He stated he has received a lot of mail regarding these bills. He testified State Farm sent out 92,000 letters to its policyholders saying you'd better write and save your daughter's insurance premiums from going up. The letter also contained enclosures. There was almost \$20,000 spent on postage alone, not taking into consideration the cost of the letters. He stated these are not bills about the costs of insurance or assessing risk. They are bills about marketing insurance and, therefore, the ability to establish a price. He testified the difference between cost and price is called profit, and the letters State Far mailed out are called investment.

Don Judge, representing the Montana State AFL-CIO (Exhibit 24). Terry Minnow, representing the Montana Federation of Teachers, rose in opposition to the bills. Kathleen Holden, Attorney, Montana Human Rights Commission, testified the Commission has some problems with some technicalities in the bills and presented written testimony outlining these problems (Exhibit 25). JoAnne Peterson, representing the Montana Education Association (Exhibit 26). Lynn Robson, representing the Montana Federation of Business and Professional Women, rose to defeat the bills and support nongender insurance (Exhibit 27).

QUESTIONS FROM THE COMMITTEE: Senator Crippen asked if an actuary would explain to the committee the rationale why in a group life insurance you can have group coverage that has identical premiums regardless of sex and then relate that to how that differs from an actuarial standpoint when you are talking about purchase of individual life insurance policies. Daniel Case, Actuary, American Council of Life Insurance, responded to the question. He explained they do not have employee benefit plans in which the premiums are the same for males and females. What they have are employee benefit plans in which the benefits are the same and the employee contributions are the same. If the employee benefit plan is insured with an insurer, the insurance company will require the employer to pay premiums to the insurance company, and those premiums will be based on the male-female mix of the group. The employer will make up the difference between the higher costs of insuring males for life insurance and the lower costs of insuring females. From an insurance company's point of view, it is able to base its premiums on the costs which it incurs.

Senator Crippen asked if Mr. Case would explain how life insurance companies were actuaried. Mr. Case responded individual life insurance policies are actuarially determined insofar as premiums in relationship to

the amount of money the company earns on those accumulated premiums. Mr. Case stated the law of large numbers enters in. If all the insurance company knew about the person applying for insurance was the person's age, the company, knowing data from the U.S. Population and Death Records, knowing young people die at a much lower rate than older people do, would set premiums based on age having a large body of data indicating that. If the company also knew the sex of the person, then it could become more refined knowing women live longer than men. If the company knows the state of health of the person, it would become more refined. Knowing whether the person smoked cigarettes or had a hazardous occupation could also be worked in. Although the company may have guessed wrong on one individual, it may have guessed wrong the other way on another, but it makes the best guess it can on each individual. The better the guess it can make on each individual benefiting them from the law of large numbers, the more likely it is to come out right. By eliminating one of the factors, such as sex, the company cannot make as good guess on the individual. It will have to compensate in some way, probably by building a little bit of margin into its premium rates, because it won't know how many will be men and how many will be women, and chances are its average premiums will go up a bit. The opponents have claimed that with lower cash values and lower dividends, the women are actually paying more for their insurance. That is not true when you take into account the time value of money, which means a cash value paid 20 years from issue is worth less when viewed from the present time than is a premium paid now and each year over that period. Montana regulations require that in making cost comparisons, the time value of money be taken into account. The majority of states also require that.

Senator Yellowtail asked if it would be theoretically possible to construct actuarial tables on the basis of race. Mr. Case responded affirmatively. Senator Yellowtail then asked Representative Keyser if that would be right. Representative Keyser responded it has already been shown here the companies do a better job and offer a better product if they take into consideration more information. Senator Towe asked Ms. Walters if she would support for her industry a rate table based on race. Ms. Walters stated it would violate sound actuarial principles, as they do not use surrogates for factors that they can deal with directly. She stated race is not an actuarially sound factor, but sex is, as it is not a surrogate for something else, such as lifestyle. She suggested scientific and medical evidence supports her view. Senator Towe asked if she would change her mind when someone else came along in 10 years and said it is in fact a surrogate for a lifestyle. She suggested lifestyle differences can explain mortality differences even prior to birth. Senator Towe asked if a company established as a practical matter Indians in Montana do not live as long as other non-Indians in Montana and, therefore, they will construct a rate table based on Indians versus non-Indians, or Lutherans versus Quakers, or

Blacks versus non-Blacks, or Catholics versus non-Catholics. He asked if the state of Montana should permit that. Ms. Walters stated she will not testify as to what the state of Montana should or should not do. Senator Towe asked if we should permit that, and if not, why should we permit discrimination based on sex. Ms. Walters did not think a good case could be made for justifying the use of rating variables or rating factors which are not based on sound actuarial evidence. She did not think those factors should be used because they are easy, even though it may not have any logical or scientific relevance to what you are trying to measure. Senator Towe asked if he could prove to her that distinction based on sex similarly has no basis in fact, would she change her mind. Ms. Walters stated that if he could prove to her that eliminating sex as a rating variable would not seriously diminish the accuracy and the predictive value of the rating variable, she would say he was right and she was wrong. Ms. Walters asked what would be their economic incentive to deliberately and knowingly charge an inappropriate price with nearly hundreds of firms competing. Secondly, she asked if they had one, could they get away with it if they have every other company that has a vast body of data trying to identify what the true costs are. She believes the economic incentive in a competitive market is just the opposite; it is to drive towards accurate prices.

Senator Crippen asked if a man and a woman were to both pay the same premiums at the same age, at age 65 with the cash accumulation account, will they receive the same amount of money per month. Ms. Elliott responded if it is a unisex policy, yes. Senator Crippen asked actuarially who would live longer at age 65. the man or the woman. No answer was received. Senator Crippen asked if you go a step further and say the man and woman at age 65 are going to receive an identical amount of monthly returns on the identical type of plan for a 10-year life thereafter, wouldn't we have discrimination right there based on time value of money, which is illegal in our law, because that woman is going to outlive the man actuarially and the man will die prior to the woman and not receive the same amount of money. Mr. Butler responded that is a very good point as to whether it is actuarially fair or unfair. What Ms. Elliott said is what you pay in, you get back. If you ask if it is actuarially fair that women have an actuarial chance of outliving men, then they will have a better chance of getting more money than men if they have an actuarial payout. He stated that's true on those bases, but the trouble is those kind of reasons can be used selectively. For example, in the non-smoker discount, you get a better break on your life insurance if you are a non-smoker. He asked if anyone were going around offering it is not actuarially fair to pay smokers the same pensions as non-smokers because obviously, actuarially, the non-smokers will live longer than the smokers. By the same logic of men and women being actuarially unfair to pay men the same as women, it is actuarially unfair to pay smokers the same as non-smokers. Senator Crippen stated what he was

saying is the woman is going to receive more in the long run because we are completely ignoring the time value of money. Senator Crippen asked if actuarially women will outlive men. Mr. Butler responded according to mortality tables, women, taken as a group, all things being equal, have an average greater longevity than men. Senator Crippen asked how you can justify paying them the same monthly annuities if that woman is going to get more in the long run. Mr. Butler responded they do not cut off men's pensions when they outlive their average lifetimes.

Senator VanValkenburg asked Mr. Loble if Mr. Garrity provided him with any additional information he did not hand out. Mr. Loble responded no. Senator VanValkenburg asked if Mr. Garrity addressed the possibility the court might construe the individual dignity clause as requiring a strict scrutiny test. Mr. Loble responded no.

CLOSING STATEMENT: Representative Keyser closed by stating this group of women represents some 3,000 women. He testified the groups these women belong to may number 3,000, but the total women within these groups do not support this. They talked about a survey. It's a survey none of the industry had heard about, and it apparently wasn't done throughout the state of Montana. But a poll done in 1983 conducted by Skelly & White on the subject of auto insurance found more than 80% of American women said it would be unfair to charge young women the same rates on auto insurance as young men and 64% of the men agreed with them on this point. Clearly American consumers recognize the economics dealing with unisex insurance. Representative Keyser reminded the committee neither the Montana Supreme Court, the U.S. Supreme Court, nor the U.S. Congress has made this ruling on automobile, health, and life insurance. He stated if we don't pass one of these bills, the state of Montana will become the only state in the United States to have a blanket unisex insurance on all of the insurance in the state of Montana. The people from out of state who targeted Montana to be the first state to have this type of insurance will have succeeded, and the majority of women do not agree with this minority here that got this bill passed basically on a sexist and feminist basis and not based on business. He believes the women are willing to go to the marketplace and decide where they want to buy insurance.

Representative Ramirez closed by addressing a number of matters. First, on the constitutionality--lawyers will have different opinions on that issue, but the only way to solve it is through the Supreme Court. There was some discussion about availability of insurance for pregnancy, and unavailability of insurance for reproductive problems; he believes that unavailability is addressed in HB 366, and it would be prohibited if there actually were discrimination going on. If that is a problem, the committee should deal with that problem but shouldn't deal with something much broader. We talked about race versus actuarial distinctions

made on sex. Representative Ramirez stated his view is you could take every single factor in the actuarial formula and say the same thing about it. He believes it is a question of policy, but he believes it will make the system much less precise if you use other factors. The last thing on an actuary's mind is discrimination. What they are trying to do is compete. Not using race as a factor was a policy decision. When those distinctions were made, there was a minority that always came out on the short end. We are not dealing with a minority here; we are actually dealing with a majority. We are not dealing with disadvantage, but more often than not, an advantage. We are trying to take that away from them in the name of equality, and that is not right. There is no unfairness in taking sex into account in this situation. He believes the majority of women want to have their chance in the marketplace just like everyone else. He thinks unisex is demeaning to women because it says they are not capable of making this decision in the marketplace. The comment was made HB 366 is not a repealer, because it does affect a number of employers. Representative Ramirez stated 85% of the employers in the state of Montana have less than 19 employees. We are a state of small businesses with few employees. Representative Ramirez believed the statistics are distorted and have been presented to justify the continuation of the unisex law. He believes we should go on our common-sense. All sorts of factors are taken into account in insurance. We are playing the odds in trying to find an accurate way to charge people for insurance so they can get the best deal they can get. He did not doubt the sincerity of all of the people who are advocating that we continue with the unisex law, but if you set all of the emotions and political considerations aside, the depth of their belief is simply not shared by the majority of Montanans, and he does not believe they should force on us something that is not unfair and something that takes away the freedom in the marketplace for women. He thinks the equality is in the ability to go into the marketplace and make our own decisions without the state telling us what to do.

Hearing on HB 366 and HB 507 was closed.

There being no further business to come before the meeting, the hearing was closed at 12:25 p.m.



Committee Chairman

COMMITTEE ON

DATE

306 and 507

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Bonnie Tippet	Alliance of American Farmers	366 + 507	X	
Mario Walters	ISO	" "	X	
Les Loble	American Council of Life Ins	" "	X	
Beverly Bluebeek	myself and my family	366 + 507	X	
Randy Gray	State Farm ^{and National} Assoc of Ind Ins	366 + 507	X	
Judy Mintel	State Farm	366 + 507	X	
Charles Minderhann	State Farm			
Ward Stenghan	Aetna / ISFG	366 + 507	X	
Lara Halscup	Eagle Forum	507	X	
Ann M. Allen	" "	507	X	
Pam Kakkaramen		507	X	
Fred Johansson		507	X	
Anne Brodsky	WLF	366 507		X
Karen L. Zylman	NOW-State	11		X
Jan Simers	NOW-State	366 507		X
Dickette McNeill	Now-State	366 507		X
Loral Mosher	Montana Cow Belles	366 507	✓	
B. Christy	Montana Cow Belles	366 507	✓	
Rina Ponds	Self	366 507		X
Guthrie Kemp	Mont. Seniors of Women Veterans	366 507		X
Sharon Hueston	Mont. Seniors of Women Veterans	366 507	✓	
M.R. Trappan	Self + family	507	X	
Laura Michelson	self + League of Women	366 507		X
Patricia Butler	Montana National Chapter Libran	366 507		X
Carol Harris	Insurance Consumers	366 507		X
Joan Elliott	Independent Agent	366 507		X

(Please leave prepared statement with Secretary)

VISITORS' REGISTER

SENATE AND HOUSE COMMITTEE _____

BILL HR 366-507

DATE _____

SPONSOR _____

NAME	REPRESENTING	RESIDENCE	SUPPORT	OPPOSE
Jim Higgins	FARMERS INS. CO.		✓	
Richard M. Clark	Self	Missoula		✓
Dale Chase	Self	Billings		
Lynn Robson	Montana BPU	Bozeman		✓
David A. Kuller		Tishitail	✓	
Sherry Daniel	Self-woman	Billings	✓	
M. J. K. K. K.	SEMAU/11/1 Self	Billings	✓	
Angie Kohn	SEMAU - Recp	Billings	✓	
Kelli Thantler	Women's Lftrt Jns	Missoula		✓
Susan P. Hingham	ACLU	Helena		✓
Johnnie Peterson	MEA	Bozeman		✓
Monte Orushuk	Neola L W V	Missoula		✓
Kathleen Holder	Montana Human Rights Commission	Helena		✓
W. C. Church Stamps	U. Methodist Women	Helena		✓
Norman Melan	Almar. Assoc. Teachers			✓
John Wilson	Early Forum	Helena	✓	
Kelen Johnson	DIA of mt.	Helena	✓	
Sam B. Hott	Self	Helena		✓
Phyllis Sherman	Montana Federation of Teachers	Helena		✓
Kelly Adley	St Rep HD94	Billings		✓
Don Jensen	Don Jensen Youth Bp	Billings		✓
Don Judge	MT STATE AFL-CIO	Helena		✓

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

SENATE AND HOUSE COMMITTEE

DATE 3/14/85

SPONSOR

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

NAME: Bonnie Lepp DATE: March 14, 1985

ADDRESS: 1106 8th Ave

PHONE: 442-2052

REPRESENTING WHOM? The Alliance of American Insureds

APPEARING ON WHICH PROPOSAL: HB 507 & 366

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 031485
BILL NO. HBS 366 + 507

TESTIMONY
HOUSE BILLS 366 AND 507
BONNIE TIPPY
THE ALLIANCE OF AMERICAN INSURERS

Anti-female discrimination is still alive and well in our society. As a woman in a very non-traditional job, I understand what unfair discrimination is. There are a lot of areas that need to change. I also understand why insurance has become a target of groups seeking to end discrimination. It is by and large an unpopular industry. It is an industry which openly and in an above board manner differentiates between men and women in rating them according to risk. On the face of it, insurance is an easy target for change.

Because anti-female discrimination is painful, and because it makes us so justifiably angry, the Unisex insurance issue is extremely emotional. We need to forgive that of one another and proceed to define what the problems are -- whether real or only perceived, and what we need to do about them.

I argue today that the way that the insurance industry classifies men and women does in no way represent an anti-female bias. The way the industry classifies us is according to the risk we represent. It is indisputable that men and women represent different risks. Women live longer and they drive better. Making a law that says that men and women are equal in this area will not make it so. Several years ago in Arkansas, a legislator wrote a bill which, if passed, would make $\pi = 3.0$ instead of 3.14. His reasoning was that 3.0 is a much easier number to work with than 3.14. The law didn't pass, but if it had, would π now equal 3.0 in Arkansas and 3.14 everywhere else? π equals 3.14, and no

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amount of lawmaking will change it. Mavis Walters, Senior Vice President of Insurance Services Offices and an expert on actuarial tables, will make a presentation which will thoroughly cover how and why gender is so important in assigning risk, and how factors differentiating men and women simply cannot be changed.

By keeping the current Unisex law on the books, you will be forcing an entire industry to change the way they do business. While you may feel that the industry will survive this and continue to continue, there is no way to deny that this will have an immediate and adverse impact on the consumer. Therefore, the real question is, is the price worth paying for what is only a perceived sense of equality? It is not. Let's talk for just a moment about a group of women who cannot be here today to speak for themselves. Not only are they too busy, but they are just too poor and too underprivileged. In Montana, there are 13,510 female heads of households with dependent children and no husband. Sharply in contrast, there are only 2,852 male heads of households with dependent children and no wife. The median income for the men is \$16,670. The median income for women is \$9,157 per year -- 45% less money. Of the 13,510 female headed households, 5,483 -- 41% -- live below the poverty level -- of minority women, 51% live below the poverty level -- which is \$7,382 for a family of one adult female and three dependent children. A catch phrase for this group is "the new poor." New numbers show that this problem is getting even worse. Divorced women with dependent children are in real trouble, and their children are terribly disadvantaged. You'll hear a lot of talk today about annuities and individual pension plans -- these are luxuries affordable only for middle class and professional women. We're

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DATE 03/485

BILL NO. HB 366 + 507

talking about a group of people who can barely put bread on the table for their kids. But the one type of insurance that these women have to buy is automobile insurance -- it is the law. In order to walk out of her house and climb into her car -- to drive to work, this woman must have automobile insurance. If you allow the Unisex law to stay on the books, this woman could get an increase in her automobile insurance rates of \$122 - \$501 more per year. At that point she'll have a choice to make. Pay the rent, buy the food, or pay the increase. Given those choices, she will elect to drive her car without insurance, thus breaking the law. If this law becomes effective in its present form, most women in Montana will have to pay more, not less, for insurance. The law as it is written attempts to legislate an equality between the sexes which does not exist. Insurance Services Office and American Academy of Actuary Statistics are accumulated nationwide over a long period of time. These numbers, which we feel pass the test of any reasonable doubt, indicate that there are meaningful differences between men and women and married and unmarried persons in the various lines of insurance. They also indicate that Unisex is going to cost women money. It is true that in the health and disability areas, women's premiums will drop a small amount because of Unisex.

But let's look at why women pay more now. Frankly, during the child bearing years, women are just more complicated than are men. Under present law, all health insurance policies must cover for complications of pregnancy, such as caeserean sections and miscarriages. I have heard it said by our opposition that women cannot purchase their own policies which cover maternity. This is not true.

If a woman wants a policy with maternity, she can get it. If she wants a policy that will cover all methods of birth control, that, too, can be purchased.

Not only do women need medical care more often because of the complications of child bearing years, but numbers indicate that women are more apt to seek medical care if she has a problem than are men. This is an example of where the macho mystique may cost women money but can cost men their lives and health. Because of these very real cost factors, health insurance costs more for women than men. Very simply, we need more medical and seek more medical care. Doesn't it make sense to you that we pay more for medical insurance? However, please keep in mind that in the area of life insurance, the numbers are very simple. Women live seven to eight years longer than men, so we pay less for life insurance. If the Unisex law stays on the books, Montana women will have to pay anywhere from 10% to 30% more for life insurance.

In 1983, proponents of Unisex said that Montana was ahead of its time - that we were on the cutting edge of change in passing such a sweeping law. This is not so. In 1983, 11 states, including California and the District of Columbia, considered the law and all rejected it. In 1984, 13 states and the District of Columbia, considered the law and all rejected it. Four states have Unisex automobile insurance laws. Two of those states have considered and rejected any extension of the law to other forms of insurance -- and in the other two states no bill to extend the law was introduced at all. Hawaii is an example used by Unisex proponents. They say that the year after Hawaii passed a Unisex insurance law, insurance rates went down 15%. What they haven't

said is that the decrease was a reduction mandated by the state. The following year there was a 20% increase, and in subsequent years there were increases for a grand total of 82%.

The most frequent question I have been asked is -- why do you care? Why is the insurance industry so excited about all this? Won't you just pass the costs on to your consumers? Yes, the consumers will pay, but so will the free enterprise system. Compare it to airline deregulation. Because I live in Helena, Montana, I have to pay through the nose to get from here to there. I'm not happy about paying all that money, but I accept that it represents costs. How many half-empty planes are there between Chicago and New York? Not many. How many are there between Minneapolis and Helena? A lot. What deregulation did was allow consumers to stop subsidizing one another. Why should they?

In passing a law which forces an industry which is already heavily regulated to further regulate itself regarding its true costs of doing business, a step has been taken backwards. The Unisex insurance issue is not just a battle between the insurance industry and women's rights groups. It is an extremely important business and economic issue. Are you going to force an industry to charge differently for things than what they really cost?

As I said earlier, yes, women are discriminated against in a multitude of ways in our society. It is wrong, and we all need to work together to fight it wherever we can. But a Unisex insurance law is absolutely not going to solve any of these very real problems. Unisex insurance is a bad law for men, a bad law for women, and a bad law for business.

NAME: MAVIS A. WALTERS DATE:

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REPRESENTING WHOM? Insurance Service Office / on behalf of property-casualty
insurers

APPEARING ON WHICH PROPOSAL: HB 507; HB 366

DO YOU: SUPPORT? X AMEND? OPPOSE?

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 2

DATE 03/485

BILL NO. HB 366 & 507

STATEMENT OF
MAVIS A. WALTERS
SENIOR VICE PRESIDENT
INSURANCE SERVICES OFFICE

MARCH 14, 1985

HELENA, MONTANA

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 2

DATE 031485

BILL NO. HB 366 + 507

The Montana law scheduled to become effective in October 1985, would actually require many women to pay considerably more for auto insurance and life insurance than they do today.

While this law may be viewed merely in terms of eliminating or prohibiting discrimination by sex in pensions and insurance and as such sounds constructive and laudable, its effect is actually destructive and implausible. Since this law prohibits insurance companies from using sex or marital status in determining insurance rates, it means that insurers must ignore statistically significant differences in claim and benefit costs between men and women and between single and married drivers when determining the appropriate premiums that may be charged.

Clearly, women want and need financial security and a major element of that financial security is insurance. Today, many women, particularly young women, pay less for auto insurance than men because women have fewer accidents than men, and those accidents are less costly. Today, women pay less for life insurance than men because women live longer than men.

In 1981, the American Academy of Actuaries estimated that women would pay \$700 million more per year for auto insurance each year if unisex rates were to be required. A 1985 estimate of the increased burden on young women would be in excess of \$850 million countrywide!

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Some specific examples of what that would translate to here in Montana are as follows:

- in Helena a 19 year old single woman might pay between \$31 and \$113 per year more;
- a 23 year old single woman driving her car to work might pay between \$58 and \$376 more per year;
- in Great Falls a 23 year old single woman driving to work might pay between \$57 and \$330 more!

Since this law also eliminated marital status as a rating variable, young married men and women will both pay more for their insurance as well.

Some examples:

- Helena: 23 year old married woman who drove her car to work will pay between \$122 and \$501 more per year. A 23 year old married man between \$61 and \$340 more.
- In Butte, a young family headed by a 23 year old man would have to pay \$69 to \$378 more for their auto insurance if they had one car and as much as \$206 to \$936 more if they had two cars.

I believe that this aspect of the Montana law has been largely overlooked or ignored. It doesn't appear that there is a widespread recognition of the significant economic burden which will be placed upon young families if the current legislation is allowed to go into effect.

A set of exhibits displaying the changes in auto rates for 5 different classes in 6 territories in Montana is attached to my statement.

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Most consumers believe that increases of this magnitude would be unfair. In fact, a 1983 poll conducted by Yankelovich, Skelly and White on the subject of auto insurance found that more than 80% of American women say it would be unfair to charge young women the same rates for auto insurance as young men and 64% of the men agree with them on this point. Clearly American consumers recognize the economic inequity of unisex proposals.

Some people who support the unisex idea claim that the reason women have fewer auto accidents than men is that women drive fewer miles. Thus, they argue that if only insurers were to use miles driven rather than sex in determining auto insurance premiums, then women on the average would pay no more and might even pay less than they do today. That argument has become one of the myths surrounding this issue.

Yes, it is true that women do drive fewer miles than men on the average. But as many consumers know, mileage is already considered in determining insurance rates. More importantly, and directly to the point of the argument, miles driven do not explain why women have lower risk of auto accidents. If it did, then men and women who drove the same number of miles would have the same probability of having an accident. But that is not the case. Rather, consistently, in every single mileage category, women have a statistically significant lower accident rate than men who drive the same number of miles.

The fact is that unisex insurance rates would force young, low risk female drivers to subsidize high risk young male drivers.

Here in Montana, the law scheduled to take effect in October would force young women, single and married, and young married men, all to pay more than their fair share. The beneficiaries of this law would be the highest risk drivers on the road - young single men whose rates would be reduced!

Despite all the rhetoric to the contrary, women benefit under today's insurance system, one in which prices are based on costs, not social judgments. Women today pay lower insurance prices and consumers should be aware of that fact.

Insurers are opposed to the idea of unisex insurance rates.

Why- - -

Because it violates the basic economic principle upon which all pricing relies, that is pricing according to costs. This means, very simply, that those who contribute higher costs to the insurance system should pay higher premiums and those with lower costs should pay lower premiums. We believe that this provides a balanced system which is truly fair to all consumers, men and women alike. I believe such a system is socially as well as economically neutral. Prices based on costs do not involve social judgments or sexual stereotypes.

Neither an act of Congress, a state law, nor an administrative regulation mandating that prices be made equal can change the underlying costs. Laws and regulations cannot change the fact that women outlive men any more than it can change the fact that young men have almost twice as many auto accidents as young women. Thus, the costs will continue to be different regardless of the law and regardless of the prices.

The question then is whether those with the lower costs will object to paying higher prices while those with the higher costs get to pay less than their fair share.

The advocates of unisex rates claim that this is a civil rights issue and that it should be supported on those grounds. We disagree. The use of sex as a rating variable results in lower rates in auto and life insurance for precisely that group whose rights are supposedly being violated. It is difficult to understand how raising women's insurance rates can advance the cause of women's rights.

Traditional civil rights legislation has been necessary to provide a disadvantaged group access to certain fundamental rights in areas of employment, education, credit, housing, public accommodations, transportation, voting, recreation and athletics that had been denied to them because of their membership in the particular group. Women

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are not being denied access to insurance today nor are they disadvantaged by having to pay less for auto and life insurance than men.

To repeat, we believe this is an economic issue and not a civil rights question. We believe that all policyholders are treated fairly and equitably when each is charged a premium that most accurately reflects his or her own expected costs. In order to do that, insurers do consider whether the consumer is a man or a woman, as well as a whole host of other factors. In auto insurance, for example, we also consider the age of the driver and his or her actual driving experience, i.e. number of accidents and convictions; geographical area where the car is garaged; the make and model of the car and the manner in which the automobile is customarily used, i.e. commute to work or just for pleasure.

Each one of these factors is important and helps us to determine the most appropriate premium to reflect the individual characteristics. By this means, those with a lower likelihood of auto accidents are charged lower prices while those with a higher risk are charged higher prices.

Young women are less likely to have an auto accident than young men and are entitled to pay lower auto insurance premiums because of it.

Women have a longer life expectancy than men and are entitled to be charged lower life insurance rates because of that.

Insurers want to continue to be able to provide these more favorable rates to women and to young married male drivers!!

The current Montana law unless repealed or changed will prevent us from doing so.

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Billings

MONTANA

Effect of the Elimination of
Sex and Marital Status (MS) on
Automobile Insurance Premiums*

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 2

DATE 03/4/85

BILL NO. HB 366 + 507

Single Female
(19 year old
occasional driver)

	Premium as of 7/1/84	Unisex/MS	Difference
Company A	\$ 534	\$ 656	+\$122
Company B	507	536	+ 29
Company C	557	692	+135
Company D	787	877	+ 90

Single Female
(23 year old
principal operator)

	Premium as of 7/1/84	Unisex/MS	Difference
Company A	534	597	+ 63
Company B	379	450	+ 71
Company C	487	865	+378
Company D	674	809	+135

Married Female
(23 year old
principal operator)

	Premium as of 7/1/84	Unisex/MS	Difference
Company A	386	597	+211
Company B	336	450	+114
Company C	346	865	+519
Company D	539	809	+270

Single Male
(23 year old
principal driver)

	Premium as of 7/1/84	Unisex/MS	Difference
Company A	929	597	-332
Company B	621	450	-171
Company C	961	865	- 96
Company D	1057	809	-248

Married Male
(23 year old
principal driver)

	Premium as of 7/1/84	Unisex/MS	Difference
Company A	435	597	+162
Company B	393	450	+ 57
Company C	516	865	+349
Company D	697	809	+112

*Annual premiums rounded to the nearest whole dollar.

MONTANA

SENATE JUDICIARY COMMITTEE

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Effect of the Elimination of
Sex and Marital Status (MS) on
Automobile Insurance Premiums*

Butte

Single Female
(19 year old
occasional driver)

	Premium as of 7/1/84	Unisex/MS	Difference
Company A	\$ 548	\$ 673	\$+125
Company B	608	643	+ 35
Company C	581	725	+144
Company D	683	760	+ 77

Single Female
(23 year old
principal operator)

	Premium as of 7/1/84	Unisex/MS	Difference
Company A	548	612	+ 64
Company B	454	540	+ 86
Company C	507	918	+411
Company D	586	702	+116

Married Female
(23 year old
principal operator)

	Premium as of 7/1/84	Unisex/MS	Difference
Company A	396	612	+216
Company B	403	540	+137
Company C	360	918	+558
Company D	470	702	+232

Single Male
(23 year old
principal driver)

	Premium as of 7/1/84	Unisex/MS	Difference
Company A	953	612	-341
Company B	746	540	-206
Company C	1020	918	-102
Company D	915	702	-213

Married Male
(23 year old
principal driver)

	Premium as of 7/1/84	Unisex/MS	Difference
Company A	447	612	+165
Company B	471	540	+ 69
Company C	540	918	+378
Company D	605	702	+ 97

*Annual premiums rounded to the nearest whole dollar.

