MINUTES FOR THE MEETING
JUDICIARY COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

February 14, 1985

The meeting of the Judiciary Committee was called to order by Chairman Tom Hannah on Thursday, February 14, 1985 at 8:00 a.m. in Room 325 of the State Capitol.

ROLL CALL: All members were present.

CONSIDERATION OF HOUSE BILL NO. 507: Hearing commenced on HB 507. Rep. Kerry R. Keyser, District #74, sponsor of HB 507 testified. He said that HB 507 would limit prohibition against discrimination on the basis of sex or marital status to the issuance or the availability of insurance. No insurer may refuse to insure, refuse to continue to insure or limit the amount of coverage available to an individual because of the sex or marital status of the individual. However, nothing in the section would prohibit an insurer from taking marital status into account for the purpose of defining a person's eligibility for insurance. Rep. Keyser said he introduced this bill for three specific reasons. The bill that passed last session, section 49-2-309 of the MCA, is blatantly unfair to women, men and the insurance industry in the area of life and automobile insurance. He said this legislation was brought on by a sexist, feminist movement. He said that is a heck of a reason for changing the way an entire industry does business. He said the Women's Lobbyist group does not represent the majority of women in the state of Montana. He further stated that this is not a civil rights issue -- it is an economic reason. He said the cost figures cited in the last legislature by the Women's Lobbyist group used the worse case scenerio for examples which dramatized the situation unrealistically. Rep. Keyser submitted copies of the personal auto manual of the Western Insurance Companies which was marked Exhibit A and is hereto attached. He briefly commented on this particular manual.

CONSIDERATION OF HOUSE BILL NO. 366: Rep. Jack Ramirez, District #87, testified in support of HB 366 as one of its sponsors. He said that HB 366 is basically an intermediate position between the present law (as it will become law in October) and Rep. Keyser's position. Rep. Ramirez, too, believes this is an economic issue. He continued on by telling the committee the rationale of HB 366. He pointed out that the insurance business is one of the most competitive businesses. It has avoided federal regulation to a great extent. If there is a demand for a

particular product, Rep. Ramirez said that some companies or more than one company will try to meet that demand. He said that if there is a demand for unisex insurance, there will be companies that will try to provide it. He feels that if the current law is left on the books, it will hurt both women and young married couples economically. Rep. Ramirez further stated that the question gets down to this: "Are we talking about the state mandating that men and women must choose one type of a policy over another, or are we going to let the free market exist to determine the price?" He believes this legislation would leave the choice to the consumer.

PROPONENTS TO HB 507 and HB 366:

Lori Hamm, a resident of Helena, appeared and offered testimony on behalf of herself and her family. She said the unisex legislation does not create equality on the basis of gender, but rather it mandates a false climate of equalization of certain premiums and payments. Because this is a non-voluntary action on the part of the insurance industry, it will necessarily increase the cost of that industry to meet the consumer of insurance products that service it. Ms. Hamm believes that women will certainly be the ones hardest hit by this unisex insurance.

Bonnie Tippy, representing the Alliance of American Insurers, appeared and offered testimony in support of HB 507 and HB 366. A copy of her testimony was marked Exhibit B and is attached hereto.

Elaine Donnelly, representing the Eagle Forum, appeared and offered testimony in support of HB 507 and HB 366. A copy of her testimony was marked Exhibit C and is attached hereto.

Barbara J. Lautzenheiser, representing the American Council of Life Insurance, testified in support of HB 507 and 366. A copy of her written testimony was marked Exhibit D and attached hereto.

Judy K. Mintel, representing State Farm Insurance Company, testified in support of these two bills. She stated that each of the four states (Hawaii, North Carolina, Massachusetts, and Michigan) attempting to regulate auto insurance pricing, (by requiring unisex auto insurance) has adopted many additional laws to regualte insurance company underwriting decisions and to provide insurance through residual market programs due to reductions in capacity in the private market. She submitted testimony regarding the effect of eliminating sex as an auto insurance rating variable. (See Exhibit E.)

Don Garrity, an attorney from Helena, testified in support of these bills. He informed the committee that last August,

he was retained by lawyers representing several insurance companies to research the question of whether Montana's unisex insurance statute merely codifies a result which is required by Article II, Section 4 of the Montana Constitution which prohibits discrimination on the basis of sex and other items. Mr. Garrity researched the question and subsequently wrote an opinion concluding that Montana's constitutional prohibition against discrimination on the basis of sex does not prohibit Montana insurers from using sex as a classification when that classification is justified on a reasonable basis. A copy of that opinion was marked Exhibit F and is attached. Mr. Garrity also submitted the statute dealing with discrimination in employment (49-2-303). A copy of it was marked Exhibit G and attached.

Elmer Hausken, representing the Montana Association of Life Underwriters, stated the association's support for these two bills because they feel the unisex bill is unjust and economically punitive to women.

Betty Babcock, appearing on behalf of the Montana Eagle Forum, urged the committee to pass these bills.

Sally Chelim from Butte, appeared on behalf of herself and teenage girls to state her support for these bills.

Linda McCluskey, businesswoman from Helena, urged the committee to support HB 366. She feels that the actuarial tables are an objective, non-biased body of statistics that is the best information available for setting rates. She also feels that a low risk group should never have to subsidize a high risk group. She further stated that she has always supported women's rights and issues, but she does not feel that unisex insurance is a women's issue. Ms. McCluskey feels that the free marketplace and competition should be allowed to set rates -- not legislation.

Sherry Daniels, a life and health insurance salesperson from Billings, wished to go on record as supporting these bills.

Marie Doenier, and independent insurance agent from Billings who specializes in health insurance, wished to go on record as supporting this legislation.