MONTANA

EXHIBIT NO. 2DATE 03/4/85BILL NO. HB 366 + 507Great Falls

Single Female
(19 year old
occasional driver)

	Premium as of 7/1/84	Unisex/MS	Difference
Company A	\$ 491	\$ 602	\$+111
Company B	517	546	+ 29
Company C	530	656	+126
Company D	683	760	+ 77

Single Female
(23 year old
principal operator)

	Premium as of 7/1/84	Unisex/MS	Difference
Company A	491	548	+ 57
Company B	386	459	+ 73
Company C	465	795	+330
Company D	586	702	+116

Married Female
(23 year old
principal operator)

	Premium as of 7/1/84	Unisex/MS	Difference
Company A	355	548	+193
Company B	343	459	+116
Company C	330	795	+465
Company D	470	702	+232

Single Male
(23 year old
principal driver)

	Premium as of 7/1/84	Unisex/MS	Difference
Company A	852	548	-304
Company B	634	459	-175
Company C	884	795	- 89
Company D	915	702	-213

Married Male
(23 year old
principal driver)

	Premium as of 7/1/84	Unisex/MS	Difference
Company A	400	548	+148
Company B	401	459	+ 58
Company C	490	795	+305
Company D	605	702	+ 97

*Annual premiums rounded to the nearest whole dollar.

MONTANA

Effect of the Elimination of
Sex and Marital Status (MS) on
Automobile Insurance Premiums*

SENATE JUDICIARY COMMITTEE

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BILL NO. HB 366+507

Helena

Single Female
(19 year old
occasional driver)

	Premium as of 7/1/84	Unisex/MS	Difference
Company A	\$ 498	\$ 611	\$+113
Company B	542	573	+ 31
Company C	528	656	+128
Company D	683	760	+ 77

Single Female
23 year old
principal operator)

	Premium as of 7/1/84	Unisex/MS	Difference
Company A	498	556	+ 58
Company B	405	481	+ 76
Company C	463	830	+367
Company D	586	702	+116

Married Female
(23 year old
principal operator)

	Premium as of 7/1/84	Unisex/MS	Difference
Company A	360	556	+196
Company B	359	481	+122
Company C	329	830	+501
Company D	470	702	+232

Single Male
(23 year old
principal driver)

	Premium as of 7/1/84	Unisex/MS	Difference
Company A	865	556	-309
Company B	664	481	-183
Company C	923	830	- 93
Company D	915	702	-213

Married Male
(23 year old
principal driver)

	Premium as of 7/1/84	Unisex/MS	Difference
Company A	406	556	+150
Company B	420	481	+ 61
Company C	490	830	+340
Company D	605	702	+ 97

*Annual premiums rounded to the nearest whole dollar.

Effect of the Elimination of
Sex and Marital Status (MS) on
Automobile Insurance Premiums*DATE 03/4/85BILL NO. H.B. 366 & 507Eastern CountiesSingle Female
(19 year old
occasional driver)

	Premium as of 7/1/84	Unisex/MS	Difference
Company A	\$ 512	\$ 629	+\$117
Company B	523	552	+ 29
Company C	553	666	+113
Company D	778	867	+ 89

Single Female
(23 year old
principal operator)

	Premium as of 7/1/84	Unisex/MS	Difference
Company A	512	572	+ 60
Company B	390	464	+ 74
Company C	493	798	+305
Company D	667	801	+134

Married Female
(23 year old
principal operator)

	Premium as of 7/1/84	Unisex/MS	Difference
Company A	370	572	+202
Company B	346	464	+118
Company C	349	798	+449
Company D	534	801	+267

Single Male
(23 year old
principal driver)

	Premium as of 7/1/84	Unisex/MS	Difference
Company A	891	572	-319
Company B	640	464	-176
Company C	887	798	- 89
Company D	1045	801	-244

Married Male
(23 year old
principal driver)

	Premium as of 7/1/84	Unisex/MS	Difference
Company A	418	572	+154
Company B	405	464	+ 59
Company C	519	798	+279
Company D	689	801	+112

*Annual premiums rounded to the nearest whole dollar.

MONTANA

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Effect of the Elimination of
Sex and Marital Status (MS) on
Automobile Insurance Premiums*

Western Counties

Single Female
(19 year old
occasional driver)

	Premium as of 7/1/84	Unisex/MS	Difference
Company A	\$ 475	\$ 583	+\$108
Company B	563	594	+ 31
Company C	546	660	+114
Company D	765	852	+ 87

Single Female
(23 year old
principal operator)

	Premium as of 7/1/84	Unisex/MS	Difference
Company A	475	531	+ 56
Company B	420	499	+ 79
Company C	486	805	+319
Company D	656	787	+131

Married Female
(23 year old
principal operator)

	Premium as of 7/1/84	Unisex/MS	Difference
Company A	344	531	+187
Company B	373	499	+126
Company C	344	805	+461
Company D	525	787	+262

Single Male
(23 year old
principal driver)

	Premium as of 7/1/84	Unisex/MS	Difference
Company A	826	531	-295
Company B	690	499	-191
Company C	894	805	- 89
Company D	1027	787	-240

Married Male
(23 year old
principal driver)

	Premium as of 7/1/84	Unisex/MS	Difference
Company A	388	531	+143
Company B	436	499	+ 63
Company C	515	805	+290
Company D	678	787	+109

*Annual premiums rounded to the nearest whole dollar.

EXAMPLES

1. Single Female - 19 Years Old
Experienced Operator
Occasional Use
No SDIP Points
No Driver Training
No Good Student
No Multi-Car Discount

Car - 1982 Chevy Citation

Coverage - BI/PD 50/100/25
Med Pay(PIP) \$2000 Basic
U.M. Basic Limit
Comp. \$50 Deductible
Collision \$200 Deductible
2. Single Female - 23 Years Old
Principal Operator
Drive to and from work less
than 15 miles
All other characteristics the same as Example 1.
3. Married Female - 23 Years Old
Principal Operator
All other characteristics the same as Example 2.
4. Single Male - 23 Years Old
Principal Operator
All other characteristics the same as Example 2.
5. Married Male - 23 Years Old
Principal Operator
All other characteristics the same as Example 2.

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BILL NO. HB 366 * 507

CONSTITUTIONAL ISSUES

Mr. Chairman, Members of the Committee, my name is Lester H. Loble, II. I represent the American Council of Life Insurance. Throughout the debates on HB 507 and HB 366 there has been a great deal of talk about the supposed constitutional mandate which requires a Montana unisex law. Not so. Two legal opinions have been written on this subject. One by Mr. Donald A. Garrity, a Helena attorney, and the other by Mr. Greg Petesch, one of the Legislature's staff attorneys. Both concluded there was no such mandate.

Following passage of the unisex law last session, my client and others wanted an answer to the question "Does Article II, Section 4 of the Montana Constitution mandate unisex treatment in insurance matters?" If the answer was "yes", then it would be useless to mount an expensive and time-consuming campaign either to repeal or modify Montana's unisex statute. Accordingly, Mr. Garrity was hired to answer the question. He was specifically instructed that his charge was not to write an advocacy brief on our behalf. Rather, he was to do the legal research and render an opinion which would guide my client and others in their decision whether to pursue repeal as provided in House Bill 507 or modifications as provided in House Bill 366.

Attached to my remarks are both Mr. Garrity's opinion and Mr. Petesch's opinion. Mr. Garrity concludes that classifications based on sex are not prohibited if there is a rational basis for such classifications. Page 12.

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EXHIBIT NO. 3
DATE 03/4/85
BILL NO. HB 366 + 507

This opinion was submitted to the Joint Interim Subcommittee No. 3. Not content with that opinion, the Subcommittee asked Mr. Petesch to determine (1) whether the enactment of the unisex law was mandatory and (2) whether the repeal of the unisex law would make the current practice of considering gender in insurance classifications unconstitutional (page 14-15). As Mr. Petesch says on page 19 enactment of the unisex law was not mandatory. As he says on page 26 the use of gender in setting insurance rates would be permissible if the unisex law were repealed.

There is little doubt about the soundness of these two decisions. The Montana Supreme Court cases are clear. For example, take the case of In the Matter of the Will of Cram, 186 Mont. 37. Mr. Cram's will set up a trust for boys only. The Supreme Court found that Mr. Cram's scholarship trust indeed discriminated on the basis of sex, but that private discriminatory conduct is permitted.

The next case of importance, which is a case so recent that neither Mr. Garrity nor Mr. Petesch could discuss it, is Stone v. Belgrade School District No. 44, 41 St.Rep. 2436 (December 28, 1984). In that case the Belgrade School District decided that it wished to hire a female counsellor. It had a male counsellor. The School District decided it would not consider males for the position. Female students had indicated they would not visit a male counsellor in some situations because of embarrassment or inhibitions. The plaintiff, Mr. Stone, was excluded from consideration. The court held that an employer could discriminate on the basis of gender when the reasonable demands of the position

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require sex discrimination. The court affirmed the District Court, which had overruled the Human Rights Commission.

Finally, attached to these remarks at pages 27-28 are copies of the Human Rights statutes. Note that in every case in which discrimination is addressed -- employment, public accommodations, housing, finance and credit transactions, education -- distinctions based upon reasonable demands of the position or upon bonafide occupational qualifications or upon reasonable grounds, are permitted. Only the statute pertaining to discrimination in insurance and retirement plans fails to contain such a qualification. It is interesting to note, furthermore, that 49-3-103, MCA, page 29, explicitly permits an employer to recognize the terms of "any bonafide employee benefit plan, such as a retirement, pension, or insurance plan".

If the Montana Constitution mandates the unisex law and permits no reasonable distinctions based on sex, as has been argued, then all the discrimination laws which permit distinctions based upon reasonable demands, reasonable grounds, occupational qualifications, etc., are unconstitutional. The cases discussed by Mr. Garrity, Mr. Petesch and herein demonstrate that this absurd conclusion is not the case.

Thank you.

DONALD A. GARRITY

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(406 442-2711)

To: Mr. Glenn Drake, Mr. Lester Loble, Mr. Bob James and Mr. Pat Melby

From: Donald A. Garrity

Subject: The Validity of Gender Based Insurance Classifications Under Article II, Section 4, of the Montana Constitution

Date: August 29, 1984

The 1983 Montana Legislature enacted legislation providing that: "It is an unlawful discriminatory practice for any financial institution or person to discriminate solely on the basis of sex or marital status in the issuance or operation of any type of insurance policy, plan, or coverage or in any pension or retirement plan, program, or coverage, including discrimination in regard to rates or premiums and payments of benefits." Chapter 531, Laws of Montana, 1983, codified as Section 49-2-309, MCA.

The validity of this legislation is assumed. You wish to know if such a prohibition is mandated by the provisions of Article II, Section 4, of the Montana Constitution, which states:

Individual Dignity. The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws. Neither the State nor any person, firm, corporation or institution shall discriminate against any person in the exercise of his civil or political rights on account of race, color, sex, culture, social origin or condition, or political or religious ideas.

(Emphasis supplied.)

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This provision is unique among the sixteen State Constitutions which prohibit discrimination on the basis of sex in that it is the only one which explicitly prohibits such discrimination by individuals and private associations.¹ Similarly, the proposed Equal Rights Amendment to the Federal Constitution by its terms applies only to government.²

The language of the Montana Individual Dignity provision clearly seems to prohibit sexual discrimination by private persons and associations. But, as former California Chief Justice Traynor has said, "Plain words, like plain people, are not always as plain as they seem."³ Our Supreme Court had the opportunity to construe the reach of Article II, Section 4, in 1980 when it construed the will of a sheep rancher which established a trust for payments to members of the Future Farmers of America or the 4-H Club who were boys between the ages of 14 and 18, Montana residents, and children of American born parents. In the Matter of the Will of Cram, 186 Mont. 37, 606 P.2d 145 (1980).

¹ The other fifteen states are Alaska, Colorado, Connecticut, Hawaii, Illinois, Maryland, Massachusetts, New Hampshire, New Mexico, Pennsylvania, Texas, Utah, Virginia, Washington and Wyoming. The text of the various provisions is set forth in Annotation, Construction and Application of State Equal Rights Amendments Forbidding Determination of Rights Based on Sex, 90 A.L.R.3d, 164-65.

² That proposed amendment reads: "Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex." H.J.Res. 208, 92d Congress, 2d Session (1972).

³ Traynor, No Magic Words Could Do It Justice, 49 Cal. L. Rev. 615, 618 (1961).

A female member of the Future Farmers of America, who was of the age set by the trust, challenged its provisions as unconstitutionally discriminatory on the basis of sex. The Supreme Court held the trust did indeed discriminate on the basis of sex, but that private discriminatory conduct was not prohibited. Unfortunately, in its analysis the Court did not mention Montana's Constitutional provision but discussed only cases involving the Equal Protection Clause of the Fourteenth Amendment to the Federal Constitution.* That clause has consistently been interpreted as prohibiting discrimination only when there is "State action." See, e.g., Moose Lodge No. 107 v. Irvis, 407 U.S. 163 (1972), in which it was held that a private club, even though licensed by the State to serve liquor, could refuse to serve blacks without violating the Equal Protection Clause.

In the many cases involving Article II, Section 4, which the Montana Supreme Court has decided since the adoption of Montana's 1972 Constitution, it has consistently used traditional Federal Equal Protection analysis, allowing discriminatory government action when it is based on a rational

* However, the briefs filed with the Court did argue Montana's Constitutional provision.

classification.⁴ The only case other than the Cram will case which has squarely presented our Supreme Court with a question of sexual discrimination since the adoption of Article II, Section 4, is State v. Craig, 169 Mont. 150, 545 P.2d 649 (1975). There a male convicted of rape argued that the statute defining the offense violated this Section because it applied only to males having sexual intercourse without consent with females. The Court indicated that because historically and now "the vast majority" of sexual attacks have been by men upon women, the classification was reasonable.

Thus, it appears that the Montana Supreme Court, at least to date, has effectively read out the last sentence of Article II, Section 4, and confined its scope to the traditional equal protection of the laws. The committee report on this provision stated that it was intended to eradicate "public and private

⁴ See, e.g., McMillan v. McKee & Co., 166 Mont. 400, 533 P.2d 1095 (1975) (granting attorneys' fees to successful workers' compensation claimants but not to successful defending insurers does not violate equal protection); State v. Jack, 167 Mont. 456, 539 P.2d 726 (1975) (requiring non-resident hunters to be accompanied by licensed guide invalid because not supported by rational basis); State v. Craig, 169 Mont. 150, 545 P.2d 649 (1976) (statute prohibiting sexual intercourse without consent only by males does not offend Article II, Section 4); State v. Gafford, 172 Mont. 380, 563 P.2d 1129 (1977) (statutory discrimination against ex-felons is reasonable and does not violate Montana's equal protection provisions); Emery v. State, 177 Mont. 73, 580 P.2d 445 (1978) (permissible to deny voting rights to inmates of state prison); McLanathan v. Smith, 186 Mont. 56, 606 P.2d 507 (1979) (difference in treatment of claimants with dependents under workers' compensation law valid because supported by a rational basis); Tipco Corporation v. City of Billings, _____ Mont. _____, 624 P.2d 1074 (1982) (city ordinance prohibiting residential solicitors but exempting local merchants invalid because not supported by rational basis); Oberg v. City of Billings, _____ Mont. _____, 674 P.2d 494 (1983) (statute prohibiting lie detector tests for employees except employees of public law enforcement agencies denies equal protection to law enforcement employees).

discriminations based on race, color, sex, culture, social origin or condition, or political or religious ideas."⁵ It also noted that the proposed Federal Equal Rights Amendment "would not explicitly provide as much protection as this provision."⁶ However, the committee report qualified the language somewhat by noting that it was not their intent that the prohibition against discrimination on the basis of political or religious ideas permit persons who supported the right to work in principle to avoid union membership.⁷

The Convention debate on this provision is more confusing. Delegate Habedank moved to delete the words "any person, firm, corporation, or institution," saying that he was a member of the Sons of Norway which, he feared, would not be able to limit its membership under this provision.⁸

Delegate Dahood responded that the section was only intended to cover discrimination in "matters that are public or matters that tend to be somewhat quasi-public. With respect to a religious organization, with respect to the Sons of Norway or the Sons of Scandinavia, of course, there would necessarily be qualifications that an individual would have to meet before he would be admitted to membership. That type of private organization is certainly not within the intendment of the

⁵ Proceedings of the Montana Constitutional Convention, Vol. II, P. 628.

⁶ Ibid.

⁷ Ibid.

⁸ Proceedings of the Montana Constitutional Convention, Vol. V., pp. 1642-43.

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committee in submitting Section 4."⁹ He also answered a question from another delegate concerning the right of women to join strictly men's organizations by saying, ". . . no, that is not our intent. There are certain requirements, certain qualifications, certain matters, I suppose, that might fall within the term of legitimate discrimination that are not covered by this particular section. Anything that falls within the realm of common sense--I think you've indicated situations where common sense would have to indicate that the qualifications that would be set for membership are proper, and in those circumstances I would not expect Section 4 to have any effect."¹⁰

The one exchange in the debate which seems to justify the Supreme Court's reading of this provision as a traditional equal protection clause is that between delegates Loendorf and Dahood. Loendorf stated: ". . . it's my understanding that . . . everything you have after the word 'equal protection of the law' would really be subsumed in that first provision and everything you've said after that would really be unnecessary" Dahood replied that Loendorf was correct but defended the additional wording as "the sermon that can be given by the Constitution, as well as the right," ¹²

⁹ Id. at 1643.

¹⁰ Id. at 1644.

¹¹ Id. at 1643.

¹² Ibid.

It was after this discussion that the motion to delete the words "any person, firm, corporation or institution" was defeated.¹³

Conceivably, it is this history which the Supreme Court has relied upon to interpret Article II, Section 4, as a simple equal protection clause not applicable to private persons and allowing discrimination based on reasonable classifications.

Had it chosen to fully articulate its reasons for so construing this section of our Constitution, the Montana Supreme Court might also have relied on the principle that a statute or a state constitutional provision must, if possible, be construed in such a manner as to uphold its constitutionality.¹⁴ If Section 4 were literally interpreted, a religious body could not limit its priesthood or ministry to males, Democrats could not bar Republicans from participating in their caucuses, atheists would be entitled to participate in private religious services and the Sons of Norway, Daughters of the American Revolution, et al., would cease to exist as

¹³ Id. at 1645-46.

¹⁴ North Central Services, Inc., v. Hafdahl, ___ Mont. ___, 625 P.2d 56 (1981); Harrison v. City of Missoula, 146 Mont. 420, 407 P.2d 703 (1965); City of Philipsburg v. Porter, 121 Mont. 88, 190 P.2d 676 (1948). The same rules of construction apply to constitutional provisions as apply to statutes. Keller v. Smith, 170 Mont. 399, 553 P.2d 1002 (1976).

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distinctive organizations. At least some of these results would clearly violate the United States Constitution.¹⁵

Another alternative rationale for our Supreme Court's interpretation of Section 4 would be a restrictive interpretation of the words "civil or political rights." In the debate on this section, it was stated that civil rights are "things that the Legislature has to deal with"¹⁶ and that "at this time in American we [do not] have an all-inclusive definition of civil rights."¹⁷

Montana's Supreme Court has defined "right" as "any power or privilege vested in a person by law."¹⁸ There are rights vested by the constitution, such as freedom of religion, due process, bail, trial by jury, and the right to vote, to name a few. Section 4 of Article II, like the Equal Protection Clause of the Federal Constitution, merely provides that the rights of all persons must rest upon the same rule under similar circumstances,¹⁹ but it does not require things which are different in fact to be treated in law as though they were the same.²⁰

¹⁵ See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976) holding that churches are free to establish their own rules for internal government and the State may not interfere.

¹⁶ Proceedings of the Montana Constitutional Convention, Vol. V, P. 1644.

¹⁷ Ibid.

¹⁸ Waddell v. School District No. 3, 79 Mont. 432, 257 P. 278 (1927).

¹⁹ Louisville Gas & Electric Co. v. Coleman, 277 U.S. 32 (1928).

²⁰ Norvell v. Illinois, 373 U.S. 420 (1963).

As I stated at the outset of this paper, I assume Section 49-2-309, MCA, which prohibits different insurance rates based on sex, was within the power of the legislature to enact. But the differences in life expectancy between the sexes are real ones.²¹ There is also apparently a real difference between the automobile accident records of young (under 25) male and female drivers, as well as between married persons under 25 and young single persons.²² These differences constitute a rational basis for classification by sex and marital status and thus are not prohibited by Article II, Section 4, of the Montana Constitution. Similarly, they would not offend the statutory prohibition against "unfair discrimination between individuals or risks of the same class" contained in Section 33-18-210, MCA.²³

In summary, it is my opinion that Article II, Section 4, of the Montana Constitution applies only to "state action," not purely private discrimination, and that classifications based on sex are not prohibited thereby if there is a rational basis for such classifications. While I do not believe the

²¹ The average white male born in 1980 had a life expectancy of 70.7 years while the average white female born in that year had a life expectancy of 78.1 years. A white male who was 35 in 1980 had a life expectancy of an additional 38.6 years while a 35 year old white female could expect an additional 44.9 years of life. 1984 Statistical Abstract of the United States. See also: Note, Sex Discrimination and Sex Based Mortality Tables, 53 Boston University Law Review 624 (1973).

²² Florida Dep't of Insurance v. Insurance Services Office, 434 So.2d 908 (Fla. 1983); Insurance Services Office v. Commissioner of Insurance, 381 So.2d 515 (La. 1979).

²³ Ibid.

regulation of insurance companies by the State converts their discriminatory acts into "state action,"²⁴ resolution of that question is unnecessary since the State itself is free to make such classifications on a rational basis. ²⁵

In answer to your question, it is my opinion that the provisions of Chapter 531, Laws of Montana, 1983, are not required by Article II, Section 4, of the Montana Constitution.

²⁴ Life Insurance Co. of North America v. Reichardt, 591 F.2d 499 (9th Cir. 1979) and Murphy v. Harleysville Mutual Insurance Co., 282 Pa. Super. 244, 422 A.2d 1097 (1981) so hold.

²⁵ As an employer subject to the Federal Equal Employment Opportunities Act, Montana may not discriminate in the terms of pension plans for its employees on the basis of sex, in spite of the difference in longevity between men and women. 42 U.S.C. §2000e-2; Los Angeles Dep't. of Water and Power v. Manhart, 435 U.S. 702 (1978); Arizona Governing Committee v. Norris, ____ U.S. ____, 77 L.Ed.2d 1236, 103 S. Ct. 3492 (1983).



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October 29, 1984

TO: Joint Interim Subcommittee No. 3

FROM: Greg Petesch, Staff Attorney *GP*

RE: Gender-Based Insurance Classifications

Section 49-2-309, MCA, enacted by Chapter 531, Laws of 1983, provides:

49-2-309. Discrimination in insurance and retirement plans. (1) It is an unlawful discriminatory practice for any financial institution or person to discriminate solely on the basis of sex or marital status in the issuance or operation of any type of insurance policy, plan, or coverage or in any pension or retirement plan, program, or coverage, including discrimination in regard to rates or premiums and payments or benefits.

(2) This section does not apply to any insurance policy, plan, coverage, or any pension or retirement plan, program, or coverage in effect prior to October 1, 1985.

You have asked me to investigate two issues: (1) whether enactment of this legislation was mandatory in light of Article II, section 4, of the Montana Constitution; and (2) whether repeal of this legislation would make the current practice of

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considering gender in insurance classifications
unconstitutional.

Article II, section 4, of the Montana Constitution provides:

Section 4. Individual dignity. The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws. Neither the state nor any person, firm, corporation, or institution shall discriminate against any person in the exercise of his civil or political rights on account of race, color, sex, culture, social origin or condition, or political or religious ideas.

Montana's is the only equal rights amendment which specifically prohibits discrimination by any person, firm, corporation, or institution, i.e., private discrimination.¹

The Bill of Rights Committee of the Constitutional Convention stated in its committee report the following:

COMMENTS

The committee unanimously adopted this section with the intent of providing a Constitutional impetus for the eradication of public and private discriminations based on race, color, sex, culture, social origin or condition, or political or religious ideas. The provision, quite similar to that of the Puerto Rico declaration of rights is aimed at prohibiting private as well as public discriminations in civil and political rights.

¹Construction and Application of State Equal Rights Amendments Forbidding Determination of Rights Based on Sex, 90 A.L.R. 3d, 164-65. SENATE JUDICIARY COMMITTEE

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Considerable testimony was heard concerning the need to include sex in any equal protection or freedom from discrimination provisions. The committee felt that such inclusion was eminently proper and saw no reason for the state to wait for the adoption of the federal Equal Rights Amendment, an amendment which would not explicitly provide as much protection as this provision.

The word culture was incorporated specifically to cover groups whose cultural base is distinct from mainstream Montana, especially the American Indians. "Social origin or condition" was included to cover discriminations based on status of income and standard of living.

Some fears were expressed that the wording "political or religious ideas" would permit persons who supported right to work in principle to avoid union membership. Such is certainly not the intent of the committee. The wording was incorporated to prohibit public and private concerns discriminating against persons because of their political or religious beliefs.

The wording of this section was derived almost verbatim from Delegate Proposal No. 61. The committee felt that this proposal incorporated all the features of all the Delegate Proposals (No.'s 10, 32, 50 and 51) on the subjects of equal protection of the laws and the freedom from discrimination. The committee is well aware that any broad proposal on these subjects will require considerable statutory embellishment. It is hoped that the legislature will enact statutes to promote effective eradication of the discriminations prohibited by this section. The considerable support for and lack of opposition to this provision indicates its import and advisability. (emphasis supplied)²

²Proceedings of the Montana Constitutional Convention, Vol. II, p. 628.

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As pointed out by Mr. Garrity, the convention debate on Article II, section 4, is confusing.³ Delegate Harper did ask, "Aren't civil rights things that the Legislature has to deal with?"⁴ Delegate Dahood responded that basically that was correct.⁵ At the time the Constitution was adopted, section 64-301, R.C.M. 1947, provided:

64-301. Freedom from discrimination as civil right -- employment -- public accommodations. The right to be free from discrimination because of race, creed, color, sex, or national origin is recognized as and declared to be a civil right. This right shall include, but not be limited to:

(1) The right to obtain and hold employment without discrimination.

(2) The right to the full enjoyment of any of the accommodation facilities or privileges of any place of public resort, accommodation, assemblage or amusement.

That section is now codified as 49-1-102, MCA.

This section points out that the issue of sex discrimination was addressed by the Legislature even prior to the adoption of Article II, section 4.

With this background, it appears that the Constitutional Convention delegates intended that the Legislature embellish Article II, section 4, with statutory enactments. The question presented, however,

³Garrity, pp. 5-6; Proceedings of the Montana Constitutional Convention, Vol. V, pp. 1642-1646.

⁴Ibid., p. 1644.

⁵Ibid.

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is whether the Legislature is required to enact legislation regarding this area.

It has long been recognized that the Constitution does not grant power to the Legislature but merely limits the Legislature's exercise of its power. In St. ex rel. DuFresne v. Leslie, 100 M 449, 453, 50 P.2d 959 (1935), the Montana Supreme Court stated:

It is very clear that, except for the limitations placed upon the power of the legislature, first by the Constitution of the United States, and second by the Constitution of the state, the will of the legislative body may be freely exercised in all legislative matters unrestricted.⁶

It is inherent in the concept of the separation of powers provision of the state Constitution, Article III, section 1, that if a power is reposed in one department, the other two may not encroach upon or exercise that power, except as expressly directed or permitted in the Constitution. Mills v. Porter, 69 M 325, 222 P. 428 (1924). The courts have no power to compel the Legislature to pass an act, even though the Constitution expressly commands it, nor restrain it from passing an act, even though the Constitution expressly forbids it.⁷

⁶See also Board of Regents v. Judge, 168 M 433, 543 P.2d 1323 (1975); Hilger v. Moore, 56 M 146, 182 P. 477 (1919); St. ex rel. Evans v. Stewart, 53 M 18, 161 P. 309 (1916); and St. ex rel. Toi v. French, 17 M 54 (1895).

⁷See cases cited in Annotation, Power and duty of court where legislature renders constitutional mandate ineffectual by failing to enact statute necessary to make it effective or by repealing or amending statute previously passed for that purpose, 153 A.L.R. 522-528.

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The lawmaking body may or may not, as it chooses, pass laws putting into effect a constitutional provision, and if, in its efforts to give effect to a constitutional provision, the statute is not broad and comprehensive enough to cover all subjects that it might, we know of no reason why it should not be valid as far as it goes.

49-2-309 { It is apparent that the Legislature is never required to enact a statute or particular piece of legislation. Therefore, in answer to the first question presented, the enactment of Chapter 531, Laws of 1983, was not mandatory. I am unaware of any method of compelling a legislative enactment, other than that used to gain passage of Chapters 2 and 3, Ex. Laws of 1903. *

The second question presented is whether the repeal of Chapter 531, Laws of 1983, would render the use of gender in classifying individuals for insurance purposes unconstitutional.

The courts generally recognize the power of the Legislature to repeal a statute enacted in compliance with a provision of the Constitution even where the Constitution makes it the duty of the Legislature to enact such a law to effectuate the constitutional provision, and the repealer would result in frustrating the purpose evidenced by the Constitution.⁸

If the framers of the Constitution do not feel that the Legislature will carry out a constitutional mandate,

⁸ Arizona Eastern R. Co. v. Matthews, 180 P. 159 (Az. 1919).