Bev Glueckert, a Helena housewife, wished to go on record as supporting this legislation.

Other supporters of this legislation were Betty Johnson, Helena businesswoman; Karen Larson, president of Helena Eagle Forum; Dorothy Traxler; and Lois Halsey, state president of the Eagle Forum.

OPPONENTS:

Anne Brodsky, representing the Women's Lobbyist Fund, appeared and testified against HB 366 and HB 507. A copy of her written testimony was marked as Exhibit H and is attached hereto.

Karen Zollman, a forest engineer from Kalispell, offered testimony in opposition to the legislation to repeal the unisex insurance law. She addressed the pregnancy exclusion. A copy of her statement was marked Exhibit I and attached hereto.

Sharon Eisenberg, a certified public accountant from Conrad, and a member of the National Organization of Women, submitted her written testimony which was marked Exhibit J.

Patrick Butler, insurance expert for the National Organization for Women, testified as an opponent to HB 507 and HB 366. A copy of his testimony was marked Exhibit K and is attached hereto.

Mike Meloy, representing the American Civil Liberties Union of Montana, addressed some of the legal questions pertaining to this legislation. A copy of his testimony was marked Exhibit L and attached hereto.

Joan Jonkel, president of the Women's Law Section from Missoula, appeared and offered testimony in opposition to HB 366 and HB 507. She emphasized that the equal rights clause of the Montana Constitution, Article II, Section 4, is one of the most comprehensive in the nation. She further pointed out that even if the gender-based insurance law is repealed, the use of gender as a classification would probably be declared unconstitutional.

Patricia Blau Reuss, legislative director of Women's Equity Action League, testified in opposition to this legislation. A copy of her written testimony was marked Exhibit M and is attached hereto.

Anne L. MacIntyre, administrator of the Human Rights Division, expressed the views of the Human Rights Commission with regards to HB 366 and HB 507. She said that 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. She said that she was speaking as an opponent of the 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. The majority of these problems are contained in HB 366, but they also exist to a lesser extent in HB 507. A copy of her written testimony was marked as Exhibit N and attached hereto.

Linda Brock, an architect from Bozeman and also representing the Bozeman Business and Professional Women's Organization, appeared and testified against these bills.

Pat Simmons, a manager in the Physical Plant Division of Montana State University, appeared and testified against the bills. A copy of her written statement was marked as Exhibit O and attached hereto.

Also testifying briefly as opponents to HB 366 and HB 507 were Kathy Karp; Harriet Meloy, representing the American Association of University Women; Joanne Peterson, representing the Montana Education Association; and Mike Dahlem, representing the Montana Federation of Teachers.

There being no further proponents or opponents, the sponsors of the bills closed.

Rep. Keyser said the issue we are addressing is the rights of women in the state of Montana, and the right of women not to bear higher insurance rates because a minority of women wish to impose their will upon the rest of the state of Montana.

Rep. Ramirez encouraged the committee to try to be as analytical as possible in addressing this issue. He said emotion is not the basis upon which this issue should be decided. Rep. Ramirez rebutted some of the testimony offered by the opponents of the bill. He feels the Norris decision applies only to pension plans -- by its rationale it applies to more, but by the act which it enforces, it applies only to employers with more than 15 employees. This legislation does extend the protection beyond the Norris decision. He also stated that he does not believe that HB 366 is unlawful. As far as the constitutional question is concerned, Rep. Ramirez feels the issue can never be resolved in this body.

Chairman Hannah opened the floor up for questioning.

Rep. Rapp-Svrcek asked Rep. Keyser the following question: "If it could be actuarily or economically shown that people of color other than white were at a higher risk for insurance purposes, would you say that we should allow that to happen in the state of Montana?" Rep. Keyser stated that the federal government has ruled that you cannot discriminate as far as color.

Rep. Addy asked Bonnie Tippy if she was suggesting by her testimony that rates should be based upon the ability to pay. Ms. Tippy answered "no." Rep. Addy further asked if it shouldn't be based on the ability to pay, what should it then be based on? Ms. Tippy stated that rates should be based on amount of risk. She continued by saying that some insurance companies don't make any differential -- once an

individual turns 25 years old, they don't give you a break. But, then, a lot of insurance companies do give you a break. So again, this whole issue is going to make women more aware of the fact they may shop around for insurance. They can get a women's discount after age 25. Rep. Addy responded by saying that all the figures seen and all the testimony that has been heard from the witnesses today suggest that if a woman drives 50,000 miles and if a man drives 50,000 miles, the woman is a better risk. He said that all the testimony given today suggests that the standard policy is to charge women and men over age 25 the same premium. Ms. Tippy responded by saying that is not standard policy in all companies.

Rep. Addy directed some general questions to Ms. Donnelly. Ms. Donnelly pointed out that the reason that Detroit had such a steep increase in insurance rates was that previous to the unisex law, they has the lowest rates for that class of women. Since they have had to bring it up to a unisex standard, the rates have dramatically increased. Rep. Addy referred to a copy of the Michigan's Insurance Commissioner's Report. He stated that in the first page of the report, they point out that the insurer cited in the example they gave had only five drivers in the class of 1981 and only two drivers in the 1982 class. Ms. Donnelly said that could very well be true, but again, an individual can shop around. Rep. Addy wanted to know if Ms. Donnelly gave the committee an example of the highest rate increase -- not necessarily the representative rate increase. Ms. Donnelly stated that she had never said that all women had to pay that high a rate.

Rep. Addy asked Ms. Mintel if companies left Hawaii or Masachusetts as a result of mandated decreases. Ms. Mintel said that State Farm certainly did not. She further pointed out that the company doesn't have many agents in the state of Massachusetts.

Rep. Hannah asked Karen Zollman if the insurance companies in this state dealing in the health insurance areas are covering the costs of abortions. Ms. Zollman said she didn't know. Rep. Hannah further questioned her by asking her if she thought it would be possible under the present unisex law to require insurance companies to cover the costs of abortions. She said she thinks there is a move to exclude anything that has to do with any reproductive functions of women. Rep. Hannah asked her if she thought abortion coverage should be allowed to be purchased under health insurance plans. She stated that her organization (NOW) doesn't have a position on that particular issue.

Following more general questions, hearing closed on HB 366 and HB 507.

CONSIDERATION OF HOUSE BILL NO. 643: Rep. Bob Thoft, District #63, testified in support of HB 643. This is an act to provide when a local government may and may not prohibit, register, tax, license or regualte the purchase, sale or other transfer, ownership, possession, discharge, transportation or unconcealed carrying of firearms. (He submitted a copy of Louis J. Bruen, III, testimony which was marked as Exhibit P-1.)

Lee Spurgin from Billings, appeared and offered testimony in support of HB 643.

Glenn Sanders, representing the Montana Pistol and Rifle Association, testified as a proponent to this bill. It provides that cities and towns may impose an ordinance to prevent carrying firearms in a city or town. It specifically would prevent removing firearms from the general public thereby removing the citizen's constitutional rights to own and possess firearms.

Harold M. Price, representing the Montana Wildlife Federation, testified in support of HB 643. A copy of his written testimony was marked Exhibit P and attached hereto.

James McConnell, chairman of the Montana Rifle Association, said that this bill is important to the gun owners of this state. He submitted a copy of his written testimony which was marked Exhibit Q.

Calvin L. Burr, Jr. appearing on behalf of himself and the Havre Rifle Club and the National Rifle Association, wished to go on record as supporting the bill.

Lenora Houldson from Missoula, testified in support of this bill. She said she is a pistol competitor. She stated that she is concerned about legislation coming at the local level that would make criminals out of law abiding citizens by taking away the rights that are guaranteed in our national constitution and that are likewise guaranteed in our state constitution.

Don Valem from Ovando, spoke as a proponent to the bill. Robert VanDerVere also spoke as a proponent . Ralph Knauss, from Clancy, also wished to go on record as supporting this legislation.

There being no further proponents or opponents, Rep. Thoft closed. He stated that he hopes the committee will not amend the bill in any way, and further urged the committee to pass the bill.

CONSIDERATION OF HOUSE BILL NO. 594: Rep. John Cobb, District #42, sponsor of HB 594, testified in support of it. This bill is an act requiring notice of entry onto land by appropriate state and local personnel for certain floodplain and floodway management purposes.

Lorna Frank, representing the Montana Farm Bureau Federation, testified in support of HB 594. A copy of her written statement was marked Exhibit R and is attached.

There being no further proponents or opponents present to testify, Rep. Cobb closed. The committee had no questions at this time, and hearing closed on HB 594.

CONSIDERATION OF HOUSE BILL NO. 17: Rep. Bob Marks, District #75, sponsor of HB 17, testified in support of it. He said this bill deals with criminal trespass. Passage of this bill would result as making any trespass on land a criminal trespass, and it strikes the necessity of prior notice that entry is not allowed. Rep. Marks informed the committee that this bill came out of the same subcommittee which dealt with the stream access issue. The subcommittee felt it was important to separate the two issues, the trespass issue is complicated enough.

PROPONENTS: Lorraine Gillies, representing the Montana Farm Bureau Federation, testified as a proponent to HB 17. A copy of her testimony was marked Exhibit S and attached.

Jo Brunner, representing the Montana Grange Association and the Montana Cattlemen's Association, testified in support of the bill.

Norm Starr, rancher from Melville, wished to go on record as supporting HB 17.

Esther Rudd, representing the Montana Cattlemen's Association, appeared and offered testimony in support of this legislation. She told the committee that the present trespass law in Montana leaves the property owner, rather than the trespasser, in a position of disadvantage. A copy of her written testimony was marked Exhibit S and attached hereto.

Nancy McIlhattan, representing the Park County Legislative Association, stated the PCLA likes the stringent enforcement of a stiff fine outlined in this bill. She did point out one aspect of the bill which does concern the association. The idea of how someone distinguishes private property from federal or state lands when it comes to the forest ground's checkerboard ownership does present a problem. A copy of her testimony was marked as Exhibit T and is attached hereto.

Ron Waterman, representing the Montana Stockgower's Association, testified as a proponent to HB 17. He said there is a need in this state for stronger enforcable trespass laws. He said this is not a rural landowner issue -- it is an issue that affects all property owners equally. Without trespass laws, no property owner whether they are in the city or in the country, can keep others off

private land. There is no law or rule which permits trespass. The strengthening to trespass laws merely makes it easier for the owners of private property to exercise control over their property. It permits private property owners to prevent a person from entering onto private property without permission. He feels the problems of the present trespass law should be recognized and addressed.

OPPONENTS:

Jim Flynn, director of the Department of Fish, Wildlife and Parks, stated that this legislation contains a number of revisions in current law, one of which the department can and does support; others which it cannot support. Mr. Flynn's written testimony (marked as Exhibit U) further outlines the revision the department can support and those revisions that it cannot support.

Pat Melby, representing the Montana Bar Association, stated that the association has a concern with the bill in the fact that it removes such an important element of any crime -- that being the knowledge or intent to commit a crime. He feels this should be a concern to any citizen of this state when such a thing as this is proposed by the legislature.

Mark J. Murphy, representing the Montana County Attorney Association, stated his opposition with regards to a couple of points in the bill. He feels the scope of the bill is much broader than he feels has been presented.