⁹ See Myers v. English, 9 Cal. 342 (1858) and 153 A.L.R. supra at 525.

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they may make the constitutional provision self-executing. As stated in St. ex rel. Stafford v. Fox-Great Falls Theatre Corp., 114 M 52, 74, 132 P.2d 689 (1942):

A provision is self-executing when it can be given effect without the aid of legislation and there is nothing to indicate that legislation is contemplated in order to render it operative; * * * constitutional provisions are self-executing when there is a manifest intention that they should go into immediate effect, and no ancillary legislation is necessary to the enjoyment of a right given, or the enforcement of a duty imposed.

The court went on to point out that the test for determining whether a provision is self-executing is whether it is directed to the courts or the Legislature.

During the debate on Article II, section 4, Delegate Robinson asked whether the provision would be nonself-executing and would require complete legislative implementation to make it effective. Delegate Dahood responded that in his judgment that was not true.¹⁰ But also note that the committee report states that "The committee is well aware that any broad proposal on these subjects will require considerable statutory embellishment."¹¹ Unfortunately, conflicting conclusions as to the self-executing nature of Article II, section 4, can be reached from these remarks.

In Keller v. Smith, 170 M 399, 409, 553 P.2d 1002 (1976), the Supreme Court stated that "... the

¹⁰ Transcripts, supra at 1644-1645.

¹¹ Supra, Note 2.

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collective intent of the delegates can best be determined by application of the preceding rules of construction [i.e., general rules of statutory construction] to the ambiguous language used". The court pointed out that it had specifically refrained from using the Convention proceedings to determine intent as they could be used to support either position.

The problem then becomes one of predicting how the Montana Supreme Court would interpret a case brought challenging the use of gender classifications in setting insurance rates. As pointed out by Mr. Garrity, a challenge based on private sex discrimination under the alleged reach of Article II, section 4, was brought before the court in In the Matter of the Will of Cram, 186 M 37, 606 P.2d 145 (1980). The court did not mention Article II, section 4, but upheld the private discriminatory trust based upon a lack of "state action". The requirement of "state action" for discrimination to be prohibited is taken from cases interpreting the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution.¹²

The Montana Supreme Court has consistently applied federal Equal Protection analysis to cases involving Article II, section 4.

¹²See Moose Lodge No. 107 v. Irvis, 407 U.S. 163, 173, 92 S.Ct. 1965, 32 L.Ed.2d 627 (1972), wherein it is stated that "where the impetus for discrimination is private, the State must have 'significantly involved itself with invidious discriminations', in order for the discriminatory action to fall within the ambit of the constitutional prohibition".

Federal analysis, at least in the areas of economic and social legislation, allows governmental classification when it has a rational basis, i.e., it is not arbitrary.¹³ The federal analysis applies a "strict scrutiny" test to so-called suspect classifications such as race.¹⁴ In those areas a state must show a "compelling interest" in the classification.¹⁵ The U.S. Supreme Court has recently adopted a so-called "middle test" in areas involving gender classifications. In Mississippi University for Women v. Hogan, 458 U.S. 710, 724 (1982), the court said:

The party seeking to uphold a statute that classifies individuals on the basis of gender must carry the "exceedingly persuasive justification" for the classification. The burden is met only by showing at least that the classification serves "important governmental objectives and that the discriminatory means employed" are "substantially related" to the achievement of those objectives.¹⁶

¹³ See Royster Guano Co. v. Virginia, 253 U.S. 412, 40 S.Ct. 560, 64 L.Ed. 989 (1920). This test was applied in St. v. Craig, 169 M 150, 545 P.2d 649 (1975).

¹⁴ Loving v. Virginia, 388 U.S. 1, 87 S.Ct. 1817 (1967).

¹⁵ See San Antonio Independent School Dist. v. Rodriguez, 411 U.S. 1, 36 L.Ed.2d 16, 93 S.Ct. 1278, reh. den., 411 U.S. 959 (1973). This strict scrutiny test requiring the showing of a compelling state interest was applied in White v. St., ___ M ___, 661 P.2d 495 (1983).

¹⁶ This middle test was first articulated in Craig v. Boren, 429 U.S. 190 (1976), involving an Oklahoma statute providing differing legal drinking ages for males and females. The U.S. Supreme Court struck down the law saying the state was using maleness as a proxy for the regulation of drinking and driving. A quote from this case that may be of particular interest to this committee is found on page 204. "It is

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The Montana Supreme Court has only been squarely presented with two sexual discrimination cases: Cram, involving private discrimination, and St. v. Craig, 169 M 150, 545 P.2d 649 (1975), where the court held that there was a rational basis for classifying by sex under the sexual intercourse without consent statute. In a case involving a dissolution of marriage, Vance v. Vance, ____ M ____, 664 P.2d 907, 40 St.Rep. 836 (1983), the court stated that the trial court's recognition of the present relative economic status of men and women with respect to income earning potential and the distribution of marital assets accordingly did not violate a former husband's constitutional right of equal protection.

It is interesting to note that Article II, section 4, has been referred to in an Alaska decision. In U.S. Jaycees v. Richardet, 666 P.2d 1008 (Alaska 1983), Richardet argued that the prohibition against sex discrimination in Article I, section 3, of the Alaska Constitution, was in effect as broad as Montana's Article II, section 4, which explicitly prohibits both private and governmental discrimination, 'because the Alaska Human Rights legislation implementing the Constitution prohibits private as well as public discrimination. The Alaska Supreme Court stated in note 15, "However, the Legislature's construction of a

16 (continued) unrealistic to expect either members of the judiciary or state officials to be well versed in the rigors of experimental or statistical technique. But this merely illustrates that proving broad sociological propositions by statistics is a dubious business and one that inevitably is in tension with the normative philosophy that underlies the Equal Protection Clause."

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constitutional provision is, of course, not binding upon this court." The court went on to hold that "state action" is a necessary predicate to application of the Equal Protection Clause of the Alaska Constitution.¹⁷

The case closest to the situation under consideration here is Murphy v. Harleysville Mutual Insurance Co., 422 A.2d 1097 (Pa. super. 1980), wherein a class action was brought on behalf of three groups that had purchased automobile insurance from the defendant: (1) all males; (2) all unmarried persons; and (3) all persons under 30 years of age. The plaintiff alleged that the premiums charged constituted a violation of the Pennsylvania ERA as to the first group and the federal Equal Protection Clause as to the other two groups. The Pennsylvania court found no state action as to the alleged federal violations. In its discussion of the alleged state ERA violation, the court quoted extensively from Lincoln v. Mid-Cities Pee Wee Football Assoc., 576 S.W.2d 922 (Tex. Ct. App. 1979), a case involving a girl's attempt to be allowed to participate in a private nonprofit corporation's all-male youth football league. Both states' ERAs prohibit discrimination "under the law". Both courts held that "state action or private conduct that is

¹⁷ This case was decided prior to Roberts v. U.S. Jaycees, 52 L.W. 5076 (1984), where the U.S. Supreme Court held that under Minnesota's Human Rights Act, Ms. Roberts could not be excluded from membership in the organization. The court stated, "Assuring women equal access to the goods, privileges, and advantages of a place of public accommodation clearly furthers compelling state interests." (emphasis supplied)

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encouraged by, enabled by, or closely interrelated in function with state action"¹⁸ is required before a discriminatory practice is prohibited.

The courts stated: "Had the amendment been intended to proscribe private conduct, we believe this proscription could and would have been clearly expressed to apply to all discrimination, public and private."¹⁹ Following Murphy, the Pennsylvania Insurance Commissioner used the ERA as an aid in interpreting his powers and duties under the Rate Act 40 P.L. §§1181-1199, to disapprove the use of sex as a classification basis for automobile insurance rate differentials. The Commissioner's decision was upheld in Hartford Accident and Indemnity Co. v. Insurance Commissioner of Pennsylvania, 442 A.2d 382 (Pa. Comwlth. 1982), where the court held that the Commissioner did not exceed his statutory authority. The Commissioner's action was recently upheld by the Pennsylvania Supreme Court.²⁰

In light of these cases, it appears that if the Montana Supreme Court could be persuaded to follow the rationale regarding private discrimination referred to in the Texas and Pennsylvania decisions, the use of gender as a classification factor in setting insurance rates could be held unconstitutional if Chapter 531, Laws of 1983, were repealed.²¹ However, so long as the

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¹⁸ Murphy at 1103.

¹⁹ Ibid.

²⁰ Hartford Accident & Indemnity Co. v. Insurance Commissioner, Docket No. J-76-1984, (Pa. Sup. Ct. 1984).

²¹ This seems unlikely in light of the recently decided In the Matter of C.H., M, 683 P.2d 931, 41 St.Rep. 997, 1005 (1984), where the court stated, "The Fourteenth Amendment of the United States

court applies traditional federal Equal Protection analysis to claims of alleged private discrimination, there would be no "state action", and the use of gender in setting insurance rates would be permissible if Chapter 531, Laws of 1983, were repealed.²²

*

21(continued) Constitution and Article II, section 4, of the 1972 Montana Constitution guaranty [sic] equal protection of the laws to all persons. The equal protection provisions of the federal and state constitutions are similar and provide generally equivalent but independent protections." Citing Emery v. St., 177 M 73, 580 P.2d 445, cert. den., 439 U.S. 874, 99 S.Ct. 210, 58 L.Ed.2d 187 (1978). The court goes on to explain when it applies the various tests to the type of classification involved.

²²See Note 20, but the court could address a gender classification under Article II, section 4, in the recently argued case of Miller-Wohl Co., Inc. v. Commissioner of Labor and Industry, No. 84-172.

ency to aid, abet, incite, compel, or coerce the doing of an act forbidden under this chapter or to attempt to do so.

History: En. 64-312 by Sec. 9, Ch. 283, L. 1974; am. Sec. 10, Ch. 524, L. 1975; R.C.M. 1947, 312(1); am. Sec. 5, Ch. 177, L. 1979.

Cross-References

When accountability exists, 45-2-302.

Inchoate offenses, Title 45, ch. 4.

49-2-303. Discrimination in employment. (1) It is an unlawful discriminatory practice for:

(a) an employer to refuse employment to a person, to bar him from employment, or to discriminate against him in compensation or in a term, condition, or privilege of employment because of his race, creed, religion, color, or national origin or because of his age, physical or mental handicap, marital status, or sex when the reasonable demands of the position do not require an age, physical or mental handicap, marital status, or sex distinction;

(b) a labor organization or joint labor management committee controlling apprenticeship to exclude or expel any person from its membership or from apprenticeship or training program or to discriminate in any way against member of or an applicant to the labor organization or an employer or employee because of race, creed, religion, color, or national origin or because of his age, physical or mental handicap, marital status, or sex when the reasonable demands of the program do not require an age, physical or mental handicap, marital status, or sex distinction;

(c) an employer or employment agency to print or circulate or cause to be printed or circulated a statement, advertisement, or publication or to use employment application which expresses, directly or indirectly, a limitation, specification, or discrimination as to sex, marital status, age, physical or mental handicap, race, creed, religion, color, or national origin or an intent to make the limitation, unless based upon a bona fide occupational qualification;

(d) an employment agency to fail or refuse to refer for employment, to classify, or otherwise to discriminate against any individual because of sex, marital status, age, physical or mental handicap, race, creed, religion, color, or national origin, unless based upon a bona fide occupational qualification.

(2) The exceptions permitted in subsection (1) based on bona fide occupational qualifications shall be strictly construed.

En. 283, L. 1974; am. Sec. 2, Ch. 121, L. 1975; am. Sec. 3, Ch. 1, L. 1977; R.C.M. 1947, 64-306(1), (2); am. Sec. 1, Ch. 279, L.

Equal pay for women for equivalent service, 39-3-104.

Exclusion of handicapped from minimum wage and overtime compensation laws, 39-3-406.

Women in employment, Title 39, ch. 7.

Exemption from association with labor organization on religious grounds, 39-31-204.

Right to refuse to participate in sterilization, Title 50, ch. 10.

Right to refuse to participate in abortion, Title 50, ch. 10.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 3

DATE 03/14/85

BILL NO. HB 366 + 507

49-2-304. Discrimination in public accommodations. Except when the distinction is based on reasonable grounds, it is an unlawful discriminatory practice for the owner, lessee, manager, agent, or employee of a public accommodation:

(1) to refuse, withhold from, or deny to a person any of its services, goods, facilities, advantages, or privileges because of sex, race, age, physical or mental handicap, creed, religion, color, or national origin;

(2) to publish, circulate, issue, display, post, or mail a written or printed communication, notice, or advertisement which states or implies that any of the services, goods, facilities, advantages, or privileges of the public accommodation will be refused, withheld from, or denied to a person of a certain race, creed, religion, sex, age, physical or mental handicap, color, or national origin.

History: En. 64-306 by Sec. 2, Ch. 283, L. 1974; am. Sec. 2, Ch. 121, L. 1975; am. Sec. 3, Ch. 524, L. 1975; am. Sec. 7, Ch. 38, L. 1977; R.C.M. 1947, 64-306(3).

Cross-References

Health care facilities, 50-5-105.

Furnishing of medical assistance, 53-6-105.

Opportunity for religious observance in facilities for developmentally disabled, 53-20-142.

Opportunity for religious observance in mental health facilities, 53-21-142.

49-2-305. Discrimination in housing. (1) Except when the distinction is based on reasonable grounds, it is an unlawful discriminatory practice for the owner, lessee, manager, or other person having the right to sell, lease, or rent a housing accommodation or improved or unimproved property:

(a) to refuse to sell, lease, or rent the housing accommodation or property to a person because of sex, race, creed, religion, color, age, physical or mental handicap, or national origin;

(b) to discriminate against a person because of sex, race, creed, religion, age, physical or mental handicap, color, or national origin in a term, condition, or privilege relating to the use, sale, lease, or rental of the housing accommodation or property;

(c) to make a written or oral inquiry or record of the sex, race, creed, religion, age, physical or mental handicap, color, or national origin of a person seeking to buy, lease, or rent the housing accommodation or property; or

(d) to refuse to negotiate for a sale or to make a housing accommodation or property unavailable because of sex, race, creed, religion, age, physical or mental handicap, color, or national origin.

(2) A private residence designed for single-family occupancy in which sleeping space is rented to guests and in which the landlord also resides is excluded from the provisions of subsection (1).

(3) It is also an unlawful discriminatory practice to make, print, or publish or cause to be made, printed, or published any notice, statement, or advertisement that indicates any preference, limitation, or discrimination that is prohibited by subsection (1) or any intention to make or have such a preference, limitation, or discrimination.

History: En. 64-306 by Sec. 2, Ch. 283, L. 1974; am. Sec. 2, Ch. 121, L. 1975; am. Sec. 3, Ch. 524, L. 1975; am. Sec. 7, Ch. 38, L. 1977; R.C.M. 1947, 64-306(4); am. Sec. 1, Ch. 177, L. 1979; am. Sec. 1, Ch. 335, L. 1981.

1981 Amendment: Inserted subsection (1)(d).
Urban renewal, 7-15-4207.

9-2-306. Discrimination in financing and credit transactions. It is an unlawful discriminatory practice for a financial institution, upon giving an application for financial assistance, to permit an official or employee, during the execution of his duties, to discriminate against the applicant because of sex, marital status, race, creed, religion, age, physical or mental handicap, color, or national origin in a term, condition, or privilege relating to the obtainment or use of the institution's financial assistance, unless based on reasonable grounds.

(2) It is an unlawful discriminatory practice for a creditor to discriminate on the basis of race, color, religion, creed, national origin, age, mental or physical handicap, sex, or marital status against any person in any credit transaction which is subject to the jurisdiction of any state or federal court record.

History: Ea. 64-306 by Sec. 2, Ch. 283, L. 1974; amd. Sec. 2, Ch. 121, L. 1975; amd. Sec. 3, Ch. 1975; amd. Sec. 7, Ch. 38, L. 1977; R.C.M. 1947, 64-304(5), (8).

- Cross-References**
- State District Court jurisdiction, Title 3, ch. 33-22-506, 33-30-1003, 33-30-1004.
 - Municipal Court jurisdiction, 3-6-103.
 - Power to contract, Title 28, ch. 2, part 2.
 - No discrimination by certain insurers, 8-210.
 - Medical and health insurance -- continuation of coverage for handicapped child, 33-22-304.
 - Minors' power to contract, Title 41, ch. 1, part 3.

9-2-307. Discrimination in education. It is an unlawful discriminatory practice for an educational institution:

- 1) to exclude, expel, limit, or otherwise discriminate against an individual seeking admission as a student or an individual enrolled as a student in terms, conditions, or privileges of the institution because of race, creed, religion, sex, marital status, color, age, physical handicap, or national origin because of mental handicap, unless based on reasonable grounds;
- 2) to make or use a written or oral inquiry or form of application for admission that elicits or attempts to elicit information or to make or keep record concerning the race, color, sex, marital status, age, creed, religion, physical or mental handicap, or national origin of an applicant for admission, except as permitted by regulations of the commission;
- 3) to print, publish, or cause to be printed or published a catalog or other notice or advertisement indicating a limitation, specification, or discrimination based on the race, color, creed, religion, age, physical or mental handicap, sex, marital status, or national origin of an applicant for admission;

- 4) to announce or follow a policy of denial or limitation of educational opportunities of a group or its members, through a quota or otherwise, because of race, color, sex, marital status, age, creed, religion, physical or mental handicap, or national origin.

History: Ea. 64-306 by Sec. 2, Ch. 283, L. 1974; amd. Sec. 2, Ch. 121, L. 1975; amd. Sec. 3, Ch. 1975; amd. Sec. 7, Ch. 38, L. 1977; R.C.M. 1947, 64-304(7).

- Cross-References**
- Non-discrimination in education, Art. X, sec. 10nt. Const.
 - Exemption from immunization requirements on religious grounds, 20-5-405.

9-2-308. Discrimination by the state. It is an unlawful discriminatory practice for the state or any of its political subdivisions:

(1) to refuse, withhold from, or deny to a person any state, or federal funds, services, goods, facilities, advantages, or privileges because of race, creed, religion, sex, marital status, color, age, physical or mental handicap, or national origin, unless based on reasonable grounds;

(2) to publish, circulate, issue, display, post, or mail a written or printed communication, notice, or advertisement which states or implies that any local, state, or federal funds, services, goods, facilities, advantages, or privileges of the office or agency will be refused, withheld from, or denied to a person of a certain race, creed, religion, sex, marital status, color, age, physical or mental handicap, or national origin or that the patronage of a person of a particular race, creed, religion, sex, marital status, color, age, or national origin or possessing a physical or mental handicap is unwelcome or not desired or solicited, unless based on reasonable grounds;

(3) to refuse employment to a person, to bar him from employment, or to discriminate against him in compensation or in a term, condition, or privilege of employment because of his political beliefs. However, this prohibition does not apply to policymaking positions on the immediate staff of an elected officer of the executive branch provided for in Article VI, section 1, of the Montana constitution, to the appointment by the governor of a director of a principal department provided for in Article VI, section 7, of the Montana constitution, or to the immediate staff of the majority and minority leadership of the Montana legislature.

History: Ea. 64-306 by Sec. 2, Ch. 283, L. 1974; amd. Sec. 2, Ch. 121, L. 1975; amd. Sec. 3, Ch. 1975; amd. Sec. 7, Ch. 38, L. 1977; R.C.M. 1947, 64-304(6).

- Cross-References**
- Special consideration for military personnel and veterans, Art. II, sec. 35, Mont. Const.
 - Executive branch officers and agencies, Title 2, ch. 15.
 - Library services for the handicapped, 22-1-103.
 - Religious beliefs of witness not relevant to credibility, Rule 610, Montana Rules of Evidence (see Title 26, ch. 10).
 - Marital status irrelevant to parent-child relationship, 40-6-103.
 - Right to refuse to participate in sterilization, Title 50, ch. 5, part 6.
 - Exemption from prenatal blood tests on religious grounds, 50-19-109.
 - Right to refuse to participate in abortion, 50-20-111.
 - Furnishing of medical assistance, 53-6-105.
 - Community-based services for developmentally disabled, 53-20-212.
 - Community mental health centers, 53-21-206.
 - Ineligibility of handicapped for driver's license, 61-5-105.
 - Homestead exemption, Title 70, ch. 32, part 2.
 - Surviving spouse exempt from inheritance tax, 72-16-313.
 - Exceptions to fishing and hunting license requirements, Title 87, ch. 2, part 8.

SENATE JUDICIARY COMMITTEE
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- Cross-References**
- Educational programs for gifted children, Title 20, ch. 7, part 9.
 - State School for the Deaf and Blind, Title 20, ch. 8.
 - Work-study program, 20-25-707.

49-2-309. Discrimination in insurance and retirement plans. (1) It is an unlawful discriminatory practice for any financial institution or person to discriminate solely on the basis of sex or marital status in the issuance or operation of any type of insurance policy, plan, or coverage or in any pension or retirement plan, program, or coverage, including discrimination in regard to rates or premiums and payments or benefits.

(6) "Qualifications" means such qualifications as are genuine related to competent performance of the particular occupational task.
History: (1) Ea. 64-316 by Sec. 1, Ch. 487, L. 1975; Sec. 64-316, R.C.M. 1947; (2) Ea. 64-319 by Sec. 4, Ch. 487, L. 1975; and, Sec. 11, Ch. 38, L. 1977; Sec. 64-319, R.C.M. 1947; R.C.M. 1947, 64-316, 64-319(part); and, Sec. 13, Ch. 177, L. 1979; and, Sec. 1, Ch. 540, L. 1983.

Compiler's Comments
1983 Amendment: Inserted (1) through (4); and rephrased (5), leaving substance the same.

49-3-102. What local governmental units affected. Local governmental units affected by this chapter include all political subdivisions of the state, including school districts.
History: Ea. 64-327 by Sec. 12, Ch. 487, L. 1975; R.C.M. 1947, 64-327.

Cross-References
Applicability to community college districts, 20-16-403.

49-3-103. Permitted distinctions. Nothing in this chapter shall prohibit any public or private employer:

- (1) from enforcing a differentiation based on marital status, age, or physical or mental handicap when based on a bona fide occupational qualification reasonably necessary to the normal operation of the particular business or where the differentiation is based on reasonable factors other than age;
- (2) from observing the terms of a bona fide seniority system or any bona fide employee benefit plan, such as a retirement, pension, or insurance plan, which is not a subterfuge to evade the purposes of this chapter, except that no such employee benefit plan shall excuse the failure to hire any individual; or
- (3) from discharging or otherwise disciplining an individual for good cause.

History: Ea. 64-328 by Sec. 13, Ch. 487, L. 1975; R.C.M. 1947, 64-328; and, Sec. 2, Ch. 279, L. 1983.

Compiler's Comments
1983 Amendment: In (1), inserted "marital status".

49-3-104. Quotas not required. Nothing in this chapter shall be construed as requiring the institution of a system of quotas for representation of any sex, age, religious, racial, ethnic, or other group affected by this chapter.

History: Ea. 64-330 by Sec. 15, Ch. 487, L. 1975; R.C.M. 1947, 64-330.

49-3-105. Procedure for claiming exemption. A state or local governmental agency seeking to apply any exemption from the requirements of this chapter may petition the commission for a declaratory ruling as provided in 2-4-501 of the Montana Administrative Procedure Act. If the commission finds that reasonable grounds for applying an exemption exist, it may issue a ruling exempting the petitioner from the particular provision. The burden is on the petitioner to demonstrate that an exemption should be applied. Any provision in this chapter allowing an exemption from its requirements must be strictly construed.

(6) "Qualifications" means such qualifications as are genuine related to competent performance of the particular occupational task.
History: (1) Ea. 64-316 by Sec. 1, Ch. 487, L. 1975; Sec. 64-316, R.C.M. 1947; (2) Ea. 64-319 by Sec. 4, Ch. 487, L. 1975; and, Sec. 11, Ch. 38, L. 1977; Sec. 64-319, R.C.M. 1947; R.C.M. 1947, 64-316, 64-319(part); and, Sec. 13, Ch. 177, L. 1979; and, Sec. 1, Ch. 540, L. 1983.

Compiler's Comments
1983 Amendment: Inserted (1) through (4); and rephrased (5), leaving substance the same.

49-3-102. What local governmental units affected. Local governmental units affected by this chapter include all political subdivisions of the state, including school districts.
History: Ea. 64-327 by Sec. 12, Ch. 487, L. 1975; R.C.M. 1947, 64-327.

Cross-References
Applicability to community college districts, 20-16-403.

49-3-103. Permitted distinctions. Nothing in this chapter shall prohibit any public or private employer:

- (1) from enforcing a differentiation based on marital status, age, or physical or mental handicap when based on a bona fide occupational qualification reasonably necessary to the normal operation of the particular business or where the differentiation is based on reasonable factors other than age;
- (2) from observing the terms of a bona fide seniority system or any bona fide employee benefit plan, such as a retirement, pension, or insurance plan, which is not a subterfuge to evade the purposes of this chapter, except that no such employee benefit plan shall excuse the failure to hire any individual; or
- (3) from discharging or otherwise disciplining an individual for good cause.

History: Ea. 64-328 by Sec. 13, Ch. 487, L. 1975; R.C.M. 1947, 64-328; and, Sec. 2, Ch. 279, L. 1983.

Compiler's Comments
1983 Amendment: In (1), inserted "marital status".

49-3-104. Quotas not required. Nothing in this chapter shall be construed as requiring the institution of a system of quotas for representation of any sex, age, religious, racial, ethnic, or other group affected by this chapter.

History: Ea. 64-330 by Sec. 15, Ch. 487, L. 1975; R.C.M. 1947, 64-330.

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History: (1) Ea. 64-316 by Sec. 1, Ch. 487, L. 1975; Sec. 64-316, R.C.M. 1947; (2) Ea. 64-319 by Sec. 4, Ch. 487, L. 1975; and, Sec. 11, Ch. 38, L. 1977; Sec. 64-319, R.C.M. 1947; R.C.M. 1947, 64-316, 64-319(part); and, Sec. 13, Ch. 177, L. 1979; and, Sec. 1, Ch. 540, L. 1983.

Compiler's Comments
1983 Amendment: Inserted (1) through (4); and rephrased (5), leaving substance the same.

49-3-102. What local governmental units affected. Local governmental units affected by this chapter include all political subdivisions of the state, including school districts.
History: Ea. 64-327 by Sec. 12, Ch. 487, L. 1975; R.C.M. 1947, 64-327.

Cross-References
Applicability to community college districts, 20-16-403.

49-3-103. Permitted distinctions. Nothing in this chapter shall prohibit any public or private employer:

- (1) from enforcing a differentiation based on marital status, age, or physical or mental handicap when based on a bona fide occupational qualification reasonably necessary to the normal operation of the particular business or where the differentiation is based on reasonable factors other than age;
- (2) from observing the terms of a bona fide seniority system or any bona fide employee benefit plan, such as a retirement, pension, or insurance plan, which is not a subterfuge to evade the purposes of this chapter, except that no such employee benefit plan shall excuse the failure to hire any individual; or
- (3) from discharging or otherwise disciplining an individual for good cause.

History: Ea. 64-328 by Sec. 13, Ch. 487, L. 1975; R.C.M. 1947, 64-328; and, Sec. 2, Ch. 279, L. 1983.

Compiler's Comments
1983 Amendment: In (1), inserted "marital status".

49-3-104. Quotas not required. Nothing in this chapter shall be construed as requiring the institution of a system of quotas for representation of any sex, age, religious, racial, ethnic, or other group affected by this chapter.

History: Ea. 64-330 by Sec. 15, Ch. 487, L. 1975; R.C.M. 1947, 64-330.

49-3-105. Procedure for claiming exemption. A state or local governmental agency seeking to apply any exemption from the requirements of this chapter may petition the commission for a declaratory ruling as provided in 2-4-501 of the Montana Administrative Procedure Act. If the commission finds that reasonable grounds for applying an exemption exist, it may issue a ruling exempting the petitioner from the particular provision. The burden is on the petitioner to demonstrate that an exemption should be applied. Any provision in this chapter allowing an exemption from its requirements must be strictly construed.



NAME Carol Mosher BILL NO. HB 366 and HB507
ADDRESS Augusta, Montana DATE 3-14-85
WHOM DO YOU REPRESENT Montana CowBelles
SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

We support HB 366 ^{and HB507} in its efforts to correct what we feel would be discriminate treatment to us as women. We feel that we deserve to have our insurance rates based upon facts which statistics prove in regard to our driving records and length of life. Charts which show that we would recieve smaller amounts in payments of pensions and dividends are true, but it must be remembered that we live longer than men, so those payments to us must be stretched out over those extra years. We ask for your consideration in passing ~~these~~ ^{these} bills.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 4
DATE 03/4/85
BILL NO. HB 366 & 507

NAME: Ann M. Allen DATE 3-14-85

ADDRESS: 508-2 Ave So. Great Falls Mt 594

PHONE: 453-9085

REPRESENTING WHOM? Eagle Forum

APPEARING ON WHICH PROPOSAL: # 507

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: I was a Secretary of American Fraternal Union for over 25 years & also a Director of Board of A.F.U.
I also was a Montana Delegate to Houston's National Conf. of Women in 1976

Mr. Chairman and Members of the Judiciary Committee;
I am Ann Allen - Great Falls Eagle Forum
I am here to support H.B. #507, to repeal the

Unisex Law of 1983. I was a Montana Delegate to Nat. Conf. of Women in Houston
But Having been in the insurance field for many years, am
I have ~~only~~ this to say - the only equality younger family with 3 kids
women will gain from the 1983 Unisex Law, is the equality divine
of their budgets to zero. the greatest life sponsor

PLEASE LEAVE

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 5

DATE 03/4/85

BILL NO. HB 507

Ann Allen
508-2 Ave So.
Great Falls, Mt

NAME: Sherry Daniels DATE: 3/14/85

ADDRESS: 2915 Oakland Dr., Blgs. MT. 59112

PHONE: (406) 656-2484

REPRESENTING WHOM? myself & family

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 6

DATE 03/4/85

BILL NO. HB 366 & 507

APPEARING ON WHICH PROPOSAL: HB 366 & HB 507

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENTS: As a working woman, I find that there are many inequities towards women in today's world. However, this is not one of them. Statistics show that women earn an average of 60¢ on the dollar that a man averages. The current Unisex law would force these same women to pay more for the two very insurance policies that they must pay for out of their own pocket, their life & auto insurance. Please don't take away my RIGHT TO CHOOSE!