Dan Heinz, representing the Montana Wildlife Association, appeared as an opponent to HB 17. He said the association is concerned about the fairness of assigning criminal penalties for unknowing trespass during fishing or shotgun hunting, recreation activities which have less potential for damage than big game hunting. A copy of his written testimony was marked Exhibit V and attached hereto.

Mary Wright, representing Trout Unlimited, wished to go on record as opposing the bill. She also stated that she supports extending the authority of wardens.

There being no further proponents or opponents, Rep. Marks closed. He pointed out that the fiscal note is a horror story that has no justification whatsoever. He feels that expanding the authority of the game warden is a very important part of the bill. He said the positive amendments that were proposed by Mr. Heinz are good. Rep. Marks did state that he felt the points made by the Montana Bar Association are valid, and he feels there may be a problem with the bill in that particular area.

It was decided that all questions will be addressed in executive session due to the press of time.

CONSIDERATION OF HOUSE BILL NO. 276: Rep. Dorothy Bradley, District #79, appeared and offered testimony in support of HB 276 as its chief sponsor. She said that HB 276 is an S.R.S. bill to help them "take a bite out of crime." The bill would allow the Department of Revenue to furnish the Department of Social and Rehabilitative Services information obtained under 15-30-301 pertaining to applicants and recipients of public assistance. She wanted to make it clear to the committee that she is not asking the S.R.S. to be able to get their hands on the income tax forms themselves -- but rather, just the information that is sent to the Department of Revenue. She doesn't feel that welfare fraud is an overwhelming problem in Montana.

Pat Godbout, administrator of the Audit and Program Compliance Division of the Department of S.R.S., testified briefly in support of the bill.

Ken Morrison, representing the Department of Revenue, said the department supports this legislation; however, it does have a concern. The income tax system is built on voluntary compliance. If the taxpayers perceives that the information they are providing us is going to be used for other purposes than just for tax collection purposes, the department may then run into problems with voluntary compliance.

There being no further proponents or opponents, Rep. Bradley closed.

The floor was opened for questioning.

In response to a question asked by Rep. Krueger, Ms. Godbout wanted the committee to keep in mind that the information received by the Department of Revenue can be almost a year old before the Department of S.R.S. gets it, because the information is filed only once a year with the Department of Revenue.

In response to a question from Rep. Keyser, Ms. Godbout stated that the information would be obtained from other sources such as banks. What 15-30-301 specifically addresses is interest, dividends, pensions and so forth. It would not have anything to do with wages or unemployment information because S.R.S already gets that from the Department of Labor. (A copy of the Release of Confidential Information form was left with the committee and marked as Exhibit W.)

Rep. Bradley wished to add that in one of the surveys already done, the survey produced information showing that in 6.5% of the cases, there were resources present; and if we let this type of fraud continue, we are in line to lose a lot of federal medicade money. Rep. Bradley further stated that it was one of the reasons why she could justify going this far in order to obtain that information in a least costly way. She further informed the committee that she described this legislation to a number of senior citizen groups to get their reaction. When they realized how much federal money was at stake, they didn't have any problems with it.

There being no further discussion, hearing closed on HB 276.

ADJOURN: A motion having been made and seconded, the meeting was adjourned at 12:55 p.m.

Tom Hannah

TOM HANNAH, Chairman

DAILY ROLL CALL

HOUSE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 2/14/85

EXECUTIVE SESSION - 7:00

NAME	PRESENT	ABSENT	EXCUSED
Tom Hannah (Chairman)	✓		
Dave Brown (Vice Chairman)	✓		
Kelly Addy	✓		
Toni Bergene	✓		
John Cobb	✓		
Paula Darko	✓		
Ralph Eudaily	✓		
Budd Gould	✓		
Edward Grady	✓		
Joe Hammond	✓		
Kerry Keyser			
Kurt Krueger	✓		
John Mercer	✓		
Joan Miles	✓		
John Montayne	✓		
Jesse O'Hara	✓		
Bing Poff	✓		
Paul Rapp-Svrcek	✓		

DAILY ROLL CALL

HOUSE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 2/14/85

NAME	PRESENT	ABSENT	EXCUSED
Tom Hannah (Chairman)	✓		
Dave Brown (Vice Chairman)	✓		
Kelly Addy	✓		
Toni Bergene	✓		
John Cobb	✓		
Paula Darko	✓		
Ralph Eudaily	✓		
Budd Gould	✓		
Edward Grady	✓		
Joe Hammond	✓		
Kerry Keyser	✓		
Kurt Krueger	✓		
John Mercer	✓		
Joan Miles	✓		
John Montayne	✓		
Jesse O'Hara	✓		
Bing Poff	✓		
Paul Rapp-Svrcek	✓		

STANDING COMMITTEE REPORT

February 14 19 85

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 357

FIRST reading copy (WHITE color)

TO REQUIRE MOTORCYCLE RIDERS TO WEAR PROTECTIVE HEADGEAR

Respectfully report as follows: That HOUSE Bill No. 357

be amended as follows:

1. Title, line 6.
Following: "HEADGEAR;"
Insert: "PROVIDING AN EXCEPTION FOR A MECHANIC TEST DRIVING A MOTORCYCLE;"

2. Page 1, line 11.
Following: "."
Insert: (1)

3. Page 1, line 12.
Following: "riders."
Strike: "An"
Insert: "Except as provided in subsection (2), an"

4. Page 1, following line 16.
Insert: "(2) A mechanic test driving a motorcycle in the course of servicing or repairing the motorcycle is not required to wear protective headgear."

DO PASS
XXXXX

AND AS AMENDED,
DO NOT PASS

REP. TOM HANNAH Chairman.

COMMITTEE SECRETARY

STATE PUB. CO.
Helena, Mont.

ROLL CALL VOTE

HOUSE COMMITTEE JUDICIARY

DATE February 14, 1985 BILL NO. HB 357 TIME 7:15 a.m.

NAME	AYE	NAY
Kelly Addy		✓
Toni Bergene	✓	
John Cobb	✓	
Paula Darko		✓
Ralph Eudaily		✓
Budd Gould		✓
Edward Grady	✓	
Joe Hammond	✓	
Kerry Keyser		
Kurt Krueger		✓
John Mercer	✓	
Joan Miles	✓	
John Montayne	✓	
Jesse O'Hara		✓
Bing Poff	✓	
Paul Rapp-Svrcek	✓	
Dave Brown (Vice Chairman)	✓	
Tom Hannah (Chairman)		✓

Marcene Lynn
Secretary

Tom Hannah
Chairman

Motion: Rep. Grady moved that HB 357 DO NOT PASS AS AMENDED.

The motion was seconded by Rep. Rapp-Svrcek and carried 10-7.

STANDING COMMITTEE REPORT

February 14 19 85

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 522

FIRST reading copy (WHITE color)

PROVIDING NOTICE TO CLAIMANTS OF CERTAIN PROPERTY SUBJECT TO FORFEITURE

Respectfully report as follows: That HOUSE Bill No. 522

be amended as follows:

1. Page 5, line 13.
Strike: "No"
Insert: "Only one 20-day"

2. Page 5, line 17.
Following: "days"
Insert: "or within the 20-day extension"

AND AS AMENDED,
DO PASS

REP. TOM HANNAH Chairman.

COMMITTEE SECRETARY

STATE PUB. CO.
Helena, Mont.

STANDING COMMITTEE REPORT

February 14 19 85

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 619

FIRST reading copy (WHITE color)

REQUIRE PLAINTIFF IN JUSTICE'S COURT TO FILE A MOTION FOR DEFAULT ENTRY

Respectfully report as follows: That HOUSE 619 Bill No.

DO NOT PASS

~~DO PASS~~

REP. TOM HANNAH Chairman.

STATE PUB. CO.
Helena, Mont.

COMMITTEE SECRETARY

STANDING COMMITTEE REPORT

February 14 19 85

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 656

FIRST reading copy (WHITE color)

WORKERS' COMPENSATION INSURER LIABILITY FOR COSTS AND ATTORNEY FEES

HOUSE 656

Respectfully report as follows: That Bill No.

be amended as follows:

1. Page 1, line 22.
Following: "the"
Strike: "division of"

Following: "compensation"
Insert: "judge"

AND AS AMENDED,
DO PASS

~~DO PASS~~

REP. TOM HANNAH Chairman.

STATE PUB. CO.
Helena, Mont.

COMMITTEE SECRETARY

EXHIBIT A
2/14/85
HB 507

PRIVATE PASSENGER AUTOMOBILE RATING TABLES

1. In Table A, choose the highest appropriate driver age – auto use factor for each car to be insured. (If there is youthful operator and car is also used in driving to work, both rating elements are to apply).
2. Choose the appropriate secondary classification for each car in Table B.
3. Add or subtract the Table B factor from the Table A factor.
4. Apply resulting factor to appropriate base premium for each coverage.

Autos owned by corporations, co-partnerships and unincorporated associations are to be rated in accordance with Table C.

TABLE A – OTHER THAN YOUTHFUL OPERATORS (For 'Youthful Operators' See Next Page.)

	Driver	Pleasure Use and Drive to Work 5 Miles and Under	Drive to Work More Than 5 Miles, Less Than 15 Miles	Drive to Work 15 or More Miles	Business Use	Farm Use
	Only Operator in Household is a Female Age 30-64	8131– 0.90	8132– 1.05	8133– 1.30	8138– 1.35	8139– 0.75
*	Principal Operator is Age 50-64	8891– .90	8892– 1.05	8893– 1.30	8898– 1.35	8899– 0.75
††	Principal Operator is Age 65 or Over	8021– 0.95	8022– 1.10	8023– 1.35	8028– 1.40	8029– 0.80
	All Other Operators	8111– 1.00	8112– 1.15	8113– 1.40	8118– 1.45	8119– 0.85

TABLE B

Single Car – Sub-Class						Multi-Car – Sub-Class					
	0	1	2	3	4		0	1	2	3	4
Codes						Codes					
*NHP	–10	–11	–12	–13	–14	*NHP	–20	–21	–22	–23	–24
* *HP	–50	–51	–52	–53	–54	* *HP	–60	–61	–62	–63	–64
Factors	+0.00	+0.40	+0.90	+1.50	+2.20	Factors	-0.15	+0.05	+0.30	+0.60	+0.95

These two digits are to be appended to the four-digit code corresponding to the Primary Rating Factor to which the Factor in this table is added or subtracted.

** The coding of High Performance Cars is required on liability policies written in combination with Physical Damage. Determine from the Symbol and Identification Section which cars should be coded as High Performance.

For Multi-Car Risks, the Secondary Rating Factor is to be added to the Primary Rating Factor for each car. If a Multi-Car Risk consists however of more than two cars and develops points under the Safe Driver Insurance Plan, the points shall be assigned to the two cars with the highest "Total Base Premiums" for all coverages combined and the remaining automobiles shall be rated at Sub-Class O. The code for each car is to be appended accordingly.

"Total Base Premiums" means the sum of the base premiums for the bodily injury, property damage, medical payments, comprehensive and collision coverages that apply to the automobile.