* Regarding cost, I challenge the members of the Committee to call 3 or 4 local insurance agents and get quotes on male & female rates for life & auto! You will find the female rates to

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

be lower. Common sense tells you that if rates must be equalized, women's

rates will go up. This is anti-women legislation and forces women to subsidize men. AND TO WHAT END? S. Daniels

NAME: MARIE Deonier DATE: 3/14/85

ADDRESS: 1 P Shadow Place, Billings MT 59101

PHONE: 245-7063 (H) 652-5240 (BUS)

REPRESENTING WHOM? SEMIALL & SELF

APPEARING ON WHICH PROPOSAL: 366 & 507

DO YOU: SUPPORT? X AMEND? OPPOSE?

COMMENTS: as a wife, mother of sons & daughters,
as a consumer of insurance & as
an insurance agent, urge you to
consider this bill favorably.

Thank you

MARIE Deonier, R.H.U.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 7
DATE 031485
BILL NO. HB 366 & 507

NAME: ELMER HAUSKEN DATE: 14 Mar 85

ADDRESS: 1400 HIGHLAND HELENA, MT

PHONE: 442-8319

REPRESENTING WHOM? Not Anew Life Underwriters

APPEARING ON WHICH PROPOSAL: HB 366 & HB 507

DO YOU: SUPPORT? Yes AMEND? _____ OPPOSE? _____

COMMENTS: The MALU supports HB 366 and
HB 507 because we feel the Unisex
law is blatantly discriminatory and
economically punitive to women.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 8
DATE 031485
BILL NO. HB 366 + 507

NAME: Lois Halsey DATE: 3-14-85

ADDRESS: 520 8th St. No.

PHONE: 452-2715

REPRESENTING WHOM? Montana State Eagle Forum

APPEARING ON WHICH PROPOSAL: H.B. 507 + 366

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENTS: If H.B. 507 passes we as women will be treated as we should be, in insurance & life & auto.)

The women's lobbyist group does not represent the majority of Montana women, only a small minority. All over the United States women are realizing that such a minority are now becoming less and less credible and use any means to destroy free enterprise in their proposals and ~~also~~ destroy protection for women. They take more and more rights away from women.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 9

031485

BILL NO. HB 366 + 507

NAME: Beverly Gluckert DATE: 3/14/85

ADDRESS: 1527 Chateau St., Helena, MT. 59601

PHONE: 442-9824

REPRESENTING WHOM? Myself and my family

APPEARING ON WHICH PROPOSAL: Support HB 507

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENTS: I support HB #507.

I am a small group of vocal feminists
claim they speak for the majority of Montana women.
They have never represented me nor do they now. At
one time I belonged to the League of Women Voters, attended ALP
meetings and attended one Women's Political Caucus
meeting and saw some of the same faces at the meetings.

Consider - had the insurance companies
originally proposed such legislation as these feminists
have done, can you imagine, and rightfully so, the
whop and holler which would sound across Montana!!

I am the mother of six sons but since young
women in a group have earned a lower insurance rate than
so be it. Four six fair!

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 10

D 031485

BILL NO. HB 507

NAME :

DATE :

ADDRESS :

PHONE :

REPRESENTING WHOM?

APPEARING ON WHICH PROPOSAL:

DO YOU:

SUPPORT?

AMEND?

OPPOSE?

COMMENTS :

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE

ADIT NO. 1

031485

BILL NO. HB 366 + 507

NAME: Judith K. Minfel DATE: 3/14/85
ADDRESS: One State Farm Plaza, Bloomington, IL 61701

PHONE: (309) 766-3520

REPRESENTING WHOM? State Farm Insurance Companies

APPEARING ON WHICH PROPOSAL: HB 366 and HB 507

DO YOU: SUPPORT? X AMEND? OPPOSE?

COMMENTS:

The use of sex as an insurance rating variable
is fair and reasonable. It is not a denial
of civil rights because the differences are not based
on prejudice, but on actual, significant differences
in insurance costs. The present system does not
disadvantage women, but instead provides a significant
economic benefit.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE

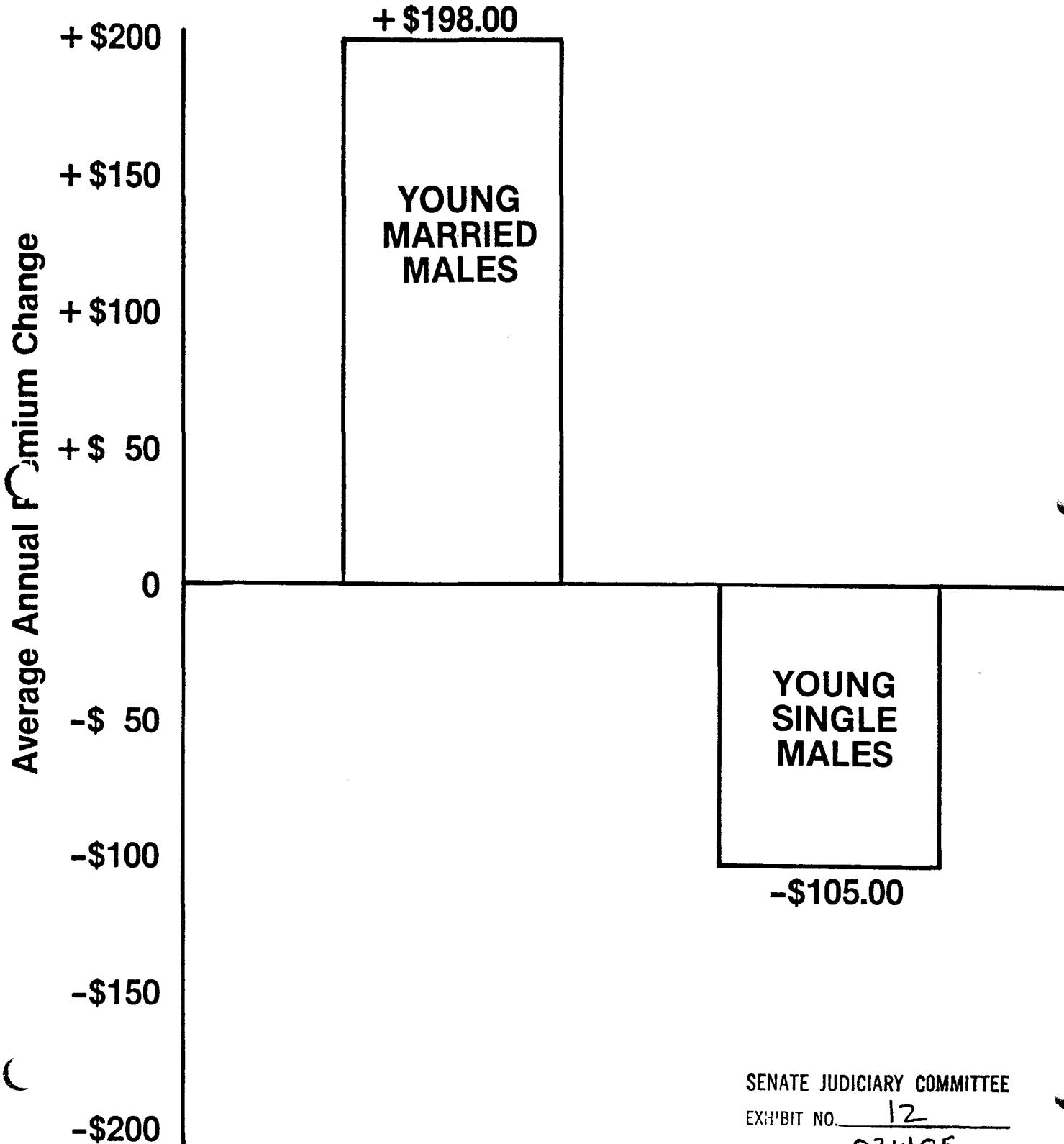
EXHIBIT NO. 12

DATE 031485

BILL NO. HB 366 + 507

MONTANA

Estimated Average Annual Change in Total Package Policy Premium
for State Farm Mutual Policyholders if Marital Status of Driver is Eliminated as a Rating Factor



SENATE JUDICIARY COMMITTEE

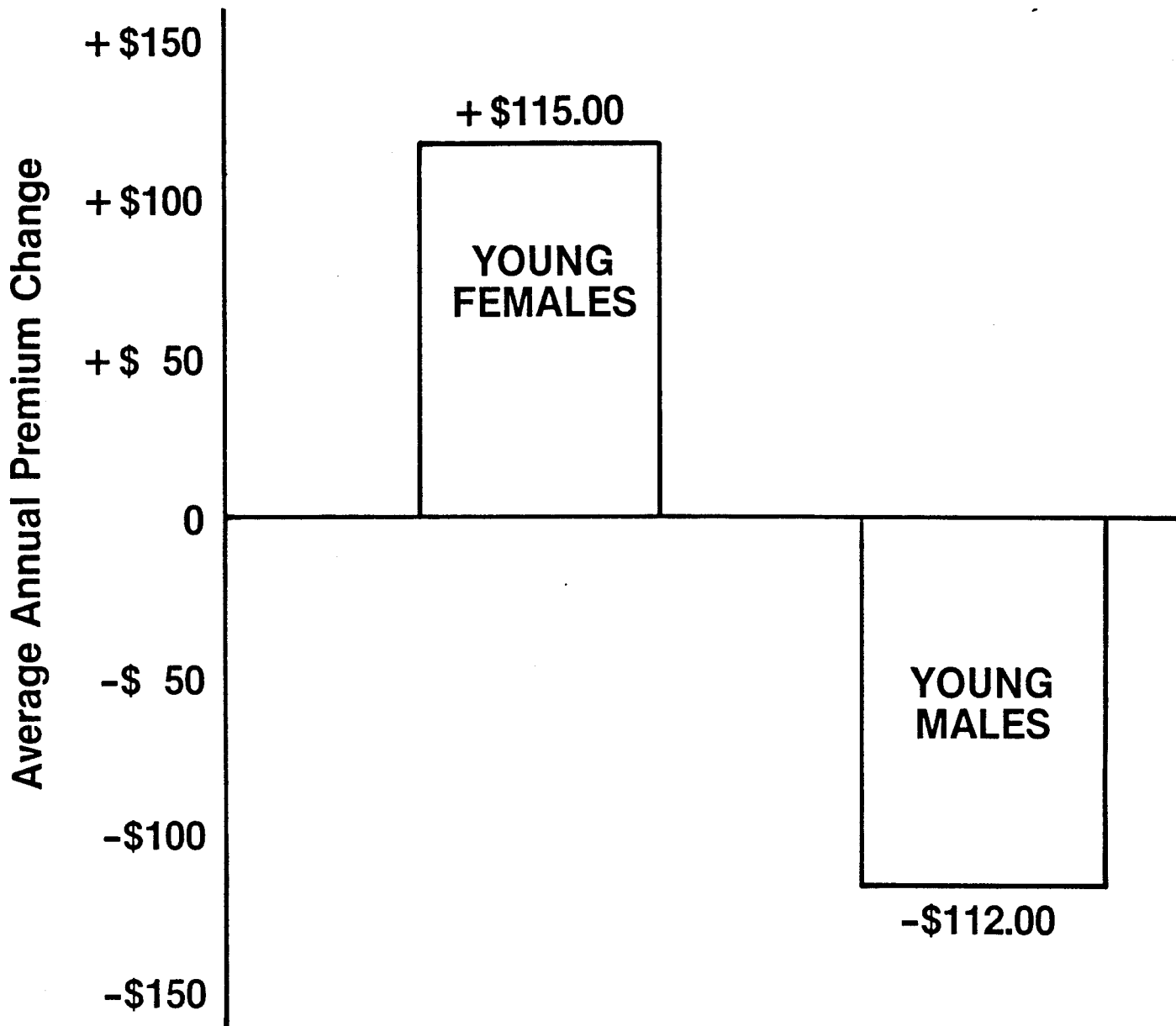
EXHIBIT NO. 12

DATE 03/4/85

BILL NO. #B 366 + 507

MONTANA

Estimated Average Annual Change in Total Package Policy Premium
for State Farm Mutual Policyholders if Sex of Driver is Eliminated as a Rating Factor



SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 12
DATE 031485
BILL NO. HB 366 + 507

MONTANA
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY
BLOOMINGTON, ILLINOIS

Examples of the Effect of Eliminating Status of Driver as a Rating Factor

	Married Male Age Under 21 Principal Driver Pleasure Use				Single Male Age Under 21 Principal Driver Pleasure Use			
	Current Annual Premium	Approximate Annual Change	Approximate Unisex Premium*	% Change	Current Annual Premium	Approximate Annual Change	Approximate Unisex Premium*	% Change
Billings	\$621	+ \$493	\$1,114	+ 79%	\$1,199	-\$85	\$1,114	-7%
Helena	584	+ 461	1,045	+ 79	1,126	- 81	1,045	-7
Missoula	504	+ 397	901	+ 79	972	- 71	901	-7

These examples are for a 1982 Ford Escort, with the following coverages:

25/50/25 BIPD Liability
\$5,000 Medical Payments
Full Comprehensive
\$100 Deductible Collision
25/50 UM

* Reflects the Elimination of Marital Status as a Rating Factor

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 12

DATE 031485

BILL NO. HB 366 + 507

MONTANA

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY BLOOMINGTON, ILLINOIS

Examples of the Effect of Eliminating Marital Status of Driver as a Rating Factor

	Married Male Age 21-22 Principal Driver Pleasure Use				Single Male Age 21-22 Principal Driver Pleasure Use			
	Current Annual Premium	Approximate Annual Change	Approximate Unisex Premium*	% Change	Current Annual Premium	Approximate Annual Change	Approximate Unisex Premium*	% Change
Billings	\$495	+ \$179	\$674	+ 36%	\$910	-\$236	\$674	-26%
Helena	465	+ 168	633	+ 36	855	- 222	633	-26
Missoula	402	+ 144	546	+ 36	738	- 192	546	-26

These examples are for a 1982 Ford Escort, with the following coverages:

25/50/25 BIPD Liability
\$5,000 Medical Payments
Full Comprehensive
\$100 Deductible Collision
25/50 UM

* Reflects the Elimination of Marital Status as a Rating Factor

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 12
DATE 031485
BILL NO. HB 366 + 507

MONTANA
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY
BLOOMINGTON, ILLINOIS

Examples of the Effect of Eliminating Marital Status of Driver as a Rating Factor

	Married Male Age 23-24 Principal Driver Pleasure Use				Single Male Age 23-24 Principal Driver Pleasure Use			
	Current Annual Premium	Approximate Annual Change	Approximate Unisex Premium*	% Change	Current Annual Premium	Approximate Annual Change	Approximate Unisex Premium*	% Change
Billings	\$423	+ \$251	\$674	+ 59%	\$910	-\$236	\$674	-26%
Helena	398	+ 235	633	+ 59	855	- 222	633	-26
Missoula	344	+ 202	546	+ 59	738	- 192	546	-26

These examples are for a 1982 Ford Escort, with the following coverages:

25/50/25 BIPD Liability
\$5,000 Medical Payments
Full Comprehensive
\$100 Deductible Collision
25/50 UM

*Reflects the Elimination of Marital Status as a Rating Factor

MONTANA
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY
BLOOMINGTON, ILLINOIS

Examples of the Effect of Eliminating Sex of Driver as a Rating Factor

	Single Female Age 21-24 Principal Driver Pleasure Use				Single Male Age 21-24 Principal Driver Pleasure Use			
	Current Annual Premium	Approximate Annual Change	Approximate Unisex Premium	% Change	Current Annual Premium	Approximate Annual Change	Approximate Unisex Premium	% Change
Billings	\$531	+ \$179	\$710	+ 34%	\$910	-\$200	\$710	-22%
Helena	499	+ 168	667	+ 34	855	- 188	667	-22
Missoula	431	+ 143	574	+ 33	738	- 164	574	-22

These examples are for a 1982 Ford Escort, with the following coverages:

25/50/25 BIPD Liability
\$5,000 Medical Payments
Full Comprehensive
\$100 Deductible Collision
25/50 UM

SENATE JUDICIARY COMMITTEE
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MONTANA

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY
BLOOMINGTON, ILLINOIS

Examples of the Effect of Eliminating Sex of Driver as a Rating Factor

	Single Female Under 21 Principal Driver Pleasure Use				Single Male Under 21 Principal Driver Pleasure Use			
	Current Annual Premium	Approximate Annual Change	Approximate Unisex Premium	% Change	Current Annual Premium	Approximate Annual Change	Approximate Unisex Premium	% Change
Billings	\$657	+ \$246	\$903	+ 37%	\$1,197	-\$294	\$903	-25%
Helena	618	+ 230	848	+ 37	1,126	- 278	848	-25
Missoula	534	+ 196	730	+ 37	972	- 242	730	-25

These examples are for a 1982 Ford Escort, with the following coverages:

25/50/25 BIPD Liability
\$5,000 Medical Payments
Full Comprehensive
\$100 Deductible Collision
25/50 UM

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WHAT HAS BEEN THE EFFECT OF
ELIMINATING SEX AS AN AUTO INSURANCE RATING VARIABLE?

Rate classifications based on sex and marital status have already been prohibited in four states: Hawaii in 1974, North Carolina on December 1, 1977, Massachusetts on January 1, 1978 and Michigan on January 1, 1981. These prohibitions apply to auto insurance only. No state laws have been implemented applicable to all lines of insurance.

In each of these states where sex and marital status were eliminated as rating variables in auto insurance, the legislature at the same time effected many other changes in the way insurers are permitted to determine auto insurance rates so that rate increases or decreases resulting from the new laws may not solely be attributable to the elimination of sex as a rating variable. It is important to note that in three of the four states prohibiting the use of sex and marital status in auto insurance rate classifications, the use of age was eliminated as well. The prohibition of age with that of sex and marital status causes the subsidy required by law to be given to young unmarried male drivers to be borne by the entire adult driving population as well as young women. Therefore, rate increases for young women directly attributable to these state laws are not as large as they would have been if age had not been eliminated. Only Michigan continued to allow the use of age while eliminating sex and marital status rate classifications. Rate increases for young women in Michigan in 1981 were significant as is illustrated by the attached exhibit.

Also, it is important to note that each of the four states attempting to regulate auto insurance pricing has adopted many additional laws to regulate insurance company underwriting decisions and to provide insurance through residual market programs due to reductions in capacity in the private market. Both North Carolina and Massachusetts require mandatory rate bureau membership with all auto insurance rates required to be uniform and fixed by government.

A review of the situation in each of the four states follows:

1. Hawaii. The legislation in Hawaii which became effective in late 1974 eliminated age and marital status as well as sex as auto insurance rating variables. Furthermore, no fault provisions were enacted at the same time which included a mandatory 15% rate reduction by all companies. Auto insurance rate increases implemented in Hawaii in 1976 and 1977 were significant.

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2. North Carolina. In North Carolina all insurers are required by law to belong to the North Carolina Rate Bureau and all are required to use the same rate classification plan. The North Carolina legislation eliminating age and sex as rating factors became law in 1975. The law was implemented on December 1, 1977. Accident and violations surcharges were increased to offset rate reductions for youthful male drivers and were required to be larger than experience would indicate. Also, inexperienced operator surcharges were dramatically increased resulting in immediate rate increases for young women 16 to 17 years old. Currently, the pleasure use classification in North Carolina has a higher indicated rate than the business use class due to the influx of youthful male drivers in the pleasure use class. Approximately 25% of all vehicles insured in North Carolina are provided coverage through the North Carolina Reinsurance Facility, the residual market mechanism. In Montana, less than one tenth of one percent of the vehicles are insured through the Montana residual market mechanism, the AIP.
3. Massachusetts. This state has the distinction of having an auto insurance system that is "by far the costliest and unquestionably the most wasteful and complicated in the United States," in the words of a former Massachusetts governor. In Massachusetts, all companies are required to belong to and charge rates set by the state in a fashion similar to the rate bureau operation in North Carolina. In 1978 the Insurance Commissioner ruled that age, sex and marital status were no longer acceptable rating variables and changes were required in the method for calculating territorial relativities. These rulings were confirmed by legislative action. In 1978 the industry filed for a rate increase of +7.3%. The Commissioner fixed rates by reducing them - 12.9%. The residual market mechanism in Massachusetts grew to over 45% of the auto insurance business in the state at the current time. In Massachusetts, over 90% of youthful male drivers and 70% of youthful female drivers are currently being insured through the Reinsurance Facility, Massachusetts residual market mechanism.
4. Michigan. The Michigan legislation eliminating both sex and marital status became effective January 1, 1981. This same legislation restricted the total number of rating territories allowable as

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well as the range of rating differentials between territories. Examples of State Farm rates before and after January 1, 1981 are attached. The territorial rating changes mandated by law were intended to significantly reduce rates in Detroit at the expense of out-state drivers.

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State Farm Mutual Automobile Insurance Company

MICHIGAN

Rate Comparisons Before and After Elimination of Sex and Marital Status as Rating Variables

These rates reflect premiums applicable before and after the elimination of sex and marital status as rating variables, effective January 1, 1981 for youthful (under 21) principal operators, with no accidents or convictions, for a 1981 Oldsmobile Cutlass Supreme (IRG II, Age Group I) with the following coverages:

25/50/25 BIPD
Full PIP
Coverage N
Full Comprehensive
\$100 Deductible

	Married Female			Married Male			Unmarried Female			Unmarried Male		
	Before	After	Change	Before	After	Change	Before	After	Change	Before	After	Change
Northern Counties	\$175.94	\$469.04	+166.6%	\$342.62	\$469.04	+36.9%	\$342.62	\$469.04	+36.9%	\$675.98	\$469.04	-30.6%
Detroit Suburbs	260.11	685.36	+163.5	506.53	685.36	+35.3	506.53	685.36	+35.3	999.37	685.36	-31.4
Western Counties	173.09	457.60	+164.4	337.07	457.60	+35.8	337.07	457.60	+35.8	665.03	457.03	-31.2

SENATE JUDICIARY COMMITTEE

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DATE 031485

FILE NO. HR 366+507

Loble

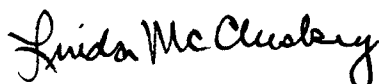
March 13, 1985

To the Chairman and Members of the Senate Judiciary Committee:

I urge your support of HB 366. Insurance rates are set by the best information available at this time and I do not feel it is discrimination to use sex as a determining factor in rate setting if it is statistically significant. If insurance companies are forced into using a more complex, less reliable form of rate setting, the expense will be passed on to the consumer. Insurance is risk management, and a low risk group should not have to subsidize a high risk group. If consumers want unisex insurance, then let the market place and competition influence the insurance industry rather than legislation.

I have always supported and believed in women's issues, but I feel that unisex insurance, and the resulting higher rates, will only hurt most women.

Sincerely,



Linda McCluskey
1500 Virginia Dale
Helena, Montana

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 13
DATE 03/14/85
BILL NO. HB 366

NAME: Margaret Trupphorn DATE: 3-14-85

ADDRESS: Fort Harrison

PHONE: 442-1636

REPRESENTING WHOM? Self and family

APPEARING ON WHICH PROPOSAL: Support 507

DO YOU: SUPPORT? X AMEND? OPPOSE?

COMMENTS: I support House Bill 507

One small vocal minority should not
be forced on all the majority of
women in the state of Montana.

I speak for my family, 2 daughters
and 1 son.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 13

DATE 03/14/85

BILL NO. HB 507

WOMEN'S LOBBYIST FUND

Box 1099
Helena, MT 59624
449-7917



March 14, 1985

TESTIMONY IN OPPOSITION TO HB 366 and HB 507

Mr. Chairman and Members of the Senate Judiciary Committee:

My name is Anne Brodsky and I am here today to speak on behalf of the Women's Lobbyist Fund (WLF), a 3,000 member organization which serves as a coalition of women's groups and individuals across Montana. As you know, the WLF took the lead in 1983 in lobbying for passage of Montana's gender-free insurance law. I am here today to voice our strong opposition to HBs 366 and 507 and, for that matter, any weakening of the gender-free insurance law that comes before the 1985 Legislature.

You may ask why the WLF and other women's and consumers groups across Montana and this country are working so hard to eradicate sex discrimination in insurance. The answer is that the issue is both a civil rights issue and an economic one, and the two are always inextricably related.

On the civil rights front, discrimination in insurance is no different than discrimination in any other area, despite the fact that the industry hides behind actuarial tables in its attempt to justify this discrimination. The industry did the same not long ago when attempting to justify race-based insurance rates with its actuarial tables.

It has been said that this law is being promoted by a small minority of people. This is simply not true. The industry, itself, provides a study of public sentiment on the subject. In a 1980 study conducted for the American Council of Life Insurance, respondents, when told that insurance premiums depend in part on a person's relative risk of dying, by a 72% margin opposed the use of sex in determining premiums. What did these respondents think should be used to determine premiums: the causally-related categories of age (71%), occupation (70%), cancer (69%), heart disease (69%), hazardous hobbies (67%), smoking (63%), and weight (55%).

Sex may be one of the easiest categories in which to group people. A person's sex may be identified when she or he walks through the door to purchase insurance, calls on the phone, or states her or his name. Race is almost as easy to identify. However, there are legal forms of subdividing the risk pool and there are unconstitutional ones. The Montana Constitution speaks plainly and clearly in its prohibition of sex discrimination in both the public and private sectors.

On the economic front, I will recount a personal experience. Just last week, I purchased a major medical health insurance policy, with a \$1,000 deductible. This policy does not cover pregnancy (although it does cover pregnancy complications). The cost? \$377.89/year. Had my hypothetical twin brother purchased the identical policy, he would have been charged \$216/yr., a \$161/yr. difference, only because of his and my sex. My smoking habits, drinking habits, and exercise habits were not even questioned.

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HB 366 & 507

Had I been covered by an employer-sponsored health plan, the rates would have been the same for me and my (hypothetical) twin brother. The 1983 U.S. Supreme Court decision in Arizona v. Norris, which concluded that employer-based pension plans may not pay women lower benefits than similarly situated men, applies with equal reasoning to employer-based health plans. Without Montana's gender-free insurance law, we must live with a 2-tiered system of justice. This is particularly significant in Montana, where employer-sponsored health coverage among civilian workers is the lowest in the nation: 37.63% (Employee Benefit Research Institute - see attached).

The elimination of sex discrimination in insurance has taken and will continue to take place. In the 4 states that prohibit the use of sex and marital status in auto insurance rates (Hawaii, Massachusetts, Michigan, and North Carolina), excellent public acceptance of their laws is reported. These states demonstrate that the industry can and will change, even if fighting the changes until the very end. And in some instances, the industry has begun to use the mandate of non-gender employer-sponsored benefit plans to promote its product, with the advertising of attractive "unisex" policies.

Finally, I wish to speak briefly to the bills. First, I will have you note that subsection (1) of both bills, which refers to availability, states that an insurer may take "marital status into account for the purpose of defining persons eligible for dependent benefits." Does this mean that a single mother could be denied availability of insurance for her children merely because she is single?

Second, I wish to comment on HB 366, which has been referred to as a "compromise" bill. As stated in a letter by the American National Insurance Company to a Montana Senator, "...either HB 366 or HB 507 would effectively repeal the Unisex legislation." HB 366 prohibits discrimination on the basis of sex or marital status in any type of insurance that is part of an employee benefit plan. An employee benefit plan, at present, may not discriminate on the basis of sex, as I just explained, pursuant to the Norris decision.

I might also add that the WLF, in good faith, agreed to 2 compromises in 1983: adding the grandfather clause and adding the October 1, 1985 delayed effective date. It takes 2 to compromise and HB 366 should not be viewed as a "compromise" bill.

In conclusion, the Montana Legislature should be proud to have taken the lead in eradicating sex and marital status discrimination in insurance. There is no reason for the Montana Legislature to move backwards. The 1983 law should be given a chance to work.

The WLF urges you to give HB 366 and 507 a do not pass recommendation.