†† The classification "Principal Operator is Age 65 or Over" shall be interpreted that any operator of the automobile with a higher Primary Rating Factor shall determine the classification of the automobile.

TABLE C

Autos owned by corporation, co-partnership or unincorporated association

(To be rated on a Commercial Type Policy.)

	Classification Codes		
For Private Passenger Types rated on a Fire Company policy multiply the Fire Company Personal Auto Rates by 1.45.	NON-FLEET	*NHP	899017
For Private Passenger Types rated on a Casualty Company policy, refer to state rate sheets displaying Private Passenger Types		**HP	899057
	FLEET		199800

* Non-High Performance Automobile
** High Performance Automobile

PRIVATE PASSENGER AUTOMOBILE RATING TABLES

TABLE A – YOUTHFUL OPERATORS (For Other Than Youthful Operators' see previous page.)

DRIVER		Pleasure Use and Drive to Work 5 Miles and Under		Drive to Work More Than 5 Miles, Less Than 15 Miles		Drive to Work 15 or More Miles		Business Use		Farm Use	
		No Driver Training	Driver† Training	No Driver Training	Driver† Training	No Driver Training	Driver† Training	No Driver Training	Driver† Training	No Driver Training	Driver† Training
UNMARRIED MALE OWNER OR PRINCIPAL OPERATOR	17*yr. old	8711-- 3.50	8761-- 3.10	8712-- 3.65	8762-- 3.25	8712-- 3.65	8762-- 3.25	8712-- 3.65	8762-- 3.25	8711-- 3.50	8761-- 3.10
	18 yr. old	8721-- 3.30	8771-- 2.90	8722-- 3.45	8772-- 3.05	8722-- 3.45	8772-- 3.05	8722-- 3.45	8772-- 3.05	8721-- 3.30	8771-- 2.90
	19 yr. old	8731-- 3.10	8781-- 2.70	8732-- 3.25	8782-- 2.85	8782-- 3.25	8782-- 2.85	8732-- 3.25	8782-- 2.85	8731-- 3.10	8781-- 2.70
	20 yr. old	8741-- 2.85	8791-- 2.55	8742-- 3.00	8792-- 2.70	8742-- 3.00	8792-- 2.70	8742-- 3.00	8792-- 2.70	8741-- 2.85	8791-- 2.55
	21 yr. old	8811-- 2.50		8812-- 2.65		8812-- 2.65		8812-- 2.65		8811-- 2.50	
	22 yr. old	8821-- 2.35		8822-- 2.50		8822-- 2.50		8822-- 2.50		8821-- 2.35	
	23 yr. old	8831-- 2.20		8832-- 2.35		8832-- 2.35		8832-- 2.35		8831-- 2.20	
	24 yr. old	8841-- 2.05		8842-- 2.20		8842-- 2.20		8842-- 2.20		8841-- 2.05	
	25 yr. old	8911-- 1.90		8912-- 2.05		8912-- 2.05		8912-- 2.05		8911-- 1.90	
	26 yr. old	8921-- 1.75		8922-- 1.90		8922-- 1.90		8922-- 1.90		8921-- 1.75	
	27 yr. old	8931-- 1.55		8932-- 1.70		8932-- 1.70		8932-- 1.70		8931-- 1.55	
	28 yr. old	8941-- 1.40		8942-- 1.55		8942-- 1.55		8942-- 1.55		8941-- 1.40	
	29 yr. old	8951-- 1.25		8952-- 1.40		8113-- 1.40		8118-- 1.45		8951-- 1.25	
UNMARRIED MALE NOT OWNER OR PRINCIPAL OPERATOR	17*yr. old	8511-- 2.75	8561-- 2.30	8512-- 2.90	8562-- 2.45	8512-- 2.90	8562-- 2.45	8512-- 2.90	8562-- 2.45	8511-- 2.75	8561-- 2.30
	18 yr. old	8521-- 2.55	8571-- 2.15	8522-- 2.70	8572-- 2.30	8522-- 2.70	8572-- 2.30	8522-- 2.70	8572-- 2.30	8521-- 2.55	8571-- 2.15
	19 yr. old	8531-- 2.40	8581-- 2.05	8532-- 2.55	8582-- 2.20	8532-- 2.55	8582-- 2.20	8532-- 2.55	8582-- 2.20	8531-- 2.40	8581-- 2.05
	20 yr. old	8541-- 2.25	8591-- 1.95	8542-- 2.40	8592-- 2.10	8542-- 2.40	8592-- 2.10	8542-- 2.40	8592-- 2.10	8541-- 2.25	8591-- 1.95
	21 yr. old	8611-- 1.90		8612-- 2.05		8612-- 2.05		8612-- 2.05		8611-- 1.90	
	22 yr. old	8621-- 1.70		8622-- 1.85		8622-- 1.85		8622-- 1.85		8621-- 1.70	
	23 yr. old	8631-- 1.55		8632-- 1.70		8632-- 1.70		8632-- 1.70		8631-- 1.55	
	24 yr. old	8641-- 1.35		8642-- 1.50		8642-- 1.50		8642-- 1.50		8641-- 1.35	
MARRIED MALE	17*yr. old	8311-- 1.95	8361-- 1.70	8312-- 2.10	8362-- 1.85	8312-- 2.10	8362-- 1.85	8312-- 2.10	8362-- 1.85	8311-- 1.95	8361-- 1.70
	18 yr. old	8321-- 1.85	8371-- 1.65	8322-- 2.00	8372-- 1.80	8322-- 2.00	8372-- 1.80	8322-- 2.00	8372-- 1.80	8321-- 1.85	8371-- 1.65
	19 yr. old	8331-- 1.75	8381-- 1.60	8332-- 1.90	8382-- 1.75	8332-- 1.90	8382-- 1.75	8332-- 1.90	8382-- 1.75	8331-- 1.75	8381-- 1.60
	20 yr. old	8341-- 1.65	8391-- 1.55	8342-- 1.80	8392-- 1.70	8342-- 1.80	8392-- 1.70	8342-- 1.80	8392-- 1.70	8341-- 1.65	8391-- 1.55
	21 yr. old	8411-- 1.50		8412-- 1.65		8412-- 1.65		8412-- 1.65		8411-- 1.50	
	22 yr. old	8421-- 1.40		8422-- 1.55		8422-- 1.55		8422-- 1.55		8421-- 1.40	
	23 yr. old	8431-- 1.30		8432-- 1.45		8432-- 1.45		8432-- 1.45		8431-- 1.30	
	24 yr. old	8441-- 1.20		8442-- 1.35		8113-- 1.40		8118-- 1.45		8441-- 1.20	
UNMARRIED FEMALE	17*yr. old	8211-- 1.75	8261-- 1.60	8212-- 1.90	8262-- 1.75	8212-- 1.90	8262-- 1.75	8212-- 1.90	8262-- 1.75	8211-- 1.75	8261-- 1.60
	18 yr. old	8221-- 1.60	8271-- 1.50	8222-- 1.75	8272-- 1.65	8222-- 1.75	8272-- 1.65	8222-- 1.75	8272-- 1.65	8221-- 1.60	8271-- 1.50
	19 yr. old	8231-- 1.50	8281-- 1.40	8232-- 1.65	8282-- 1.55	8232-- 1.65	8282-- 1.55	8232-- 1.65	8282-- 1.55	8231-- 1.50	8281-- 1.40
	20 yr. old	8241-- 1.25	8291-- 1.20	8242-- 1.40	8292-- 1.35	8113-- 1.40	8113-- 1.40	8118-- 1.45	8118-- 1.45	8241-- 1.25	8291-- 1.20
	21 yr. old	8461-- 1.15		8462-- 1.30		8113-- 1.40		8118-- 1.45		8461-- 1.15	
	22 yr. old	8471-- 1.10		8472-- 1.25		8113-- 1.40		8118-- 1.45		8471-- 1.10	
	23 yr. old	8481-- 1.05		8482-- 1.20		8113-- 1.40		8118-- 1.45		8481-- 1.05	
	24 yr. old	8491-- 1.00		8492-- 1.15		8113-- 1.40		8118-- 1.45		8491-- 1.00	

*17 or under

† If Driver Training Credit is to apply, attach Verification of Driver Education Form

GOOD STUDENT CLASSIFICATIONS

FOR INSTRUCTIONS IN DETERMINING THE CLASSIFICATION CODES AND RATING FACTORS, SEE REVERSE SIDE OF THIS PAGE.

TABLE A

Driver		*Pleasure Use and Drive to Work 5 Miles and Under		*Drive to Work More Than 5 Miles, Less Than 15 Miles		Drive to Work 15 or More Miles		Business Use		Farm Use	
		No Driver Training	Driver Training†	No Driver Training	Driver Training†	No Driver Training	Driver Training†	No Driver Training	Driver Training†	No Driver Training	Driver Training†
UNMARRIED MALE OWNER OR PRINCIPAL OPERATOR	17* yr. old	8716-- 2.70	8764-- 2.50	8716-- 2.85	8765-- 2.65	8716-- 2.85	8765-- 2.65	8716-- 2.85	8765-- 2.65	8716-- 2.70	8764-- 2.50
	18 yr. old	8726-- 2.50	8774-- 2.30	8725-- 2.65	8775-- 2.45	8725-- 2.65	8775-- 2.45	8725-- 2.65	8775-- 2.45	8726-- 2.50	8774-- 2.30
	19 yr. old	8736-- 2.30	8784-- 2.15	8735-- 2.45	8785-- 2.30	8735-- 2.45	8785-- 2.30	8735-- 2.45	8785-- 2.30	8736-- 2.30	8784-- 2.15
	20 yr. old	8746-- 2.10	8794-- 2.05	8745-- 2.25	8795-- 2.20	8745-- 2.25	8795-- 2.20	8745-- 2.25	8795-- 2.20	8746-- 2.10	8794-- 2.05
	21 yr. old	8814-- 2.05		8815-- 2.20		8815-- 2.20		8815-- 2.20		8814-- 2.05	
	22 yr. old	8824-- 2.00		8825-- 2.15		8825-- 2.15		8825-- 2.15		8824-- 2.00	
	23 yr. old	8834-- 1.95		8835-- 2.10		8835-- 2.10		8835-- 2.10		8834-- 1.95	
	24 yr. old	8844-- 1.90		8845-- 2.05		8845-- 2.05		8845-- 2.05		8844-- 1.90	
UNMARRIED MALE NOT OWNER OR PRINCIPAL OPERATOR	17* yr. old	8514-- 2.10	8564-- 1.80	8515-- 2.25	8565-- 1.95	8515-- 2.25	8565-- 1.95	8515-- 2.25	8565-- 1.95	8514-- 2.10	8564-- 1.80
	18 yr. old	8524-- 1.95	8574-- 1.65	8525-- 2.10	8575-- 1.80	8525-- 2.10	8575-- 1.80	8525-- 2.10	8575-- 1.80	8524-- 1.95	8574-- 1.65
	19 yr. old	8536-- 1.85	8584-- 1.55	8535-- 2.00	8585-- 1.70	8535-- 2.00	8585-- 1.70	8535-- 2.00	8585-- 1.70	8534-- 1.85	8584-- 1.55
	20 yr. old	8546-- 1.70	8594-- 1.40	8545-- 1.85	8595-- 1.55	8545-- 1.85	8595-- 1.55	8545 1.85	8595-- 1.55	8544-- 1.70	8594-- 1.40
	21 yr. old	8614-- 1.40		8615-- 1.55		8615- 1.55		8615-- 1.55		8614-- 1.40	
	22 yr. old	8624-- 1.30		8625-- 1.45		8625-- 1.45		8625-- 1.45		8624-- 1.30	
	23 yr. old	8634-- 1.20		8635-- 1.35		8113-- 1.40		8110-- 1.45		8634-- 1.20	
	24 yr. old	8644-- 1.10		8645-- 1.25		8113-- 1.40		8110-- 1.45		8644-- 1.10	
MARRIED MALE	17* yr. old	8314-- 1.60	8364-- 1.35	8315-- 1.75	8365-- 1.50	8315-- 1.75	8365-- 1.50	8115-- 1.75	8365-- 1.50	8314-- 1.60	8364-- 1.35
	18 yr. old	8324-- 1.50	8374-- 1.30	8325-- 1.65	8375-- 1.45	8325- 1.65	8375-- 1.45	8325-- 1.65	8375-- 1.45	8324-- 1.50	8374-- 1.30
	19 yr. old	8334-- 1.40	8384-- 1.25	8335-- 1.55	8385-- 1.40	8335-- 1.55	8113-- 1.40	8335-- 1.55	8118-- 1.45	8334-- 1.40	8384-- 1.25
	20 yr. old	8344-- 1.30	8394-- 1.20	8345-- 1.45	8395-- 1.35	8345-- 1.45	8113-- 1.40	8345-- 1.45	8118-- 1.45	8344-- 1.30	8394-- 1.20
	21 yr. old	8414-- 1.20		8415-- 1.35		8113-- 1.40		8118-- 1.45		8414-- 1.20	