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The following is a list of the organizations in Montana that support the 1983 gender-free insurance law:

ACLU
American Association of University Women
Business and Professional Women
Helena Women's Political Caucus
League of Women Voters
Low Income Senior Citizen Advocates
Montana Democratic Party
Montana Democratic Women's Club
Montana Education Association
Montana Federation of Teachers
Montana Low Income Coalition
Montana People's Association
Montana Public Interest Research Group
National Organization for Women
Women's Section of the State Bar

SENATE JUDICIARY COMMITTEE
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TABLE 2. Average Earnings and Primary Health Plan Coverage
Among Civilian Workforce by State, 1983

	CIVILIAN WORKFORCE	AVERAGE EARNINGS	PRIMARY HEALTH PLAN	% WITH HEALTH PLAN	AVERAGE EARNINGS
Total.....	98,963,821	\$15,960.27	59,041,441	59.66	\$19,332.44
STATE					
ALABAMA.....	1,412,880	14,604.37	774,513	54.82	17,364.00
ALASKA.....	169,352	23,868.26	93,161	55.01	27,349.61
ARIZONA.....	1,220,314	16,141.70	684,885	56.12	20,435.16
ARKANSAS.....	892,638	11,562.23	431,437	48.33	13,866.56
CALIFORNIA.....	10,552,286	18,168.23	6,399,558	60.65	21,763.25
COLORADO.....	1,461,703	17,061.65	766,589	52.44	21,251.12
CONNECTICUT.....	1,514,791	18,858.37	955,953	63.11	22,539.62
DELAWARE.....	277,260	16,710.20	183,834	66.02	20,215.84
DISTRICT OF COLUMBIA	262,714	17,309.46	158,379	60.29	19,001.31
FLORIDA.....	4,506,621	13,487.39	2,336,052	51.84	15,964.23
GEORGIA.....	2,432,688	13,829.38	1,450,845	59.64	16,423.64
HAWAII.....	470,799	16,031.15	293,912	62.43	18,062.92
IDaho.....	366,862	15,263.51	216,208	58.93	18,584.26
ILLINOIS.....	4,867,743	17,600.74	3,201,410	65.77	20,617.00
INDIANA.....	2,304,353	14,765.10	1,414,632	61.39	18,273.29
IOWA.....	1,220,463	14,300.88	610,163	49.67	18,852.15
KANSAS.....	1,049,375	14,713.55	576,934	54.98	18,483.55
KENTUCKY.....	1,345,239	13,924.41	806,543	59.96	16,486.96
LOUISIANA.....	1,528,105	14,750.59	866,594	56.71	18,587.14
MAINE.....	530,634	13,192.55	301,677	56.85	15,917.77
MARYLAND.....	2,009,861	18,461.43	1,247,904	62.09	22,370.62
MASSACHUSETTS.....	2,653,158	16,360.66	1,670,139	62.95	19,420.26
MICHIGAN.....	3,834,438	16,089.18	2,338,736	60.99	20,457.46
MINNESOTA.....	2,044,271	14,320.60	1,046,086	51.17	19,166.23
MISSISSIPPI.....	905,415	14,300.70	517,032	57.10	16,346.60
MISSOURI.....	2,180,437	14,619.46	1,223,691	56.12	18,143.32
MONTANA.....	341,499	13,983.09	128,520	37.63	19,409.95
NEBRASKA.....	705,704	12,567.07	347,126	49.19	16,592.04
NEVADA.....	465,231	16,656.75	308,700	66.35	18,825.06
NEW HAMPSHIRE.....	418,775	14,904.99	247,532	59.11	18,653.86
NEW JERSEY.....	3,321,398	17,770.43	2,136,953	64.34	21,064.10
NEW MEXICO.....	538,119	15,028.49	275,217	51.14	18,401.10
NEW YORK.....	7,007,157	16,719.06	4,592,845	65.55	19,731.58
NORTH CAROLINA.....	2,657,459	13,560.47	1,675,203	63.04	16,272.13
NORTH DAKOTA.....	273,672	13,694.05	112,634	41.16	19,120.32
OHIO.....	4,660,579	16,162.00	2,907,830	64.11	19,354.30
OKLAHOMA.....	1,384,765	15,099.90	666,091	48.10	19,910.57
OREGON.....	1,212,738	15,787.53	718,674	59.26	18,962.51
PENNSYLVANIA.....	4,857,542	15,178.87	3,134,437	64.53	18,062.63
RHODE ISLAND.....	411,074	13,213.83	246,593	59.99	15,820.60
SOUTH CAROLINA.....	1,350,111	12,063.77	792,912	58.73	14,540.03
SOUTH DAKOTA.....	306,577	13,324.42	140,853	45.94	17,122.76
TENNESSEE.....	1,917,291	16,095.64	1,201,478	62.67	18,499.87
TEXAS.....	6,790,184	17,068.25	3,905,203	57.51	20,123.29
UTAH.....	625,403	14,830.72	335,463	53.64	19,147.81
VERMONT.....	232,956	12,807.08	132,438	56.85	15,662.30
VIRGINIA.....	2,610,484	16,924.21	1,590,847	61.25	20,417.09
WASHINGTON.....	1,696,329	16,319.99	896,364	52.84	20,872.24
WEST VIRGINIA.....	669,238	13,918.09	407,751	60.93	17,056.45
WISCONSIN.....	2,275,370	14,492.64	1,382,599	60.76	18,650.03
WYOMING.....	211,770	15,701.05	103,112	48.69	18,650.03

SENATE, 896 LB7 CIARY COM. IT.

EXHIBIT NO. 14

NON-DISCRIMINATION IN INSURANCE

Testimony of

Dr. Mary W. Gray

President, Women's Equity Action League
1255 I Street, N.W.
Washington, D.C. 20005
202-898-1588

Professor and Chair,
Department of Mathematics, Statistics and Computer Science
American University
Washington, D.C.

14 March 1985

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 15
DATE 031485
BILL NO. HB 366 + 507

As a policy matter, it is clear that discrimination on the basis of sex is insupportable. One should be treated as an individual, not disadvantaged as a member of a group. The only possible impediment to the implementation of a policy of non-discrimination in the area of insurance is that of practicality. What would the elimination of discrimination cost and is the benefit worth the cost?

Most of the same arguments against the elimination of discrimination as are now being made about insurance were made in the past in attempts to justify discrimination in education, in employment, in credit, and in housing. Institution of fair and equitable treatment in these areas did have a cost--those who previously held an advantage unrelated to personal merit were forced to give up their privileged position--but the benefits of equal opportunity far outweigh the cost of lost unfair privilege. The implementation of equitable treatment was sometimes complicated--to judge on the merits may take more time and effort than to make snap judgments based on sexual or racial stereotypes. But educational institutions did not crumble, banks and other creditors did not go broke; they all adjusted very well, just as insurers can and will adjust to the elimination of discrimination should legislators have the fortitude and sense of equity needed to require them to do so.

Since as a matter of public policy, discrimination cannot be justified, let us turn to practical matters. The advocates of continuing discrimination make many arguments, but here we address only some of the highlights.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 15

DATE 03/4/85

BILL NO. HB 366 + 507

The Feminization of Poverty

Older women and single women heads of household are the groups who are disproportionately represented among those living in poverty. Certainly their poverty cannot be attributed solely to discrimination in insurance, but such discrimination is a factor and the elimination of discrimination would be an economic advantage to them. Some proponents of discrimination argue that those women who are under twenty-five and heads of households will be unable to pay the higher auto insurance rates that the elimination of discrimination on the basis of sex will bring. In the first place, there are relatively few of these women and secondly, there is no reason to predict a dramatic rise in their auto insurance rates for any except careless drivers. Considering all categories of insurance, they may well be better off.

A much larger group are women in their late thirties and forties who are single heads of households containing teenagers. If they have all daughters, fine, but if they have even one son, auto insurance is suddenly prohibitively expensive--no matter how careful the young man, no matter how much a parttime job he could drive to might help the family finances, there is no way the family can afford the added cost under the present discriminatory system. It doesn't matter to the insurer that the young man might drive the car only 5% of the time; it doesn't matter that he has two sisters who drive more than he; it doesn't matter--he is foreclosed from contributing to the family income solely on the basis of his sex. His mother suffers, his sisters suffer; they are all

forced further into poverty.

In fact, in many cases discrimination in auto insurance is not really discrimination against men or in favor of women, but is discrimination against the parents of young men, including parents who are single women heads of household.

In addition to the mothers of teenage sons who will be helped by the elimination of sex discrimination in insurance, most women over 25 will benefit as well. The fact that they do not get an adequate discount for the fact that they, on the average, drive fewer miles, means they are currently paying more than their fair share for auto insurance. If sex were no longer used as a surrogate for miles driven for the under-25 group, and the real risk factors were used for everyone, the insurance of most women over 25 would certainly be cheaper.

But, one might say, at least women living on the edge of poverty have the advantage of cheaper life insurance to protect their families. Probably not. If they can afford insurance at all, it will be a small policy. The differences in rates per \$1000 on small and large policies are far larger than can be accounted for by administrative savings. Moreover, with a disability premium waiver the rates on life insurance policies for men and women differ only slightly--sometimes the women even pay more; and finally, if the woman doesn't smoke or drink (and who could on her income) she would still qualify for lower rates if sex were not used to determine rates. While there are conflicting studies, there is certainly solid evidence that if life style factors are controlled for, there is no difference

in the mortality of men and women.

Finally, if our poverty-ridden working mother is one of the minority of women who work for an employer who provides group life insurance, her life insurance is unisex anyway, showing that unisex is not only feasible for life insurance but is widely used.

As to health and disability insurance--either the woman has such insurance through an employer and it is unisex or if it is individual the rates are discriminatory on the basis of sex, and she will not be able to afford the insurance--for herself or for her family. Should medical care be needed, welfare is the only solution.

The health insurance problem is particularly acute for displaced homemakers who had been covered by their husbands' group policies. Not only are they faced by discriminatory rates, but any problems arising from earlier pregnancies or childbirth may be totally excluded from the private coverage.

The older woman who has an annuity or pension may well receive 15% or more less than a man with the same work experience, as pensions have only recently been equalized. Women's pensions are already small--when they exist at all--because women were paid less throughout their working careers; the added effect of sex discrimination in benefits may mean the difference between hamburger and cat food as a dietary staple.

A middle-aged widow living on the brink of poverty may want to invest the modest proceeds of her spouse's life insurance in an annuity to help her in her old age since with a shortened working career of her own she faces a bleak

retirement. However, for privately-bought annuities she will still in most cases face sex discriminatory rates.

It is clear that discrimination in insurance is a contributor to the feminization of poverty; its elimination will help women who are poor.

The Use of Alternative Predictors

Miles driven is the single best predictor of accident rates. While miles driven is currently used in some form or another by most insurers, the use is not very rational. For example, someone who lives thirty miles outside an urban area and commutes in will generally pay a surcharge of about 15% on a basic rate of, say \$150. The car will be on the crowded city streets all day, the traffic in which it is driven will be heavy. A worker who lives in the urban area and commutes thirty miles to the suburbs has the roads and streets virtually to herself. She pays a 15% surcharge on a basic \$600 rate. Thus the same number of miles costs the first worker \$22.50 and the second worker \$90. It is not clear that miles driven to work should be treated the same as other miles anyway, as it is the late-night, potentially tired and drunk drivers who pose the most serious threat.

Insurers frequently complain that they would be unable to verify the miles driven. However, even in states like Montana that have no yearly state inspection, once there has been an accident one can check the odometer reading to see whether the policy holder's statement on the insurance application was accurate. Also, insurance companies--relying on sex as a

surrogate for mileage--now rarely ask their policy holders whether the initial information supplied years ago is still accurate, even though they presumably base their rates on it.

The notion that rates are precisely calculated on the basis of risk factors is an illusion insurers try to project. In fact, their factors and their predictions are pretty crude. In Pennsylvania, one major company pulled out of the disability insurance business when it was revealed that there was no statistical basis for their discriminatory rates.

If a young male driver is listed for a car, auto insurers will credit an accident by any driver of that car as a "young male accident," no matter who was driving--so much for preciseness. The practice many major insurers have of giving a 10 or 15% discount on auto insurance to insurees who carry home insurance with the same company is certainly a pricing practice unrelated to risk factors; such a substantial discount cannot possibly be accounted for by administrative costs. Moreover, in life insurance most of the first year's premium and a substantial proportion of that of subsequent years goes as commission to the agent--why should the commission be bigger for a sale to a male than for a sale to a female? Certainly commissions are not a precise cost-based pricing factor.

Insurers frequently complain that using other factors is too difficult or that people will lie. That some people will lie is unfortunately true--with respect to insurance information as in other things. But they can and do lie currently, and insurers deal with it by not paying fraudulent

claims. It is not difficult to collect some of the information relevant to risks; more important, if the rates are based on real risk-related factors, there is an incentive to change driving habits, rewire a house, stop smoking, lose weight. All such actions reduce the risk involved. Currently the only incentive is for a sex change.

Insurers formerly used race but not sex for determining rates. The system worked very well for insurers; they prospered. Then about forty years ago race was eliminated as a determinant of rates; the system still worked well. Then, about thirty years ago, sex was added and from the insurers' point of view the system still worked well. But not from the point of view of women nor from the point of view of public policy. Discrimination on the basis of sex, like discrimination on the basis of race, is not "fair" discrimination.

Insurers like to say that race and sex are not the same; that is certainly true. However, when it comes to mortality, in both cases they serve as a proxy for life style. The higher mortality of blacks is related to their lower socioeconomic status, just as the higher mortality of men is related to their smoking, drinking and other life style factors. At least men can change many of these characteristics more easily than blacks as a group have been able to raise their socioeconomic status.

Probability Considerations

It is frequently said that the basic American principle of

individual treatment conflicts with the basic insurance principle of grouping for the purpose of risk assessment. Were this true one might still argue that insurance, important though it may be, should not override fundamental principles governing the American way of life. However, we are not forced to a showdown between the American way of life and the glorious institution of insurance.

There is no conflict between grouping on the basis of risk factors and individual treatment so long as the factors are not the invidious ones such as race, sex, religion, and national origin that insurers use as proxies for the real risk factors. No one quarrels with charging more to insure frame than brick houses; no one quarrels with charging careless drivers more; no one quarrels with charging the obese more for life insurance. Interestingly, however, a federal agency survey showed that in Chicago the owners of perfectly maintained buildings with a ZIP code indicating a predominantly black neighborhood were charged more for fire insurance than were the owners of a building with fire code violations in a predominantly white neighborhood.

Insurance principles conflict with civil rights principles only when insurers insist on the use of invidious classifications. Probability and individual rights can live in peaceful coexistence if appropriate risk classifications are employed.

Another probability scam is the invocation of the Law of Large Numbers as an excuse for not using the appropriate risk classifications to replace invidious discrimination. In

essence what insurers say is that the groups used in risk classifications must be large enough to make possible an accurate calculation of risk; thus, "they contend, if we use miles driven, driving record, make of car, etc.--or obesity, drinking and smoking in the case of life insurance--the homogeneous groups will be too small for an accurate prediction of the risk involved.

Insurers can't have it both ways; every time they classify by sex they split their group in half. For the largest possible pool, no classification at all would be used. In fact, a number of predictors are used, albeit not as well as they might be. If gender is used, in general each group will be half as large as it would be were gender not used. For example, if we start with a group of 100,000, classification by gender yields two groups of 50,000 each. If 50% of men and women smoke, classification by smoking alone also yields two groups of 50,000 each. Use of gender as well as sex results in four groups of 25,000 each.

But in fact it is not only the size of the group that increases the accuracy of risk prediction. It is also the homogeneity of the group; if a group of 10,000 shows little variation among the members of the group, it is better for predictive purposes than is a highly heterogeneous group of 100,000. Thus it is to the advantage of insurers to use highly accurate risk-predictors such as smoking, drinking, driving records, etc., rather than less accurate proxies such as sex.

Bottom line--is sex a good predictor of auto accidents or

life expectancy? Yes, it is, but only because it is a good predictor of driving records and of smoking and drinking habits. It is also a good predictor of success in graduate school--but we don't use it to deny admission to women.

Insurers claim they need sex for "cost-based" pricing. The fact is that they frequently have little information on the correlation between sex and risk or misuse what they have; the pricing is more "conjecture-based" than "cost-based."

It might be interesting if other industries used "costs" as an excuse for discrimination like the insurance industry does. For example, rates for air freight are based on weight; passenger rates are not. It would be "fairer" if they were. However, no one wants to add to the hassle at the airport by weighing each passenger. Since men weigh more on the average than do women, they cost more to transport. Why not just charge men more than women?

Rates Will Go Up

It has been alleged that the elimination of sex discrimination in insurance will cause everyone's rates to rise. If that happens it would be due only to the greediness of the insurers for increased profits. Rates for some may go up and for some they may do down. However, the net intake should be the same. Indeed, it is this very fact that makes the opposition of the industry to the elimination of discrimination such a mystery. The apportionment of premiums, so long as the total is the same, should be a matter of indifference to insurers--unless the insurers are committed

as policy to the principle of discrimination on the basis of sex. Or alternatively, if insurers simply oppose anyone's taking a careful look at their rate structure and exposing the allegedly "cost-based" pricing as a fraud and as a means for some insurees to subsidize others, then one could understand their reluctance to change. If with the institution of unisex rates, the premiums increase on the average more than what is accounted for by inflation or increased numbers of claims, it cannot be due to the elimination of sex discrimination; instead it must be blamed on the desire of the insurers for increased profits.

In fact, many companies currently market many kinds of insurance on a non-discriminatory basis--employment-related health, life and disability insurance, annuities and pensions; individual disability insurance for professionals; auto insurance by all companies in four states and by some companies in all states; Blue Cross health insurance. The rates are competitive, and the companies are doing well.

In Michigan, when sex discrimination in auto insurance was eliminated the rates of some drivers went up--but the rates of others went down. It turns out that the frequently repeated horror story of a young woman whose rates went up 350% can be explained by the fact that she married someone with a bad driving record, thus acquiring his rating. On the whole, there were no substantial increases to good drivers, and an extensive study has shown that the system is working well with virtually no complaints resulting from the elimination of sex discrimination.

Conclusion

To answer the questions posed at the beginning--there is little cost to eliminating discrimination in insurance and there is substantial benefit. What then can be said in favor of retaining sex discrimination in insurance? Why is this avenue of commerce different from others? The major difference is that insurance has always been regulated by the states, not by the federal government. But that is little reason for insurance to be the last bastion of discrimination. The finest tradition of states' rights is for states to lead the way in protecting the rights of their people--men and women.

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BILL NO. HB 366 + 507

NAME: Karen Zollman DATE: 3-14-85

ADDRESS: 128 Krause Ln Kalispell

PHONE: 755-4970

REPRESENTING WHOM? MT State Now

APPEARING ON WHICH PROPOSAL: 366-507 opposed

DO YOU: SUPPORT? AMEND? OPPOSE? X

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE

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DATE 031485

BILL NO. HB 366 + 507



MONTANA

PREGNANCY DISCRIMINATION IS SEX DISCRIMINATION

Testimony by Montana NOW

Senate Judiciary Committee

Montana State Legislature

14 March 1985

Pregnancy discrimination in insurance is sex discrimination.

ACTUARIAL CERTAINTY -- Excluding pregnancy-related conditions from the health insurance risk pool is sex discrimination. This would be true if women were solely responsible for reproduction, but it is no less true for the fact-- indeed the actuarial certainty--that every baby born will have one male parent. It would be sex discrimination if all pregnancy-related conditions were excluded. It is still sex discrimination if only some pregnancy-related conditions are excluded from contracts that cover other conditions more fully.

Although it has been our experience that insurers' cost figures invariably merit critical attention, it is not our purpose to question the fact that there is a price tag on human reproduction.

Every pregnancy initiated by a woman and a man involves expense, whether it culminates in abortion, miscarriage, or childbirth. For women and men not to

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initiate pregnancies costs money too--for vasectomy, tubal ligation, and a variety of other more or less permanent contraceptive measures. Moreover, treatment of reproductive organs can be expensive, with a considerable array of procedures required from time to time by either women or men.

Given the mutual involvement of women and men in the process of human reproduction, the denial to women--but not to men--of insurance coverage for medical services related to reproduction is sex discrimination.

RESPONSIBILITY -- In public education and the criminal justice system, two areas of broad public concern analogous to human reproduction, an assumption of societal responsibility mandates as public policy that costs be shared by all taxpayers, despite their disparate involvement with the services they are helping to finance. Adults of all ages are taxed to support the public schools, and women's taxes subsidize the criminal justice system, the cost of which is overwhelmingly attributable to men.

The fact that a considerable proportion of health insurance is sold by private carriers should not be allowed to obscure its quasi-public function in the economy or to override the responsibility of insurers to serve the public good. Insurers should not be permitted by state law to impose an economic penalty on women for sustaining the major physical burden of human reproduction.

VOLUNTARY PREGNANCY -- Insurers base denial of coverage on the ground that pregnancy is a "voluntary" condition. The credibility of the insurers'

"voluntary condition" excuse is tested by asking what would happen if women were to quit "volunteering" for pregnancy."

Insurance plans often reveal attempts at social engineering. Wives are eligible for maternity coverage on family plans. Women buying individual coverage are not. This differentiation implies a value judgment about who is entitled to be pregnant. Do insurers also disallow coverage for treatment of venereal disease in married men on the assumption that married men should not contract such diseases? Or that the disease was contracted voluntarily?

It should occur to legislators proposing bills to re-legalize sex discrimination that would assess women alone for maternity costs to question why women are also routinely assessed for medical costs, wholly or primarily attributable to men, such as prostate surgery, heart surgery, and repairs of sports injuries. Insurers say that treatment for alcoholism and the illnesses associated with it amount to some \$24 billion per year (exclusive of injuries), but they do not divide this expense by sex.

Comparisons could be multiplied to illustrate how sex discrimination in health insurance violates the insurance principle of pooling risks and does so at the expense of women. The point, however, is not to do sex discrimination better, but to eliminate it entirely because it is inherently abusive to women.

NAME: Patrick Butler DATE: March 14, 1985

ADDRESS: 1401 New York Ave NW, #800

PHONE: 202-347-2279

REPRESENTING WHOM? National Organization for Women

APPEARING ON WHICH PROPOSAL: HB's 366 + 507

DO YOU: SUPPORT? AMEND? OPPOSE? X

COMMENTS: See Testimony by Montana NOW
on Sex Discrimination in Auto Insurance

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

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EXHIBIT NO. 17

DATE 03/14/85

BILL NO. HB 366 + 507



MONTANA

AUTO INSURANCE: SEX-BASED PRICES OVERCHARGE WOMEN

Testimony Against Sex Discrimination

by

Montana NOW

Senate Judiciary Committee

Montana State Legislature

14 March 1985

SEX-BASED PRICES ON AUTO INSURANCE OVERCHARGE WOMEN. This fact is absolutely clear from insurance industry information used in Congressional testimony to oppose federal nondiscrimination in insurance legislation in 1981 and 1983. The attached NOW charts A, B, and C demonstrate this, as do the attached insurance industry charts D and E. Sources are documented on the charts and in the Appendix.

Chart A -- UNISEX: THREAT VS. REALITY

- This chart compares what insurers threaten to do with what they really do in changing from sex-based to unisex prices. (Price levels are shown as relative to \$1.00 for the lowest-priced insurance.)
- The upper figure (left side) show relative 1983 prices charged by three companies -- called A, B, and C in the insurance testimony -- in Billing to insure identical family cars driven by 19 year old women "occasional

operators" with identical driving records. (Insurance for young women "principal operators" is generally priced even higher.)

- Because the young driver surcharge is typically applied to a family policy and paid by parents, insurers know that threatening to raise young women's prices gives adult men an excuse to oppose unisex prices, ostensibly on behalf of daughters.
- Q. -- Why would anyone buy from company C? A. -- because companies A and B may refuse insurance without explanation to applicants who are divorced, have low incomes, have changed jobs or residences several times, are not credible witnesses, or are viewed as high risk for some other reason.
- The upper figure [right side] shows the higher prices that the insurance lobby threatens those companies would charge if sex-based prices were prohibited.
- What really happens when sex-based prices are prohibited? The lower columns show how three major companies really made the change from sex-based to unisex prices for the parents of 19 year old women drivers in DETROIT, as reported by the Michigan Insurance Bureau in a survey covering six major companies selling 80% of auto insurance in Michigan.
- Two companies lowered rates and one company, State Farm, adopted a non-competitive rate, obviously for the purpose of pricing itself out of the youth market. (Note that company E's unisex price was less than any of the 1980 sex-based prices for women.) (Of the six companies, 3 raised the

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prices for parents of 19 old women and 3 lowered them in the change from sex-based to unisex prices in Detroit.)

- Because Michigan made it illegal for a company to refuse to sell its lowest-priced insurance to any customer -- that's "take all comers" -- women could compare prices and change to another company if their prices were raised.
- Without this requirement, insurers often refuse to sell their lowest-priced brand of insurance to certain customers, such as divorced women. The customer may be referred to a subsidiary company which sells higher priced insurance under a different brand name. (For example, Dairyland is one of the high-priced subsidiaries of Sentry Insurance. In Montana, Dairyland has sent a letter (a copy is attached along with a comparison of Dairyland and Sentry prices) to women policyholders threatening that unisex insurance will make their already high prices go up.)

Chart B. -- AUTO INSURANCE IS NOT COST-BASED

- This chart breaks drivers into two age groups: the smaller group is young women and men, whose prices are based on sex. The larger group, representing 80% of the auto insurance market, is composed of men and women above age 25.
- At the top is MILEAGE -- column lengths show the relative mileage each group averages per year. Men drive more than women, and adults drive more than young drivers.

- In the middle row are accident rates. Because men drive more miles than women do at all ages, their accident rate is consequently higher than women's at all ages -- 38% higher for adult men (4.4 vs. women's 3.2, middle row), and 43% higher overall.
- The bottom row shows insurance price levels. If SEX-BASED auto insurance prices were COST-BASED, as insurers claim, prices at all ages would consistently reflect this significant difference between men's and women's average accident rates.
- Instead, women under age 25 are charged much more than adult men, although young women have a 10% lower accident rate than adult men (4.0 vs. 4.4).
- Let me repeat that: women under age 25 are charged much more than adult men, although young women have a 10% lower accident rate than adult men. You may well ask how insurers can possibly call that a break for young women.
- Women over 25 -- 80% of women drivers -- are charged the same as adult men, despite adult men's 38% higher accident rate. WOMEN ARE THUS OVERCHARGED FOR AUTO INSURANCE THROUGHOUT THEIR DRIVING LIFETIME AT AN ANNUAL COST EXCEEDING \$2 BILLION.
- The 10% discount sometimes offered to single women over age 30 does not accurately reflect the nearly 40% difference between adult men's and women's accident rates. The fact that it is offered inconsistently or not at all further indicates that it is related to selling, not cost. (State Farm does not offer this single women's discount.)

- Married women of any age are rated as adult men, although marital status is irrelevant to miles driven and thus to risk of accidents.

Chart C. -- WOMEN PAY MORE PER MILE

- This chart takes the average MILEAGE rates, ACCIDENT rates, and PRICE levels for adult men and women (above age 25) from the previous chart and puts them side by side for comparison.
- On average, women drive FEWER MILES [left columns] than men, and have FEWER ACCIDENTS [middle columns] as a result.
- But, insurers charge women the same PRICES [right columns] as men even though women as a group represent less risk and a lower cost to insure.
- This practice discriminates against all low-mileage, careful drivers -- a category in which women predominate.
- Because auto insurance is not cost-based, insurers' threats that unisex pricing will "force young working women to pay much more" are a deliberate deception which is contradicted by actual results in states using unisex prices (Hawaii, North Carolina, Massachusetts, and Michigan.)
- Sex discrimination is always used selectively, without regard to actual risk, and always to the advantage of insurers and their preferred customers.

Chart D. -- This chart is used by the Insurance Industry to show that men of

all driving ages have many more accidents than women. The National

Organization for Women agrees with this observation and questions why prices do not reflect this difference. Note that the highest vehicle death rate for teenage women is lower than the lowest death rate for men (that's at age 60).

Chart E. -- This chart is used by the Insurance Industry to show that even on a mileage basis men still have more accidents than women. NOW agrees with this observation and questions again why prices do not reflect this difference.

Mileage does, however, account for most of the difference shown by Chart D. Government statistics for 1981, 1982, and 1983, cited by insurers in Congressional testimony, show that men's accident rates on a mileage basis were 4% to 9% higher than women's for those years. This sort of differential is what would be expected from data cited by a Q & A booklet (December, 1984) in support of sex discrimination by major insurance trade associations: "Overall, male drivers have 6 times as many major convictions as female drivers." (Answer 5.) Men's 5 to 1 greater alcohol rate alone would be a significant contributor to this difference.

NOW first called attention to the discrepancy between accident rates and auto insurance prices in its advertisement WILL THE ERA BE SACRIFICED FOR THE INSURANCE NUMBERS GAME? published June 3, 1982 in the New York Times, Wall Street Journal, and Los Angeles Times. The ad stated "The insurance companies are therefore overcharging low-mileage, sober, careful drivers of all ages, men as well as women, by more than 30%. This means a yearly overcharge of at least \$60 on a \$200 premium, or more than \$240 on an \$800 premium."

Concluding statement. The only productive result of the auto insurers' obstinate defense of sex discrimination is one that the insurers obviously never intended -- an increased consumer sophistication that will have a long term impact on the way auto insurance is sold. The insurers' refusal to comply with the mandate of the Montana Equal Rights Amendment and the barrage of threats and misinformation that they are imposing on the public is forcing an analysis of their methods which reveals serious consumer abuse. Stripped of the false claim to statistical relevance, the welter of rating factors is shown to be a price and availability shell game in which only the most favored customers are winners -- and few women are included in this select group. By eliminating the sex-based double standard, the Montana unisex insurance law promises real benefits to consumers. That will be a genuine break for women.

APPENDIX. Background Information.

Chart A. -- Unisex: Threat vs. Reality

Billings prices are from 1983 Congressional testimony against S.372/HR.100, the Nondiscrimination In Insurance Act, by T. Lawrence Jones, President of the American Insurance Association, before the Senate Commerce Committee and the House Energy and Commerce Committee (House Committee Report page 357). Detroit prices are from the Michigan Insurance Bureau's Study: A YEAR OF CHANGE: The Essential Insurance Act in 1981, which compared the prices at the end of 1980 based on sex and marital status for young drivers with the prices for the same drivers in 1981 when basing rates on sex and marital status became illegal. The prices of the six major companies that insure over 80% of the private cars in Michigan were surveyed. The changes for the three companies shown are typical. Of the six companies studied, 3 lowered prices, and 3 raised them for the families of women "occasional operators" age 19. (The new law's restrictions on territorial differentials -- "red-lining" -- led some companies to make changes in territorial base prices that contributed to the price changes between 1980 and 1981.)

The Essential Insurance Act made it easy for Michigan automobile owners to change insurance companies to get the lowest-priced price for their category (for example: automobile type and use, ages of drivers) because of two very important provisions of the Act: one is that insurance companies must sell insurance to all licensed drivers with good driving records (fewer than 7 "eligibility points" assigned for traffic violations and at-fault accidents), and the other provision is that agents must offer customers insurance from the lowest-priced insurance for a customer's category from among the companies they represent.

Chart B. -- Auto Rates Not Cost-based

Mileage and accident rates are from Congressional testimony by the Alliance of American Insurers (1983) in the same hearings cited above (House Committee report pages 311 and 313.)

Insurance price levels are from the Insurance Services Office's, rating manual "Personal Auto Manual," 1980. ISO is an industry association for comparing data that affects insurance prices.

The National Organization for Women was the first to call attention to the discrepancy between accident rates and insurance company prices for auto insurance when it published the advertisement "WILL THE ERA BE SACRIFICED FOR THE INSURANCE NUMBERS GAME?" June 3, 1982 in the New York Times, Wall Street Journal (midwest edition), and Los Angeles Times. The ad quotes 1981 industry Congressional testimony (by the Alliance of American Insurers) in support of keeping sex discrimination legal that overall "males drivers have 1.43 times as many reported accidents as females." The NOW advertisement concluded about this large difference in accident rates between men and women of all ages that "sex does not determine low accident frequency. It is rather that the true causal factors, such as low mileage, obedience to traffic laws, sobriety, are more typical of women than men....The insurance companies are therefore overcharging low-mileage, sober, careful drivers of all ages, men as well as women, by more than 30%. This means a yearly overcharge of at least \$60 on a \$200 premium, or more than \$240 on an \$800 premium," chiefly for women.

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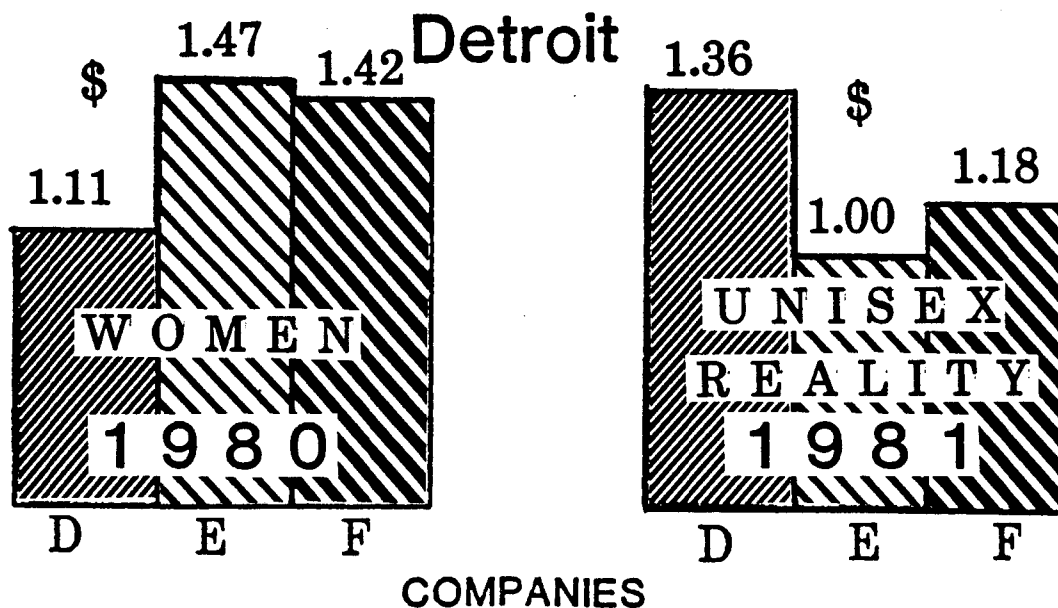
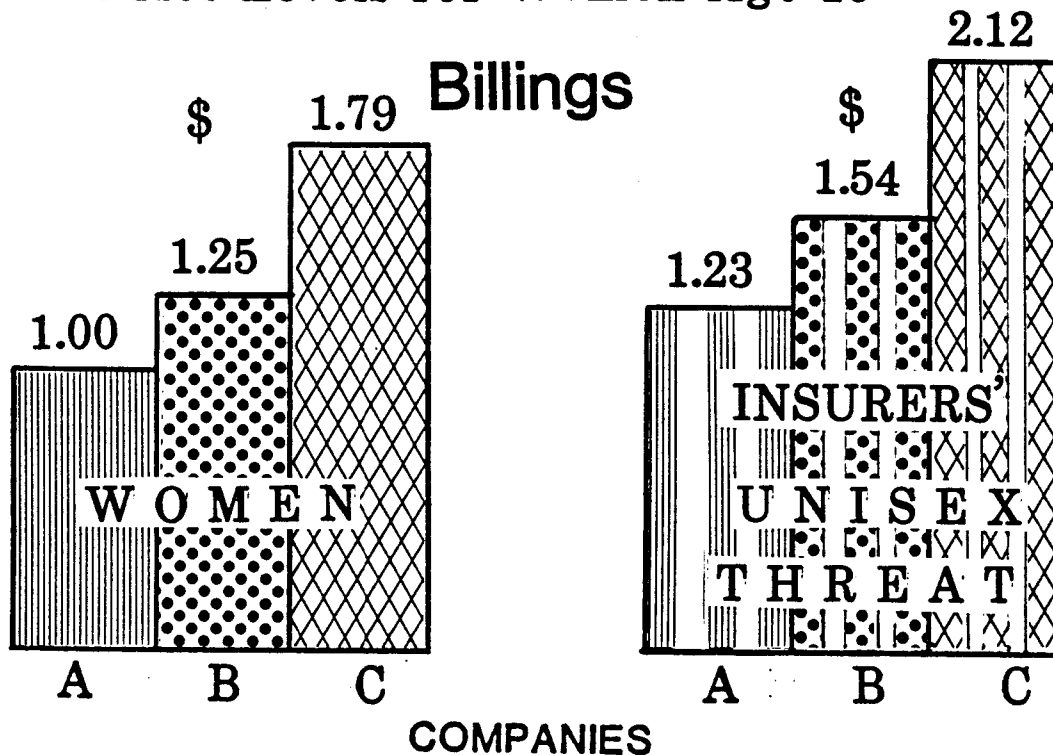
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BILL NO. HB 3664507

UNISEX: THREAT VS. REALITY

Price Levels for Women Age 19



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DATE 03/4/85
BILL NO. #83664507



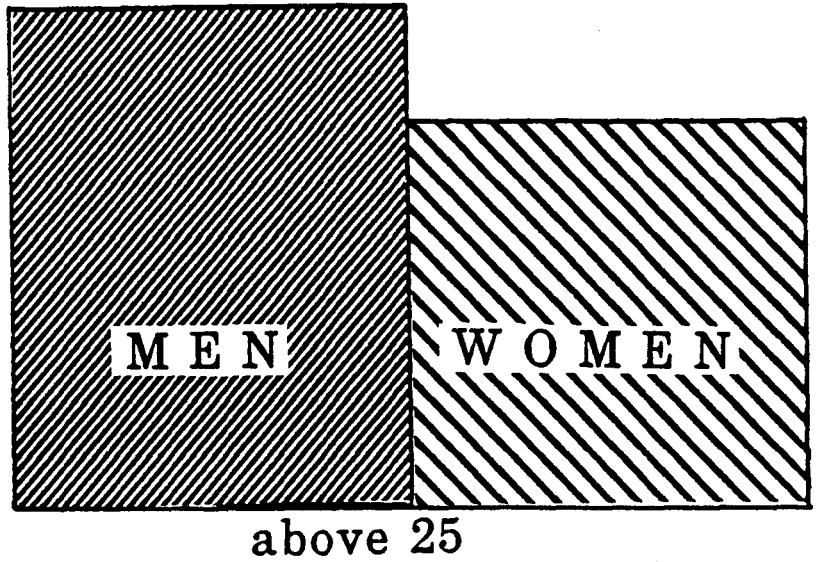
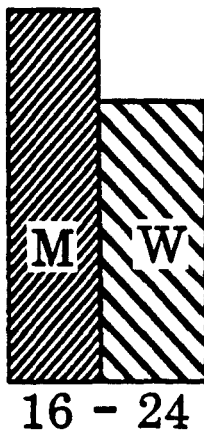
SOURCES BILLINGS: Amer. Insurance Assn, Cong. Test. 1983

DETROIT: Mich. State Insurance Bureau study "1981 - A YEAR OF CHANGE"

CHART A

AUTO INSURANCE NOT COST-BASED

MILEAGE

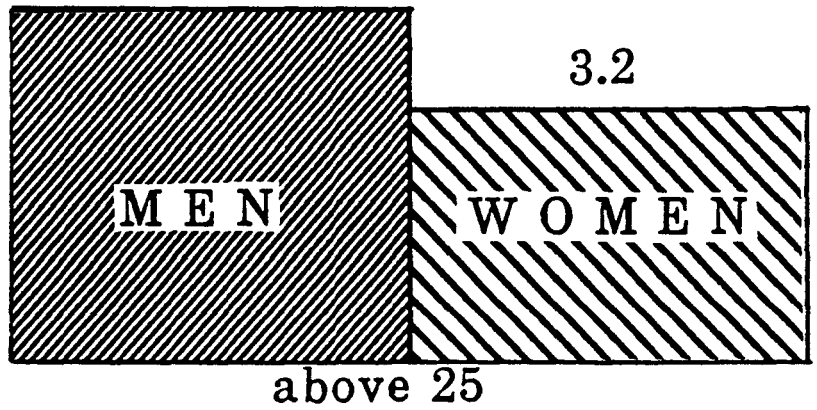


6.2

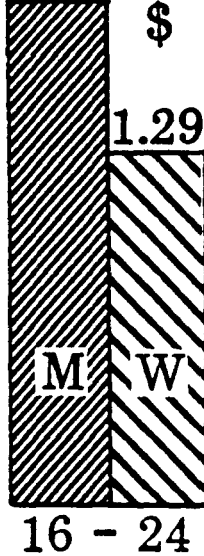


ACCIDENTS PER 100 DRIVERS

4.4



1.84

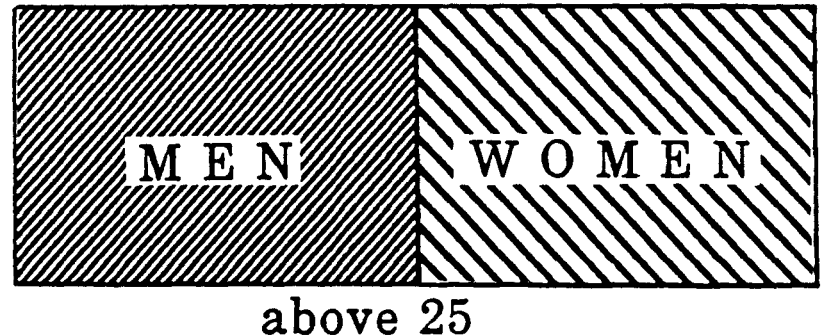


INSURANCE PRICE LEVELS

1.00

\$

1.00



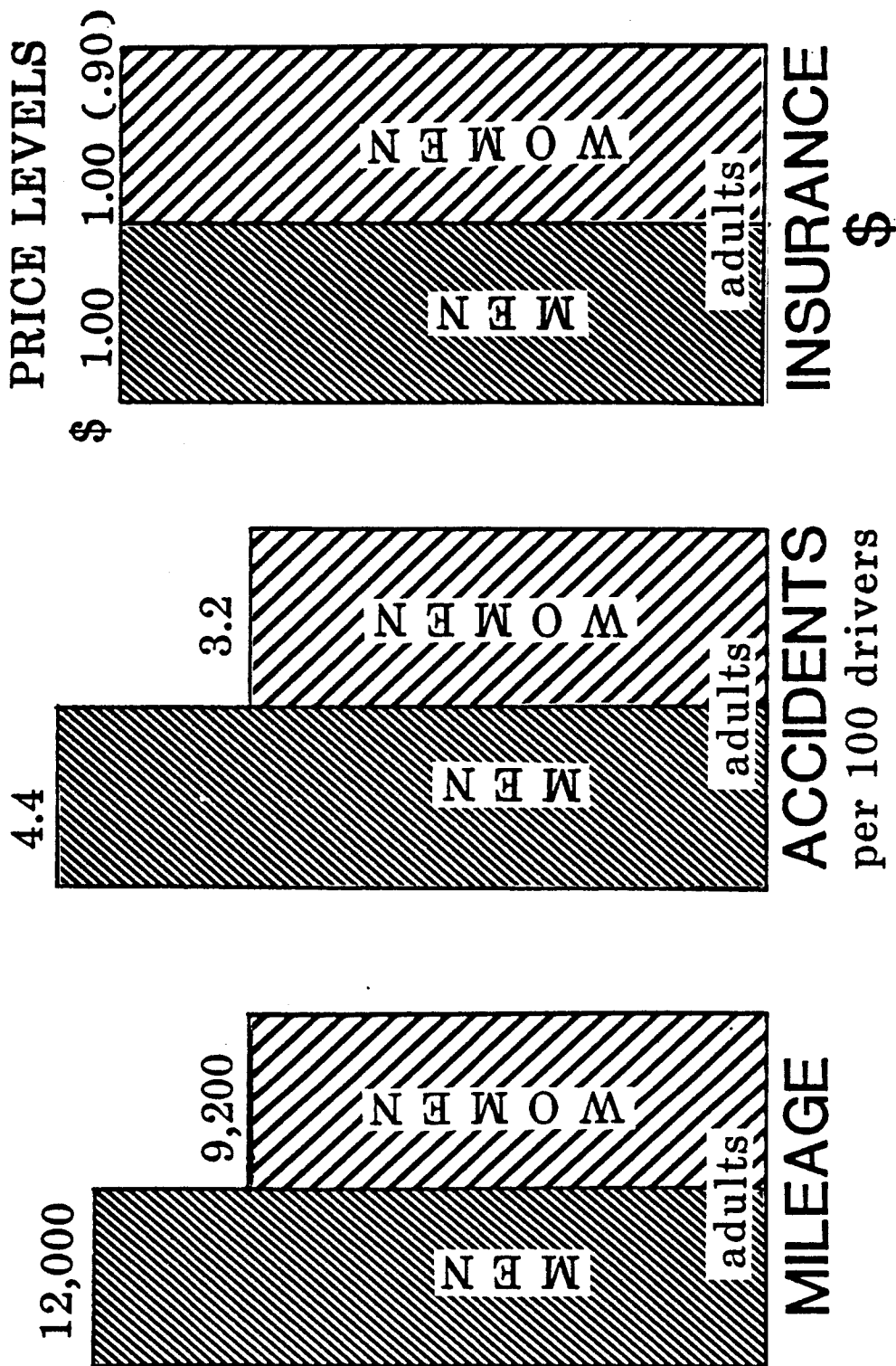
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SOURCES see accompanying diagram

CHART B



WOMEN PAY MORE PER MILE



SOURCES: MILEAGE and ACCIDENTS Alliance of Amer. Insurers, Cong. Test 1983
 PRICE The insurance industry's Insurance Services Office, Personal Auto Manual, 1980

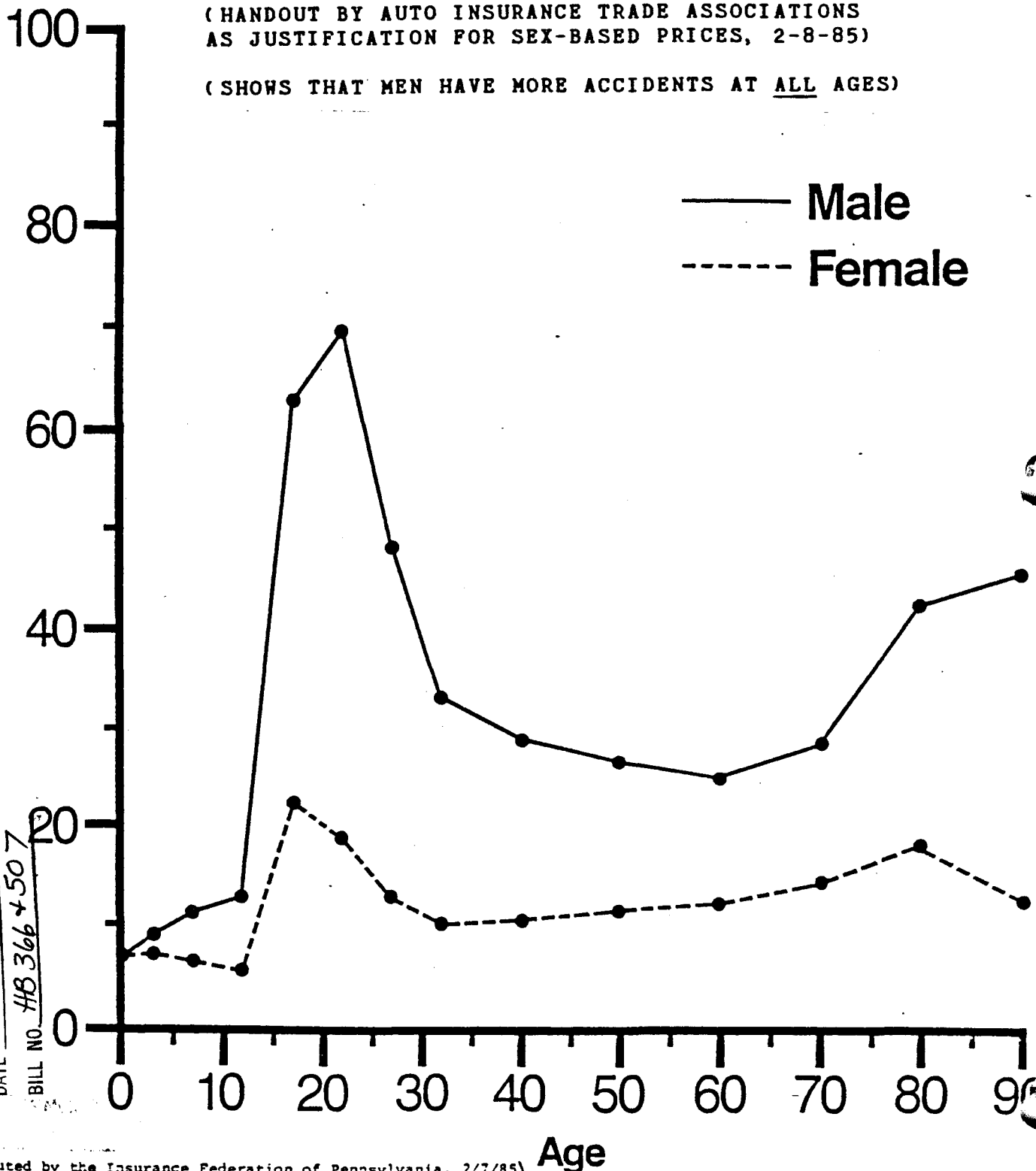
CHART C

SENATE JUDICIARY COMMITTEE
 EXHIBIT NO. 17
 DATE 03/14/85
 BILL NO. 4B 366 + 507

Deaths per 100,000 Population from Motor Vehicle Traffic Crashes by Age and Sex, 1977-79

(HANDOUT BY AUTO INSURANCE TRADE ASSOCIATIONS AS JUSTIFICATION FOR SEX-BASED PRICES, 2-8-85)

(SHOWS THAT MEN HAVE MORE ACCIDENTS AT ALL AGES)



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Distributed by the Insurance Federation of Pennsylvania, 2/7/85)
Reproduced by the NOW Insurance and Pension Project.

Source: *The Injury Fact Book*, Lexington Books, March 1984

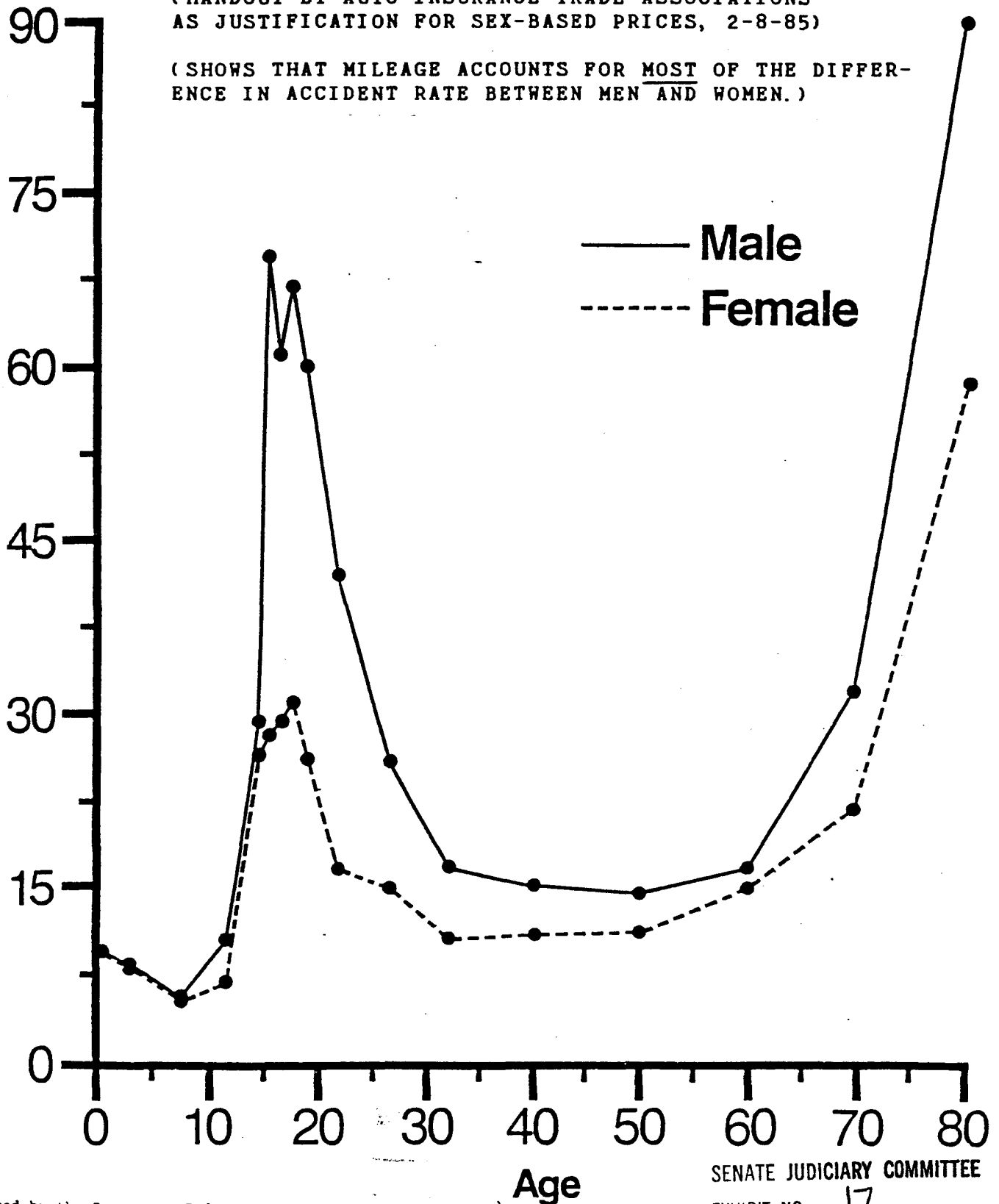
CHART D

Death Rate per Billion Miles Traveled by Age and Sex, 1979-81

Deaths

(HANDOUT BY AUTO INSURANCE TRADE ASSOCIATIONS
AS JUSTIFICATION FOR SEX-BASED PRICES, 2-8-85)

(SHOWS THAT MILEAGE ACCOUNTS FOR MOST OF THE DIFFERENCE
IN ACCIDENT RATE BETWEEN MEN AND WOMEN.)



Distributed by the Insurance Federation of Pennsylvania, 2/7/85)
Reproduced by the NOW Insurance and Pension Project.

Source: *The Injury Fact Book*, Lexington Books, March 1984

CHART E

SENATE JUDICIARY COMMITTEE

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BILL NO. HB 366 + 507



Dairyland®

A Member of the Sentry Family of Insurance Companies

Dairyland Insurance Company

421 Broadway
Box 9303
Denver, CO 80209
303 744-1831

January, 1985

Dear Montana Policyholder:

House Bill 358 was enacted into law last year. This proposal takes effect October 1, 1985, and is expected to dramatically increase the cost of automobile insurance for many Montana women. We are concerned about the effect this measure will have on you and the premiums you pay.

House Bill 358 provides that it is "unlawful to discriminate solely on the basis of sex or marital status in the issuance or operation of any type of insurance policy, plan, or coverage." This company agrees that all forms of **unfair** discrimination should be prohibited. However, the use of sex as a distinction in insurance is **not** unfair discrimination. To the contrary, these distinctions are based on sound statistics upon which fair rates can be developed. Sex has proven to be a highly relevant characteristic in auto rates and individual life insurance and annuities.

Eliminating the use of sex as a classification significantly alters the amount of premium paid by men and women for all kinds of insurance. This action would not advance the cause of women's rights or civil rights, as proponents claim. In fact, sex "discrimination" in automobile insurance is an area where such distinction actually benefits the group whose rights are supposedly violated.

In particular, policyholders who carry coverage for female drivers between the ages of 16 and 25 will be affected. Among young single drivers, there is a significant statistical difference. Young women have far fewer, and less serious, accidents than young men. Because young women drivers will be forced to pay a greater portion of the losses caused by young men under the new law, **automobile insurance premiums for women in this category will be increased substantially.** For instance, a 23-year-old Helena driver could see average premium jumps of \$140 to \$228. In Billings, the average increase could range from \$157 to \$288.

Dairyland Insurance Company will be working in Helena this year to alert legislators to the disastrous economic impact of unisex insurance on budgets of young female drivers — many of whom are single heads of households unable to afford the higher premiums this law mandates. **Your legislators need to hear from you**, their constituents, if we are to be successful in striking this unfair law from Montana's book of statutes.

With this in mind, we hope that if you agree with us on unisex, you will make an effort to call or write your state representative and senator to inform them of your concerns. As a constituent, your views can be very influential in determining how legislators vote. Please take a moment today to express your opinion. A list of legislators and districts is shown on the reverse side of this letter for your convenience.

Thank you very much.

Sincerely,

Henry J. Lang

Henry J. Lang
Resident Vice President

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 17

DATE 031485

BILL NO. HB 366 + 507

Table 1: AUTOMOBILE INSURANCE RATES

(Lowest rates are in **bold** type. See description of sample drivers and coverages on page 11. Footnotes start on page 17. Name listed on left is the name of a group's or company's "preferred" company or program unless otherwise noted.)

DRIVERS:	LOW OPTION POLICY						DATES RATES BECAME EFFECTIVE
	Unmarried A Women, 31	B	Unmarried C Men, 23	Married D Men, 38	E	Unmarried F Women, 63	
MARYLAND—MONTGOMERY COUNTY							
Aetna Casualty (Auto-Rite 1) ²	352	552	548	376	844	398	3/81
Allstate Ins. Co.	349	667	647	395	559	295 ¹¹	12/7/81
Amica Mutual ^{3,4}	350	583	505	336	580	302	1/1/82
Colonial Penn ¹²							2/5/82
Continental ⁵		451	918	402	515		"
Criterion ⁶	634	912	769	541	900	573	6/9/82
Dairyland ^{6,12,13,14}	1040	1760	1012	956	1184	956	8/10/80
Erie Ins. Exch. (Pioneer Family Policy) ¹¹	279	438	603	230	257	231	5/1/81
Federal Kemper	433	896	650	487	642	349	6/1/82
Fireman's Fund (Economy Plus) ¹²	328	528	476	322	504	280	11/15/80
GEICO	395	594	519	366	598	320 ¹	1/4/82
Harleysville Mutual ¹	342	589	503	331	588	284	1/1/82
Hartford ¹	304	468	620	333	635	257	6/15/80
Home Ins. Co. (Gold Key Auto Policy)	271	502	373	264	449	239	5/15/81
Horace Mann	368	495	577	341	468	318	10/20/81
Ins. Co. of N.A. (INA) (Family Policy) ²⁰	302	459	512	312	554	256	7/27/81
Liberty Mutual ²	394	592	573	349	613	356	12/81
Lumbermen's Mutual	422	512	608	414	600	440	12/1/80
MAIF ²¹	937	1708	1023	924	1209	887	7/1/81
Maryland Casualty Co. ⁴	388	642	588	464	734	372	2/15/82
Nationwide Mutual Ins. Co.	413	603	731	377	745	383	4/1/80
Prudential Property & Casualty Ins. Co.	432	640	740	432	820	412 ¹¹	11/81
Royal Insurance (PAP Policy)	328	459	475	311	660	324	4/15/81
SAFECO	395	610	560	310	504	337	8/8/81
Sentry (Plain Talk Auto Policy) ^{2,15}	386	533	689	311	484	332	6/81
State Farm Mutual Auto. Ins. Co.	362	513	591	332	521 ¹⁷	319	1/1/82
Travelers (Phoenix)	360	476	540	312	522	302	3/10/82
United Services Auto. Assoc. (USAA) ¹⁸	325	475	445	316	543	284	10/8/81
U.S. Fidelity & Guaranty (USF&G) ^{2,26}	282	474	"	297	541	294	8/28/81
Wausau Underwriters Ins. Co.	372	652	676	340	584	314	3/1/81

Dairyland is Sentry Insurance's high-priced brand. Note that for driver A, an "unmarried female, age 31," Dairyland's \$1040 is 2.7 times more than Sentry's \$386. Both prices are for "No traffic violations or accidents during past 3 years." (Driver C is an "unmarried male, age 23" with the same clean record. Has an older car.)

From the Consumers' Checkbook Buyers' Guide, Washington DC 1982
Reproduced courtesy of Insurance Project, National Organization for Women

→ Note also: The two categories of unmarried women A and F are charged more by Sentry than married men. NOW.

WILL THE ERA BE SACRIFICED FOR THE INSURANCE NUMBERS GAME?

Insurance companies use sex discrimination to make profits. They overcharge women on premiums and shortchange them on benefits. Tens to hundreds of dollars, multiplied by millions of customers, repeated year after year.

The Equal Rights Amendment would change all that.

That's why insurance companies may feel they have a vested interest in fighting to defeat the ERA. That's why they have been working hard to block other attempts to prohibit sex discrimination that would affect insurance. Over the past six years, strong ERA campaigns have been meeting unexpected resistance in key state legislatures. At the same time, consumer-backed campaigns to prohibit sex discrimination in insurance rates were being quietly sabotaged by insurance lobbyists in some of those state legislatures.

Why Should the Healthier Sex Pay More for Health Insurance?

The fact is they shouldn't.

According to the industry's own 1980-81 *Source Book of Health Insurance*, women have shorter hospital stays than men. And women lose fewer working days than men, even counting childbirth.¹

But, in spite of these facts, insurance companies charge women up to twice as much as men for medical insurance (frequently excluding even pregnancy benefits) and up to twice as much for disability coverage.²

How Can One Woman Have Two Lifespans?

In life, annuity and pension insurance plans, they give women one lifespan for premium purposes and another, different, lifespan for paying out benefits. The result is that women "save" 10% to 20% on life premiums³ (although according to the industry's own figures, the savings should be closer to 40%).⁴ However, they get shortchanged significantly on retirement benefits they need to live on.⁵

The folklore that says women outlive men is precisely that—folklore. The truth is, 85% of all women live no longer than 85% of all men.⁶ Smoking, overweight, drinking, recklessness, and other factors all affect a person's lifespan much more than his or her sex does. Besides, these are factors over which people have some control, and which they could change in order to get better rates. Sex is not. Yet, sex is one factor that insurance companies use almost invariably in setting rates.

Do Women Really Get a Break on Auto Insurance?

Insurance company lobbyists and lawyers are fighting state efforts to prohibit sex discrimination in auto insurance rates. They claim the change would force female drivers to pay higher premiums. (Opponents of the ERA also use this argument.)

This claim is false.

¹National Center for Health Statistics, U.S. Department of Health, Education and Welfare, *Days Lost from Work Due to Job Injury*, 1971-1972.

²*Right Time Saver for Health Insurance: Price Games*, Ed. The National Underwriter Company, Cincinnati; *Health State Farm Mutual*, Bloomington; *United Hospital Surgical Policy Plan*, at age 32-34 premiums for males are \$256.50 for females \$552.50 excluding pregnancy and childbirth; p. 122. *Disability*, Allstate Life, Northbrook; *Illinois Dividends Income Policy*, Class 4, at age 35 premiums for males are \$255.50 for females \$575.40 excluding pregnancy childbirth miscarriage abortion (but including non-elective Caesarian section); p. 5.

³E.g., from data in Richard V. Minck, Executive Vice President, American Council of Life Insurance, letter to Senator Howard K. Metzenbaum submitted at the hearing on U.S. House of Representatives bill H.R. 100, *Non-discrimination in Insurance Act*, May 20, 1981, at 121.

⁴1982, *The National Organization for Women*.

An examination of the insurance companies' rate-setting practices shows how unjust their policy of discrimination really is, to women as well as to men.

The present discount for female drivers in relation to male drivers is 35% for teenagers, declining to 0% at age 25 or 30. But sex does not determine low accident frequency. It is rather that the true causal factors, such as low mileage, obedience to traffic laws, sobriety, are more typical of women than men. Consequently, Highway department figures show an average 30% difference in accident rates between males and females of all ages.⁷

The insurance companies are therefore overcharging low-mileage, sober, careful drivers of all ages, men as well as women, by more than 30%. This means a yearly overcharge of at least \$60 on a \$200 premium, or more than \$240 on an \$800 premium.

In a recent Pennsylvania case challenging sex-based auto insurance rates, the company based its rates on statistics that did not even count accidents according to the sex of the driver.⁸ Instead, accidents were classified "male" or "female" depending on the sex of the person listed in the policy as "principal operator"—regardless of who was driving when the accident occurred. The result? The court, with reference to the state's Equal Rights Amendment, struck down the sex-based rate structure.

The Equal Rights Amendment Will Provide a National Ban on Sex Discrimination.

Insurance is virtually the only interstate industry that is left to the fifty states to regulate. Insurance regulation is in the hands of the state legislators and is enforced by underbudgeted state insurance departments, which are no match for the insurance companies with their corps of lobbyists. (Like lobbyists from the Farm Bureau, which says it opposes the ERA on philosophical grounds, but

also happens to own 55 insurance companies.) Insurance lobbyists are there when the public isn't—helping legislators revise state regulatory codes and explaining to them how any effective ban on sex discrimination would disadvantage the insurance industry.

Insurance companies will continue to discriminate against women until there is a national standard to prevent sex discrimination in every state. The Equal Rights Amendment establishes just such a national standard. It's an essential tool that no state legislature, no lobbyist, no special interest, no multi-million dollar corporation can take away from women.

If the ERA Loses, We'll All Lose More Than Money

Without a ban on sex discrimination, women lose significantly every year in excess premiums and reduced benefits. But, insurance is just part of the problem. Sex discrimination also means fewer job opportunities for women, less pay, less security in the retirement years, less equitable marital property settlements, even less justice in cases of rape, battering and sexual harassment. In short, if women are denied the Equal Rights Amendment, they are denied full human rights under the law.

The insurance industry, in order to protect its own self-interest, its convenience, and its profits, is actively working to preserve sex discrimination, despite its real and tragic cost to women. While the game may seem to advantage one sex or the other, in the end the house always wins.

Now's the time to stop the vested interests from blocking the ERA. Contribute your time, your money, your voice, in the few short weeks remaining. Tell the insurance industry how you feel about your right to legal equality. Write to the following insurance companies and your own:

Aetna Life and Casualty 151 Farmington Avenue Hartford, CT 06156 (203) 273-0123	Metropolitan Life Insurance Co. One Madison Avenue New York, NY 10010 (212) 578-2211
Allstate Insurance Company Allstate Plaza Northbrook, IL 60062 (312) 291-5000	Mutual of Omaha Mutual of Omaha Plaza Omaha, NE 68175 (402) 342-7600
American Farm Bureau 225 West Touhy Avenue Park Ridge, IL 60068 (312) 399-5700	State Farm Insurance 1 State Farm Plaza Bloomington, IL 61701 (309) 862-2311

I agree. Sex discrimination must stop.

Equal Rights Amendment

(complete text)

Section 1.

Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex.

Section 2.

The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

Section 3.

This amendment shall take effect two years after the date of ratification.

I want to add my support to the Equal Rights Amendment drive.

I'm enclosing my contribution in the amount of:

☐ \$25 ☐ \$50 ☐ \$100 ☐ Other _____

NAME _____

ADDRESS _____

CITY _____ STATE _____ ZIP _____

Please make checks payable to NOW ERA Countdown Campaign. Return along with this form to NOW ERA Countdown Campaign, P.O. Box 7813, Washington, D.C. 20044

⁴ Among individuals insured in the standard class for individual life insurance overall female mortality has consistently been very close to 60 percent of the male mortality. Barbara Laufenberger, Senior Vice President of the Phoenix Mutual Life Insurance Company, Statement submitted on behalf of the American Council of Life Insurance and the Health Insurance Association of America at the hearing on H.R. 100, May 20, 1981, at 97.

⁵ The court in the 1977 Indiana case *Reilly v. Robertson* noted that the reduced monthly benefit for retired females condemned them to less comfortable economic circumstances than retired males of similar age, years of service, and contributions to the fund, simply because they were females. Linda H. Kistler and Richard C. Healy, *Sex Discrimination in Pension Plans Since Marhart*, Labor Law Journal, April 1981, p. 231.

⁶ U.S. Representative John R. Dingell, Statement on H.R. 100, *Non-discrimination in Insurance Act*, hearing before the Subcommittee on Commerce, Transportation and Tourism, May 20, 1981, at 27.

⁷ A 1979 study of California driving performance by the California Department of Insurance shows that male drivers have 1.43 times as many reported accidents as females. Andre Masonnier, Vice President of the Alliance of American Insurers, Statement submitted at the hearing on H.R. 100, *Non-discrimination in Insurance Act*, May 20, 1981, at 202.

⁸ Commonwealth Court of Pennsylvania, Opinion, *Hartford Accident & Indemnity Co. v. Petitioner's Insurance Commissioner of Commonwealth of Pennsylvania*, Respondent, No. 1114 C.D. 1980.

NAME: Jan Siemers DATE: 03-14-85

ADDRESS: 4142 Country Gardens, Billings MT 59105

PHONE: 373-6466

REPRESENTING WHOM? Montana NOW

APPEARING ON WHICH PROPOSAL: 366-507 opposed

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? ☒ _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

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BUFILE NO HB 366 + 507



MONTANA

TESTIMONY ON SEX DISCRIMINATION IN LIFE INSURANCE

Testimony by Montana NOW

Senate Judiciary Committee

Montana State Legislature

14 March 1985

Insurers claim that women get "breaks" on life insurance. This insurance "fact" is used to help justify underpaying women in annuities and pensions, and overcharging women for health insurance. Insurers call this "fair sex discrimination."

But this life insurance "fact" does not square with insurance company price lists and sales illustrations that show:

- Women are charged higher unit prices for life insurance than men are.

According to insurers' testimony, it came about in the following way. In search of new markets in the 1950s and recognizing that women buy smaller policies, insurers did two things. They quietly raised the prices of the smaller policies women would buy, and they adopted as a sales gimmick the token "female discount." Women may be paying as much as \$500 million more for life insurance annually than they would if they were charged the average unit insurance rates men pay. The Figure below shows the unit prices age 35 women and men would pay for 10 years for the average

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F

policy size for all policies purchased in 1981: women \$17,000, men \$38,000. Women's average unit price, \$4.66, for this Allstate policy exceeds men's average \$3.94 by 18% despite the lower cost to insure women.

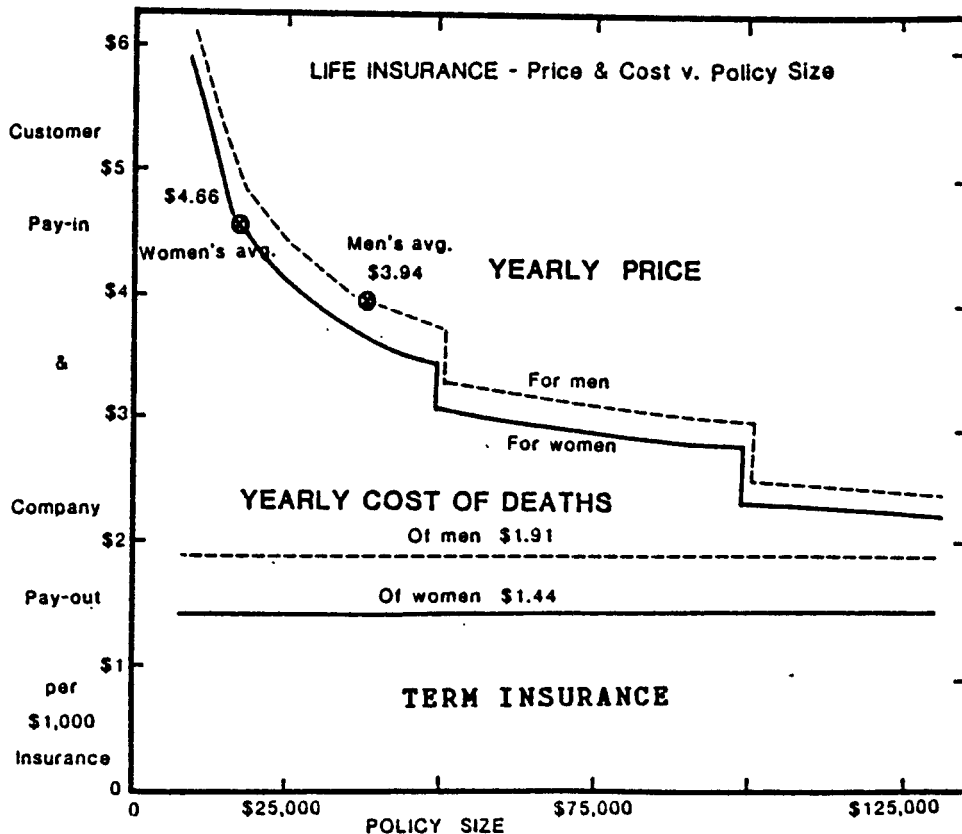


Figure Typically strong variation of prices with policy size for life insurance. Yearly prices for a 10 year term policy, ages 35-44. The mortality costs derive directly from mortality tables that at age 40 show 1.44 deaths per 1,000 women and 1.91 deaths per 1,000 men. The prices per \$1,000 insurance change rapidly with policy size at the smaller policy amounts owing to the fixed \$30 yearly "policy fee," which produces the steep price curve. The steps in the prices reflect discount "bands": 15% over \$50,000 and 30% over \$100,000.

- Insurers offer women a false discount on men's prices. Major insurers (Prudential, Metropolitan, New York Life, for example) are selling what are represented as men's Whole Life policies at a "discount" to women, but women get less than men do -- they get a discounted policy with lower dividends and less cash value accumulation. It must be understood that a

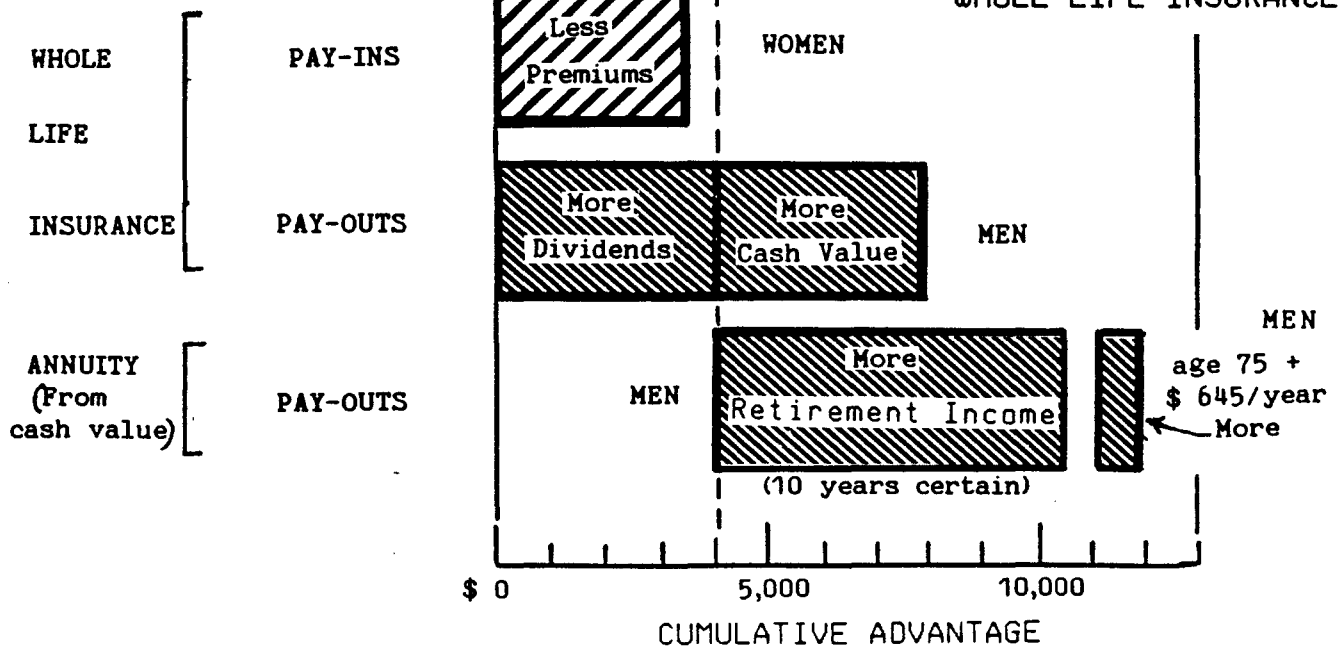
genuine discount buys the identical good or service sold to others at the full price -- not something else. (It is not really a discount on a Cadillac if what you get is a Ford.) Some insurers, in fact, do sell at a lower price to women contracts that are otherwise identical to men's -- until the cash value is converted to an annuity, at which time a woman's dollar buys a lower monthly retirement income than a man's.

- For example, the attached Metropolitan Life sales printouts (produced for NOW in 1983) for a \$100,000 Whole Life policy taken out at age 25 and converted into an annuity at age 65 shows these results:

<u>Ages 25 - 64</u> 40 years	<u>Women</u>	<u>Men</u>	<u>Difference</u>	<u>Advantage</u>
Total pay-ins (premiums)	\$ 32,440	\$ 35,960	\$ 3,520	Women
Total refunds (dividends)	38,119	42,185	4,066	Men
Guaranteed cash value at 65	50,600	54,500	3,900	Men
<u>Age 65 +</u>				
Guaranteed retirement income from cash value, monthly	286.90	340.63	645/year	Men

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ADVANTAGES COMPARED



NOTE that for the life insurance alone, men's advantage is \$4446 (= 4,066 + 3,900 - 3,520). The Insurance Commissioners' official 5% 20-year cost index (to take account of the time value of money) for just the life insurance part of this policy is 2% higher for women despite their lower cost to insure. As beneficiaries of the industry's highly touted "women's discount," women thus pay less, but get much less.

- Whole life is not a rarely-sold kind of insurance. The Blue Q & A booklet prepared by insurance trade associations in defense of sex discrimination states: "The typical individual life policy is the whole life policy (about 75% of all individual policies are whole life), which costs less for women." (Answer to Q. 2.) This statement perpetuates the deception of the false discount in life insurance and emphasizes the extent of its effect.
- Nationwide, the cash values of women's Whole Life policies are \$2 billion less than "identical" policies sold to men. New York Life alone owes \$100 million in reduced cash values to 1.3 million women whole life policy holders, according to the company's own lobbying memorandum circulated in Congress in 1983. Insurers are covering up this scandal by superimposing a mythical cost for "equalizing" men's already more valuable contracts onto the real cost of equalizing women's cash values. Understandably, insurers are reluctant to admit that the women's discount is largely a fraud, and that it is actually women's contracts whose value must be raised to make them equal with men's. The insurers' dilemma is not impairment of contract, as they claim, but impairment of integrity.

When the Norris decision made it inescapably clear that individual life insurance sold through employee payroll deduction could not discriminate by sex, insurers promptly raised the lower cash values on the existing whole life policies women employees were paying for to the levels of men's policies. The current Montana law is defective in not correcting the fraudulently reduced dividends and cash values on women's existing contracts. Under the guise of being a benefit to women, this exemption

actually saves insurers money, covers up the fraud, and perpetuates sex discrimination in life insurance against Montana women.

- Although it appears that women are charged a lower rate than men for whole life insurance, the fact that women commonly get lower dividend refunds and smaller cash value buildup on policies sold as identical to men's means that the insurance can actually cost women 10% to 15% more than men according to the Interest Adjusted Surrender Cost Index, designed to account for the time value of pay-ins and payouts, and approved by Insurance Commissioners for comparison among companies.

Examples can be added, but these are typical and indicate the fraudulence of the insurance myth that women get "breaks" on life insurance under state laws encouraging "fair sex discrimination." This legally sanctioned fraud is taking money from women's savings, and it illustrates the fact that civil rights abuses are invariably measurable in terms of economic harm to the victims.

The practices which we have described confirm what the equal rights provision of the Montana state constitution assumes -- that there is no such thing as "fair sex discrimination." That is the principle at the heart of all nondiscrimination law and the Equal Rights Amendment as well. We oppose the proposed bills to repeal or amend the Montana unisex insurance law because they affirmatively violate this fundamental principle by re-legalizing sex discrimination in insurance. The state government has done what is right and the legislature must not be pressured to undo it on behalf of insurers acting against the best interests of the people.

PREPARED FOR MS NOW

PLAN: WHOLE LIFE

BY A. SAMPLE
SUMMARY ILLUSTRATION OF POLICY DATA

CLASSIFICATION: NONSMOKER

AGE: 25-FEMALE

AMOUNT OF

INSURANCE: \$100,000

ANNUAL PREMIUM YEARS PAYABLE

\$811.00

LIFETIME

BASIC POLICY

CLASSIFICATION: NONSMOKER

AGE: 25-MALE

AMOUNT OF

INSURANCE: \$100,000

ANNUAL PREMIUM YEARS PAYABLE

\$899.00

LIFETIME

BASIC POLICY

SUMMARY FOR PERIOD SHOWN

AT AGE 62

SUMMARY FOR PERIOD SHOWN

AT AGE 62

AT AGE 65

TOTAL ANNUAL PREMIUMS
TOTAL ANNUAL DIVIDENDS\$30,007
31,190\$32,448
38,115\$33,263
34,522\$35,280
42,178ADDITIONAL INSURANCE BOUGHT BY ANNUAL DIVIDENDS
ILLUSTRATIVE DEATH BENEFIT WITH ANY TERMINAL DIVIDEND107,160
210,568107,609
211,109128,496
231,995ILLUSTRATIVE PAID-UP INSURANCE AVAILABLE - SEE PAGE 2
PAID-UP IN 23 YEARS FOR \$100,000

189,268

190,509

214,296

GUARANTEED CASH VALUE OF BASIC INSURANCE
CASH VALUE OF ADDITIONAL INSURANCE45,600
59,54049,400
64,12554,500
81,711

TERMINAL DIVIDEND

3,500

3,500

3,500

3,500

3,500

ILLUSTRATIVE CASH VALUE

108,540

117,025

117,025

139,711

GUARANTEED MONTHLY LIFE INCOME - (10 YEARS CERTAIN)
ILLUSTRATIVE MONTHLY LIFE INCOME - (10 YEARS CERTAIN)286.96
1,130.37340.63
1,253.37

INTEREST-ADJUSTED 5% INDEXED (BASIC POLICY)

10 YRS

10 YRS

10 YRS

LIFE INSURANCE SURRENDER COST INDEX

\$2.04

2.10

2.10

LIFE INSURANCE NET PAYMENT COST INDEX

\$5.73

\$7.55

\$7.55

EQUIVALENT LEVEL ANNUAL DIVIDEND

\$1.33

\$1.44

\$1.44

DIVIDENDS BASED ON JAN. 1984 SCALE. ILLUSTRATIVE MONTHLY LIFE INCOME BASED ON
APRIL 1980 SETTLEMENT OPTION RATES. DIVIDENDS AND ANY OTHER ILLUSTRATIVE
FIGURES SHOWN ARE NOT GUARANTEES OR ESTIMATES FOR THE FUTURE.DIVIDENDS BASED ON JAN. 1984 SCALE. ILLUSTRATIVE MONTHLY LIFE INCOME BASED ON
APRIL 1980 SETTLEMENT OPTION RATES. DIVIDENDS AND ANY OTHER ILLUSTRATIVE
FIGURES SHOWN ARE NOT GUARANTEES OR ESTIMATES FOR THE FUTURE.

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\$74.00

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\$91.00

DATE 08/8

DATE 08/8

Metropolitan
Insurance Company

METROPOLITAN LIFE INSURANCE COMPANY

Metropolitan
Insurance Company

METROPOLITAN LIFE INSURANCE COMPANY

01418 47 NO 13

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THE CONSTITUTIONAL IMPLICATION OF GENDER BASED INSURANCE CLASSIFICATIONS

The constitutionality of gender based insurance classifications revolve about three issues. First, because private discrimination is involved, must there be "state action" under the federal or Montana Constitution as a pre-condition to any equal protection review? Second, does the Montana "individual dignity" provision invoke a strict scrutiny analysis of any classification based upon sex? Third, does the equal protection analysis adopted by the United States Supreme Court render gender based classifications constitutionally infirm?

Before proceeding to an analysis of each of the foregoing questions, one prefatory note is appropriate. The federal congress in adopting the Civil Rights Act of 1964, prohibited by its Title VII(42 U.S.C. Section 2000e et.seq.) discrimination by an employer. The United States Supreme Court construed that section in Arizona Governing Committee v. Norris, ___ U. S. ___, 103 S.Ct. 3492, 77 L.Ed2d 1236 (1983) and City of Los Angeles v. Manhart, 435 U. S. 702 (1978) holding that Title VII forbids an employer from discriminating in employer operated pension and deferred compensation plans. Since Title VII applies to public and private employers, any such insurance plan whether it be pension, deferred compensation or health care insurance violates Title VII. Any provision, then which would purport to eliminate the use of gender based premium or benefit tables would be merely duplicative of the federal legislation and be meaningless in alleviating discrimination.

IS "STATE ACTION" REQUIRED

Under the federal constitution, equal protection guarantees afford relief only in cases where the state has directly or indirectly become involved in some private discrimination. Whether the federal equal protection clause would prohibit use of gender based classification becomes a matter of drawing lines. Under Moose Lodge No. 7 v. Irvis, 407 U. S., 163, 92 S.Ct. 1965 (1972), the Supreme Court dismissed a challenge to a racial exclusionary membership policy on grounds that no "state action" was involved. Justice Rhenquist speaking for the court noted:

The court has never held, of course, that discrimination by an otherwise private entity would be violative of the equal protection clause if the private entity receives any sort

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of benefit or service at all from the state, or if it is subject to state regulation in any degree whatever.

Irvis argued that issuance of a liquor license was sufficient "state action" to apply the Fourteenth Amendment. The court acknowledged a state involvement but noted that since liquor was available from hotels, restaurants and retail licensees, mere regulation of the Moose Lodge's liquor license was insufficient to constitute a "state action." Moose Lodge, therefore, establishes the "bottom line." In other words, state regulation of the liquor license of a private entity does not constitute "state action" within the ambit of the Fourteenth Amendment to the federal constitution.

However, there are a substantial number of cases cited by the U. S. Supreme Court where incidental state involvement in private activities constituted "state action." For example, in Burton v. Willmington Parking Authority, 365 U. S. 715, 81 S.Ct. 856, 6 L.Ed2d 45 (1961), the Court found a violation of the equal protection clause by a private coffee shop owner who refused to serve food or drink to black people. The coffee shop was situated in a public parking building under a private lease to the owner. The Court noted that the government's participation in the lease constituted a "state action" and thus subjected the private lessee to the constraints of the equal protection clause.

In Evans v. Newton, 382 U. S. 296, 86 S.Ct. 46 (1966), the Supreme Court found "state action" with respect to a privately owned park which the city had maintained for a number of years prior to the court action.

In Reitman v. Mulkey, 387 U. S. 369, 87 S.Ct. 1627 (1967), the Court found that the adoption of Proposition 14 (passed by public referendum) which prohibited the state from interfering with the right of any person to sell his property to whomever he chooses to be "state action." This case is particularly instructive because the action of the state of California in adopting the proposition had the effect of permitting racial discrimination. Similarly, Montana in adopting Section 49-2-309, MCA, has made it unlawful an discriminatory practice to use gender based insurance classifications. Any action by the Montana legislature to repeal that provision would, as did Proposition 14, permit discrimination in insurance rates. Thus, if there is no "state action" under the federal constitution, now, there will be if the state should repeal Section 49-2-309, MCA.

It is not necessary, however, to deal with the vagaries of "state action" in Montana. Article II, Section 4 of the Montana Constitution provides in part:

No person shall be denied the equal protection of the laws. Neither the state nor any person, firm, corporation, or institution shall discriminate against any person in the exercise of his civil or political rights on account of race, color, sex, culture, social origin or condition, or political or religious ideas.

The Montana Constitution, then, reaches both private as well as public discrimination. Since the provision is clear on its face, it is unnecessary to refer to the proceedings of the constitutional convention to determine "legislative" intent.

However, a review of the materials of the constitutional convention reaffirm the clear language of the provision.

For example, the constitution convention commission report on the Bill of Rights urged adoption of an equal protection provision similar to that in New York:

The (old) Montana statutes and (old) constitutional provision fall shy of the protection afforded by the Illinois constitutional provision. After hearing many witnesses, the Illinois committee decided to limit its provisions to the area of employment and the sale or rental of property -- that is, they cover private discriminations beyond fair employment practices. The New York Constitution contains a provision in Article I, Section I, which speaks broadly to prohibit all private as well as public discrimination:

No person shall, because of race, color, creed, or religion, be subjected to any discrimination in his civil rights by any person or by any firm, corporation, or institution, or by the state or any agency or subdivision of the state.

Although the New York provision does not prohibit discrimination on account of sex, it is clear that the Montana provision was styled after the New York equal protection/discrimination clause. The Montana provision, however, adds the protections against discrimination on account of sex by any person or by any firm, corporation or institution.

The state of Montana "supervises" the insurance industry by statute and through the insurance commissioner. Insurance companies must be licensed to do business in Montana; they must comply with the Code of Fair Practices; and companies providing general comprehensive liability insurance or auto liability insurance are subject to rate control. Title 33, Chapter 16 governs rates of all insurance companies except life, disability, reinsurance, aircraft and boat liability policies. Indeed, Section 33-16-201, et.seq., MCA, says liability policy rates cannot be "excessive or inadequate . . . nor shall they be unfairly discriminatory."

Arguably, then, even under Moose Lodge, there is "state action" in the activities of the liability insurance industry. Further, under Evans v. Newton, and Reitman v. Mulkey, there is sufficient state involvement to constitute "state action" as to life and disability insurance.

However, because our Montana equal protection clause clearly applies to private discrimination, the manner in which the United States Supreme Court has addressed the question under the federal constitution is not relevant.

THE MONTANA SUPREME COURT WILL EMBRACE
THE "STRICT SCRUTINY TEST" WHEN DEALING WITH
SEX-BASED CLASSIFICATIONS UNDER THE MONTANA
"INDIVIDUAL DIGNITY" PROVISION

A brief review of the equal protection analysis adopted by the courts is instructive. Governments can discriminate. In other words, the state may apply its laws unequally among various classifications of its citizens. They may do so as long as they have a good reason which is related to some legitimate governmental interest. This legal theory is called the "rational basis" analysis. However, if the governmental classification is based upon race, wealth, alienage, or any other "fundamental right," the government may not so classify unless they can show a compelling state interest. The Supreme Court has found a "compelling state interest" to justify impingement of a fundamental right in only one case. In Korematsu v. United States, 323 U. S. 214, 65 S.Ct. 193, 89 L.Ed 194 (1944), the Supreme Court found a compelling interest

arising from national defense premises to permit the internment of people of Japanese ancestry in May of 1942.

It is indeed difficult, therefore (perhaps impossible) for a government to justify a classification based upon a "suspect" category.

It is conceded for the purposes of this memorandum that a classification based on sex in insurance rates probably would survive a challenge under the traditional "rational basis" analysis. The question then becomes (1) which analysis will be applied in Montana in a sex discrimination case and (2) would the kind of gender based classifications that occur in the insurance industry survive a test under the federal constitution.

Generally, the Montana Supreme Court has followed the federal equal protection analysis in considering challenges under the state constitution. The only case decided, to date, with respect to an equal protection analysis occurred in State v. Craig, 169 Mont. 150, 545 P.2d 649 (1975). In Craig, the Montana Supreme Court upheld a classification based upon sex under the sexual intercourse without consent statute. However, the Montana equal protection clause was not litigated nor was it discussed by the court in rendering its opinion. Secondly, the court was following the traditional equal protection analysis then adopted by the U. S. Supreme Court. That equal protection analysis has changed since Craig. (More about that below.) Thus, State v. Craig is not controlling upon any question which would arise from a challenge to gender based classification in insurance rates.

Rather, the court's equal protection analyses in two recent cases are controlling. In White v. State, ___ Mont. ___, 661 P.2d 1272 (1983), the court followed the precedent discussed above:

If a statute affects a "fundamental right," it must be measured by a strict scrutiny test.

In White, the plaintiff argued that the sovereign immunity provisions of the Montana Tort Claims Act deprived her of a judicial remedy for her injuries.

It was acknowledge by all in the case, that the traditional "rational basis" explanation could be met by the state. Thus, in order for Karla White to prevail, she had to establish her right to a speedy remedy was "fundamental." If she were able to do so, the Tort Claims Act limitations on recovery against the state would not survive:

Application of this test requires that the statutory scheme be found unconstitutional unless the state can demonstrate that such law is necessary to promote a "compelling government interest."

661 P.2d at p. 1274.

Looking to Article II, Section 16, wherein all individuals are guaranteed a "speedy remedy for every injury," the court found that Karla White had a fundamental right and strict scrutiny attached. The court then proceeded to strike down the provision as unconstitutional.

Later, in Oberg v. City of Billings, ___ Mont. ___, 674 P.2d 494 (1983), Justice Morrison in a concurring opinion noted that the Montana Constitution affords greater protections to individuals than the federal constitution.

It is important to note that our state Constitution in this case, extends greater protection than does the federal Constitution. There is a specific privacy provision in our state Constitution which implicates a fundamental right and requires a strict scrutiny analysis. We accord a broader equal protection in White v. State, on the basis of constitutional language present in the Montana state Constitution and not present in the federal Constitution.

674 P.2d at p. 498.

Although the Montana Supreme Court has not directly addressed the strict scrutiny test as applied to Article II, Section 4, illegal sex discrimination, the foregoing analysis is inevitable. In White, the court looked to the "speedy remedy" provision of our Bill of Rights and in Oberg, the court looked to the "privacy" provision of the Bill of Rights in finding "fundamental rights." There can be little question that using the same analysis, the court will find a fundamental right to be free from discrimination on account of sex and, thus, requiring the showing of a "compelling interest" in justifying any classification based upon sex.

As mentioned, supra, the United States Supreme Court has adopted a higher standard under the equal protection clause

of the Fourteenth Amendment since Craig. Ironically, the court adopted this position in another "Craig," Craig v. Boren, 429 U. S. 191, 97 S.Ct. 451, 50 L.Ed2d 397 (1976).

Craig challenged the Oklahoma law which prohibited the sale of 3.2 beer to males under 21 years and females under 18 years. Craig asserted that the gender based age difference in the statute constituted invidious discrimination in violation of the equal protection clause. The state of Oklahoma argued under Reed v. Reed, 404 U. S. 71 (1971), the correct judicial analysis was the rational basis test because discrimination on account of sex was not a "fundamental right" or a "suspect classification" thus requiring a strict scrutiny analysis. The state then proceeded to establish a statistical basis for discriminating on the basis of sex. They proved at trial the basis for the gender based distinction was that 18 - 20 year old male arrests for driving under the influence substantially exceeded female arrests for the same period. Similarly, the state established that youths 17 - 21 were found to be over representative among those killed or injured in traffic accidents, with males again numerically exceeding females in this regard. Third, the state introduced a random roadside survey near Oklahoma City which revealed that young males were more inclined to drive and drink beer than were their female counter parts.

Therefore, by prohibiting the use of liquor by 18 year old males, they could cut down on auto accidents. The Supreme Court in Craig struck a middle ground between the rational basis test and the strict scrutiny test for sex based classifications. The Craig standard (which is now controlling under the Fourteenth Amendment), is what has been called the "middle-tier approach."

This standard requires the government to classify by gender only when such classifications "must serve important governmental objectives and (are) substantially related to achievement of those objectives."

It is significant in resolving an equal protection challenge to gender based insurance rates under the Fourteenth Amendment to note language from Craig wherein the Supreme Court rejected the state's rationale: (After first reviewing the statistics, the court held)

While such a disparity is not trivial on a statistical sense, it hardly can form the basis for employment of a gender line as a classifying device.

Certainly, if maleness is to serve as a proxy for drinking and driving, a correlation of 2% must be considered an unduly tenuous "fit." Indeed, prior cases have consistently rejected the use of sex as a decision making factor even though the statutes in question certainly rested on far more predictive and imperical relationships than this. (Emphasis added.)

After Craig, the court struck down an Alabama law providing that husbands but not wives may be required to pay alimony. Orr v. Orr, 440 U. S. 268, 99 S.Ct. 1102 (1979); Caban v. Mohammed, 441 U. S. 380, 99 S.Ct. 1760 (1979) struck down a New York law which allowed an unwed mother but not an unwed father to block the adoption of their child by withholding consent; Califano v. Westcott, 443 U. S. 76, 99 S.Ct. 2655 (1979) struck down a section of the Social Security Act which provided benefits to families with needy dependent children who had been deprived of parental support because of the father's employment, but did not provide such benefits when mother became unemployed; Wengler v. Druggist Mutual Insurance Co., 446 U. S. 142, 100 S.Ct. 1540 (1980) struck down Missouri workers' comp law which denied a widower death benefits unless he was mentally or physically incapacitated from wage earning but did not provide the same disqualification for a widow; Kirchberg v. Feenstraw, 450 U. S. 455, 101 S.Ct. 1195 (1981) struck down a Louisiana law which gave a husband the right to unilaterally dispose of property owned jointly with his wife but not the wife without the husband's consent; and, finally Mississippi University for Women v. Hogan, ___ U. S. ___, 102 S.Ct. 1331 (1982) struck down a University provision which denied qualified men the right to enroll for credit in its nursing school.

The adoption of the middle-tier approach from a political standpoint can be seen as an attempt by Brennan, Marshall, White and Douglas (before he retired) to build support with the middle group including Stevens, Powell, Blackman and Stewart. By adopting the "middle-tier" scrutiny, the court has produced a constitutional analysis more compatible with the generally less liberal political outlook of the justices in the center.

There is language in Personnel Administrator of Massachusetts v. Feeney, 442 U. S. 256, 99 S.Ct. 2282 (1979) which can be used to give further reach to the federal equal protection clause as it pertains to gender-based classifications. In Feeney, the Supreme Court considered the question

of whether Massachusetts' lifetime preference to veterans discriminated against women in violation of the equal protection clause. Although the court upheld the Massachusetts preference it held:

Classifications based upon gender, not unlike those based upon race, have traditionally been the touchstone for pervasive and often subtle discrimination. The court's recent cases teach that such classifications must bare a 'close and substantial relationship to important government objectives' and are in many settings unconstitutional. Although public employment is not a constitutional right, and the states have wide discretion in framing the employee qualification, these precedents dictate that any state law overtly or covertly designed to prefer males over females in public employment would require an exceedingly persuasive justification to withstand the constitutional challenge under the equal protection laws of the Fourteenth Amendment.

The court went on then to review the racial discrimination cases decided recently and noted that "those principals apply with equal force to a case involving alleged gender discrimination."

Arguably, then, under the middle-tier test, gender based rates are constitutionally infirm because they prefer women over men (on life and auto policies) and men over women (on disability, health care, annuity and pension plans) and there is no important or persuasive justification, therefore.

JOANN ELLIOTT INSURANCE, INDEPENDENT INSURANCE AGENT, BOZEMAN, MT

WHY SHOULD AN OVERWEIGHT, 65-YEAR OLD WOMAN WHO SMOKES FOUR PACKS A DAY, DRINKS EXCESSIVELY, AND HAS HIGH BLOOD PRESSURE RECIEVE A SMALLER MONTHLY PENSION THAN A PHYSICALLY FIT 65-YEAR OLD MAN WHO HAS EVERY EXPECTATION OF OUTLIVING HER? THE ANSWER USED TO BE, "BECAUSE WOMEN LIVE LONGER THAN MEN".

BUT THE SUPREME COURT IN 1983 RECOGNIZED THE ABSURDITY OF TREATING EVERY WOMAN AS IF SHE WERE "AVERAGE" AND RULED THAT CONTRIBUTIONS TO EMPLOYMENT-RELATED PENSION AND ANNUITY PLANS SHOULD BE EQUAL FOR MEN AND WOMEN.

BY THE SAME TOKEN, THERE IS NO "AVERAGE" YOUNG MAN BETWEEN THE AGES OF 15 AND 30, YET THEIR AUTO PREMIUMS ARE AUTOMATICALLY DOUBLE, TRIPLE, AND EVEN QUADRUPLE THE ADULT RATE. MY SON ASKED ME, "WHY ARE WE ALL LUMPED TOGETHER?" WHY?

EXAMPLE: MY SON...

SO THIS ISN'T JUST A WOMAN'S ISSUE. IT IS ABOUT FAIRNESS IN INSURANCE RATING. IT'S ABOUT HUMAN DIGNITY AND INDIVIDUALITY AND IT'S ABOUT OUR MONTANA CONSTITUTION.

SEX SHOULD NOT BE THE BASIS OF INSURANCE RISK CLASSIFICATION BECAUSE IT IS NOT A RISK FACTOR. INSURANCE SHOULD BE BASED ON RISK FACTORS SUCH AS DRIVING RECORDS AND TOTAL MILES DRIVEN, DRIVER EXPERIENCE, SMOKING AND DRINKING HABITS, ETCETERA, WHICH ARE CONTROLLED BY EACH INDIVIDUAL.

QUOTES BY PHONE
(406) 586-7100

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 20
DATE 03/4/85
BILL NO. HB 507

Joann Elliott Insurance

P.O. BOX 5700
BOZEMAN, MT 59717-5100



EXAMPLE:

I'M GOING TO TELL YOU ABOUT MY SON. I AM NOT BRAGGING. HE'S JUST THE YOUNG MAN I KNOW THE BEST...AND I AM SURE THERE ARE THOUSANDS LIKE HIM IN THE STATE OF MONTANA.

AGE 29

WORKED THROUGH H.S.

CAR - 11 YEARS - NEVER AN ACCIDENT - STILL DRIVING THAT CAR.

HONOR STUDENT H.S. AND UNIVERSITY

ALWAYS EMPLOYED

STABLE - CONSCIENTIOUS

NON-SMOKER

VERY HEALTHY LIFESTYLE

A RESPONSIBLE PERSON WITH A CAPITAL R

PAST 7 YEARS - TWO JOBS - BRIDGER BOWL - YELLOWSTONE

ASST. DIRECTOR PRO-PATROL - HE IS THE MAN IN CHARGE OF AVALANCHE
THE
CONTROL AND HILL SAFETY OF THE THOUSANDS OF PEOPLE WHO SKI
AT BRIDGER BOWL.

- ABOUT TWO WEEKS OFF IN APRIL - THEN TO YELLOWSTONE

- ANOTHER JOB HE HAS HAD FOR 7 YEARS

HEAVY EQUIPMENT OPERATOR - OPERATES THE \$200,000 SNOW PLOWS

NOT ONE ACCIDENT

SUPERIOR PERFORMANCE AWARDS AT REGULAR INTERVALS

YET, AT AGE 29, A MAN WITH THIS TRACK RECORD IS NOT CONSIDERED

A RESPONSIBLE ADULT BY THE AUTO INSURANCE COMPANIES. HE IS STILL PAYING AN INFLATED PREMIUM.

DO YOU KNOW WHY? DO YOU KNOW WHY? *He's not married.*

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 20
DATE 03/4/85
BILL NO. HB 507

JOANN ELLIOTT INSURANCE, INDEPENDENT INSURANCE AGENT, BOZEMAN, MT

WITH REFERENCE TO SECTION (2) OF HB 366 WHICH STATES "IT IS UNLAWFUL TO DISCRIMINATE SOLELY ON THE BASIS OF SEX OR MARITAL STATUS IN THE ISSUANCE OR OPERATION OF ANY TYPE OF INSURANCE THAT IS A PART OF AN EMPLOYEE BENEFIT PLAN..." (MY CONCERN IS WITH THE LAST NINE WORDS).

BUT...WHAT ABOUT THE WOMEN NOT COVERED BY "EMPLOYEE BENEFIT" HEALTH PLANS? THEY MUST SUBSCRIBE TO SEX-BASED RATES WHICH COST TWICE AS MUCH AS THE "EMPLOYEE BENEFIT" UNISEX RATES.

THOSE WOMEN LEFT TO COPE WITH DISCRIMINATORY RATES FOR HEALTH INSURANCE ARE WOMEN WHO ARE SELF-EMPLOYED OR WOMEN WHOSE EMPLOYER DOES NOT OFFER AN "EMPLOYEE BENEFIT" HEALTH PLAN. THIS GROUP INCLUDES THE SINGLE, WORKING MOTHER AND THE DISPLACED HOMEMAKERS WHO HAVE LOST COVERAGE THROUGH DIVORCE OR WIDOWHOOD. OFTEN THESE ARE THE WOMEN WHO CAN LEAST AFFORD THE HIGHER RATES AND HENCE, THEY DO NOT HAVE THE HEALTH PROTECTION THAT IS AN ABSOLUTE NECESSITY IN OUR SOCIETY. I ALWAYS RECOMMEND \$1000 DEDUCTIBLE OR \$2000 DEDUCTIBLE FOR THE LOWEST POSSIBLE PREMIUM. (NOTE: WITH THE HIGH DEDUCTIBLE THEY ARE NOT COVERED FOR THE USUAL OFFICE VISIT, PHYSICAL EXAM, PAP SMEAR, ETCETERA).

HOWEVER, I HAVE MANY WOMEN CLIENTS WHO CANNOT AFFORD EVEN THE REDUCED PREMIUM THAT GOES WITH \$1000 AND \$2000 DEDUCTIBLE INDIVIDUAL MAJOR MEDICAL POLICY. I'VE ALWAYS BEEN CONCERNED ABOUT THE FINANCIAL DISASTER THAT MIGHT AWAIT THEM....THAT IS UNTIL LAST FRIDAY...E.G. WALL STREET JOURNAL ARTICLE ON HOSPITAL "DUMPING"

E.G. TONI SCHARFF

SEX SHOULD NOT BE THE BASIS FOR HEALTH INSURANCE CLASSIFICATIONS. HEALTH INSURANCE SHOULD BE BASED ON RISK AND HEALTH FACTORS SUCH AS SMOKING AND DRINKING HABITS, MAINTAINING AN IDEAL WEIGHT, EXERCISE HABITS, ETCETERA, WHICH ARE CONTROLLED BY THE INDIVIDUAL. EXHIBIT NO. 20

E.G. MY DAUGHTER

MY FATHER-IN-LAW, A HOMESTEADER AT FORT DENTON, TOLD ME,

"PEOPLE DON'T LIKE CHANGE. PEOPLE WILL USE FEAR TO STOP CHANGE."

I CERTAINLY DO ENCOURAGE YOU TO VOTE NO ON HR 507 AND HR 366

SENATE JUDICIARY COM

DATE 03/4/85

BILL NO. HB 366

LET ME TELL YOU ABOUT TONI SCHARFF - I HAVE HER PERMISSION -
ALL OF ^{VS} FROM BOZEMAN KNOW HER AS A TRULY FINE, EXCEPTIONAL WOMAN.
I HAVE KNOWN TONI FOR FOUR YEARS AS A FRIEND AND CLIENT...
A CLIENT WHO CANNOT AFFORD INDIVIDUAL MAJOR MEDICAL PROTECTION...
SHE'S 38
EMPLOYED
STABLE
DEPENDABLE
NO HISTORY OF SERIOUS ILLNESS
NO PREVIOUS SURGERY
EXERCISES DAILY
NON-SMOKER
NON-DRINKER
MAINTAINS AN IDEAL WEIGHT
SHE IS VERY HEALTHY - SHE IS AN IDEAL INSURANCE RISK.

BUT...TONI WAS BORN FEMALE...AND HENCE MUST PAY ALMOST TWICE
AS MUCH FOR INDIVIDUAL MAJOR MEDICAL PROTECTION.

THE CURRENT, COMPETITIVE RATE FOR TONI IS \$515 A YEAR.

IF TONI WERE A 38-YEAR OLD MAN - \$325 A YEAR.

IF SHE WERE EVEN MORE FORTUNATE...AND COVERED BY AN "EMPLOYEE
BENEFIT" UNISEX POLICY, TONI COULD BE INSURED FOR 1/2 THE COST - \$2
THAT'S \$250 LEFT ON THE TABLE.

SO ONCE AGAIN WE ARE TALKING ABOUT FAIRNESS IN INSURANCE RATING.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 20
DATE 03/4/85
BILL NO. HB 366

JANIS

DAUGHTER - GOING FOR HER CPA - SELF EMPLOYED - ON
A TIGHT BUDGET



PROFESSIONAL INSURANCE AGENTS OF MONTANA

9 North Last Chance Gulch
Helena, Montana 59601
442-6424

*Tell them I spend \$50⁰⁰ a year
more on health insurance
than I do on food. (- self
supporting)*

*\$284⁰⁰/yr - \$1000 D → INDIVIDUAL MAJOR MEDICAL PROTECTION
\$234⁰⁰ food - 66¢ a day
(without financial aid)*

IMPORTANT VOTE TO PROFESSIONAL INSURANCE AGENTS

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 20

DATE 03/485

BILL NO. HB 366

TESTIMONY IN OPPOSITION TO HOUSE BILLS 366 and 507

I would like to urge you to vote against any bill repealing or weakening Montana's gender-free insurance law. I testified against House Bills 366 and 507 on February 14, on behalf of myself as an individual, and as President of the Women's Law Section.

Though proponents of the bills argue that they are constitutional, I believe that if either bill passed, a legal challenge would result in the Montana Court's applying the same rationale as that of the Pennsylvania court in Hartford Accident & Indemnity Co. v. Insurance Commissioner of the Commonwealth of Pennsylvania. The Pennsylvania Supreme Court found that gender-based automobile rates were "unfairly discriminatory" under the Insurance Rate Act in light of Pennsylvania's public policy against sex discrimination embodied in the state's Equal Rights Amendment. Montana has a similar insurance provision, Section 33-16-201, MCA, and, of course, the Equal Rights clause of the Montana Constitution is one of the most comprehensive in the nation. A gender rate plan is not in keeping with our Constitutional mandate.

I would also like to point out that even on an actuarial level, the use of such gender rates is questionable. The implied behavioral relationships rely on questionable social stereotypes. The arguments that proponents of the bills are making today in regard to sex were once made concerning race and religion. Despite arguments to the contrary, women are put at a disadvantage by sex-based insurance rates.

Please vote against any repeal or amendment of Section 49-2-309, MCA.

Respectfully submitted on March 14, 1985.



Joan Jonkel
Attorney at Law
Missoula, Montana

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 21

DATE 03/14/85

BILL NO. HB 366 + 507

THE LEAGUE OF WOMEN VOTERS OF MONTANA

The League's ERA position states that we support provisions to eliminate sex discrimination in pensions and insurance. House Bills 366 and 507 strive to do just the opposite of this position. For this reason we oppose House Bills 366 and 507.

Respectfully,

Kathy Karp
Kathy Karp

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 22

DATE 03/4/85

BILL NO. HB 366 + 507

TESTIMONY TO THE SENATE JUDICIAL COMMITTEE RE NON-GENDER INSURANCE

3/14/85

Mr. Chairman, members of the committee:

My name is Harriett Meloy and I represent the American Association of University Women.

AAUW is a broadly based coalition of women who have in common a college degree. There are about 200,000 members in this country; approximately 600 to 700 members in Montana.

AAUW supported the bill in the 1983 legislature that prohibited the practice of setting insurance rates on the basis of gender; we continue to support the law that was passed and look forward to the implementation of Montana's non-gender insurance law in October of this year.

Please vote NO on HB 366 and HB 507.

Thank you.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 23
DATE 03/14/85
BILL NO. HB 366 + 507

NAME: Don Judge DATE: 3-14-85

ADDRESS: P.O. Box 1176 Helena 59624

PHONE: 442-1708

REPRESENTING WHOM? Montana State AFL-CIO

APPEARING ON WHICH PROPOSAL: HB 366 & HB 507

DO YOU: SUPPORT? AMEND? OPPOSE? X

COMMENTS: Montana State AFL-CIO & National AFL-CIO both
Support Non-Gender Insurance & ask that you Kill
HB 366 & HB 507 which would repeal non-gender insurance laws

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 24
DATE 03/14/85
BILL NO. HB 366+507

NAME: Kathleen Holden, Attorney DATE: 3-14-85

ADDRESS: Rm C-317 Congress Bldg, Helena, MT.

PHONE: 444-2884, 444-4232

REPRESENTING WHOM? MT. Human Rights Commission

APPEARING ON WHICH PROPOSAL: HB 507, HB 366

DO YOU: SUPPORT? AMEND? OPPOSE? ✓

COMMENTS: See attached

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 25
DATE 03/14/85
BILL NO. HB 366 + 507

Testimony of Kathleen F. Holden in opposition to HB 366 and HB 507
Chairman Mazurek, members of the Committee, I am Kathleen Holden,
Attorney of the Human Rights Division. I am here today to express the
views of the Human Rights Commission on HB 366 and HB 507. The
Commission has chosen not to take a position on the policy question
whether the law should prohibit sex and marital status discrimination in
insurance. I am speaking today as an opponent of these bills because
they contain numerous technical defects and problems which impact the
operations of the Commission even if enforcement of the law is
transferred to the insurance commissioner.

Pregnancy Discrimination

Title VII of the Civil Rights Act as amended by the Pregnancy
Discrimination Act of 1978 makes it illegal for an employer to provide
an employee benefit plan which discriminates on the basis of sex.

Section 701(k) of the Act as amended defines the terms "because of sex"
or "on the basis of sex" to include because of or on the basis of
pregnancy, childbirth or related medical conditions; and women affected
by pregnancy, childbirth, or related medical conditions shall be treated
the same for all employment purposes, including receipt of benefits
under fringe benefit programs as other persons not so affected but
similar in their ability to work or not work.

SENATE JUDICIARY COMM
EXHIBIT NO. 25
DATE 03/485
BILL NO. HB 366 + 5

HB 507 purports to make discrimination on the basis of pregnancy legal.
Federal law makes discrimination on the basis of sex illegal and defines
on the basis of sex to include pregnancy. Passage of HB 507 would be

confusing to employers. It would mislead them to conclude that exclusion of normal pregnancy from employment benefit plans is legal.

Reference to ERISA

HB 366's reference to Section 3(3) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1002(3) is confusing. ERISA is a complex, comprehensive federal act regulating employee benefit plans of private employers. ERISA governs employee pension benefit plans which provide for income deferral or retirement income (29 U.S.C. §1002(2)) and employee welfare benefit plans including any program that provides benefits for contingencies such as illness, accident, disability, death, or unemployment (29 U.S.C. §1002(1)).

ERISA does not regulate employee benefit plans of public employers.

HB 366 purports to make it unlawful for an employer to discriminate on the basis of sex or marital status ⁱⁿ ~~is~~ an employee benefit plan. If the employer's benefit plan is regulated by ERISA, the state of Montana is preempted from enforcing a state law that makes discrimination on the basis of marital status in that employer's benefit plan. Current federal and state law already makes discrimination on the basis of sex illegal in an employment benefit law. HB 366 is redundant and does nothing to improve the situation of individuals protected by current law.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 25

DATE 03/4/85

BILL NO. HB 366 + 507

Multiplicity of Forums

Even though both HB 366 and HB 507 would transfer enforcement of their substantive provisions to the Commissioner of Insurance, the law would nonetheless create duplication of enforcement when employee benefit plans are at issue. Arguably, a claimant could pursue a claim against the employer for providing a discriminatory employee benefit plan with the Human Rights Commission or the Equal Employment Opportunity Commission while pursuing a claim over the same plan against the insurer with the Commissioner of Insurance. The effect of transferring enforcement authority in this manner is to eliminate the opportunity to resolve all claims arising out of the same discriminatory practice in one forum.

In summary, it is the position of the Human Rights Commission that HB 366 and HB 507 only serve to confuse and further complicate the issues surrounding sex and marital status discrimination in insurance. In particular, the Commission believes enactment of either of these bills is a disservice to employers because of the confusion created in regard to their existing responsibilities under the law. I urge the committee to recommend HB 366 and HB 507 do not pass.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 25
DATE 03/4/85
BILL NO. HB 366 + 507

NAME: Jo Ann Patterson DATE: 5-14-85
ADDRESS: 1216 W Washington St Helena
PHONE: 442-4250, 443-1808
REPRESENTING WHOM? Montana Education Assoc
APPEARING ON WHICH PROPOSAL: HB 507 & 366
DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? X

COMMENTS: The MEA represents
many women teachers
and many of these women
oppose these bills. It's
about time that women
and men have an equal
stance on insurance
policies. We urge this
committee to oppose
these bills. Thank you.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 26

DATE 03/4/85

BILL NO. HB 366 + 507

NAME: Lynn Robson DATE: 3/14/85

ADDRESS: 1014 So Grand, Bozeman, MT 59715

PHONE: (406) 587-1238/9

REPRESENTING WHOM? Montana Federation of Business & Professional Women

APPEARING ON WHICH PROPOSAL: HB 507 HB 366

DO YOU: SUPPORT? AMEND? OPPOSE? ✓

COMMENTS: National Federation and Montana Federation of
BPUW whose members include members of the
insurance industry has had a firm and public
support for non-gendered actuarial tables for
4 years.

The U.S. is the only industrial country on the
planet which bases insurance on gender. We
support Montana's Historical Non-gendered Insurance
law.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 27

DATE 031485

BILL NO. HB 366 + 507