	22 yr. old	8424-- 1.15		8425-- 1.30		8113-- 1.40		8118-- 1.45		8424-- 1.15	
	23 yr. old	8434-- 1.10		8435-- 1.25		8113-- 1.40		8118-- 1.45		8434-- 1.10	
	24 yr. old	8444-- 1.05		8445-- 1.20		8113-- 1.40		8118-- 1.45		8444-- 1.05	
UNMARRIED FEMALE	17* yr. old	8214-- 1.50	8264-- 1.35	8215-- 1.65	8265-- 1.50	8215-- 1.65	8265-- 1.50	8215-- 1.65	8265-- 1.50	8214-- 1.50	8264-- 1.35
	18 yr. old	8224-- 1.35	8274-- 1.25	8225-- 1.50	8275-- 1.40	8225-- 1.50	8113-- 1.40	8225-- 1.50	8118-- 1.45	8224-- 1.35	8274-- 1.25
	19 yr. old	8234-- 1.25	8284-- 1.15	8235-- 1.40	8285-- 1.30	8113-- 1.40	8113-- 1.40	8118-- 1.45	8118-- 1.45	8234-- 1.25	8284-- 1.15
	20 yr. old	8244-- 1.10	8294-- 1.05	8245-- 1.25	8295-- 1.20	8113-- 1.40	8113-- 1.40	8118-- 1.45	8118-- 1.45	8244-- 1.10	8294-- 1.05
	21 yr. old	8464-- 1.05		8465-- 1.20		8113-- 1.40		8118-- 1.45		8464-- 1.05	
	22 yr. old	8474-- 1.00		8475-- 1.15		8113-- 1.40		8118-- 1.45		8474-- 1.00	
	23 yr. old	8484-- 1.00		8485-- 1.15		8113-- 1.40		8118-- 1.45		8484-- 1.00	
	24 yr. old	8494-- 1.00		8495-- 1.15		8113-- 1.40		8118-- 1.45		8494-- 1.00	

*17 or under

† If Driver Training Credit is to apply, attach Verification of Driver Education For

TABLE B – SEE REVERSE SIDE OF THIS PAGE

INSTRUCTIONS

1. In Table A, choose the highest appropriate driver age – auto use factor for each car to be insured. (If car is also used in driving to work, both rating elements are to apply).
2. Choose the appropriate secondary classification for each car in Table B.
3. Add or subtract the Table B factor from the Table A factor.
4. Apply resulting factor to appropriate base premium for each coverage.

TABLE B

Single Car – Sub-Class						Multi-Car – Sub-Class					
	0	1	2	3	4		0	1	2	3	4
Codes						Codes					
*NHP	---10	---11	---12	---13	---14	*NHP	---20	---21	---22	---23	---24
**HP	---50	---51	---52	---53	---54	**HP	---60	---61	---62	---63	---64
Factors	+0.00	+0.40	+0.90	+1.50	+2.20	Factors	-0.15	+0.05	+0.30	+0.60	+0.95

*Non-High Performance Automobile
**High Performance Automobile

UNDERWRITING GUIDE

GOOD STUDENT DISCOUNT RULE

The Company's regular underwriting standards must be observed in connection with the Good Student Discount Rule. To maintain the quality of the business you have produced it is necessary to continue to follow present underwriting procedures with respect to:

1. Driver Classes.
2. Vehicle Classes, especially Sports Cars, Convertibles, and High Performance Automobiles.
3. Applicant's accident and conviction record.

It must be remembered that rate alone cannot produce profitable automobile experience. Only by exercising care in underwriting selection can the agent and company, working together, maintain an adequate market for the deserving risk.

Automobile Department

EXHIBIT B
2/14/85
HB 507 & HB 366

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

The two bills you are hearing today, in slightly different ways, are each designed to soften the requirement of the 1983 law that insurance rating be absolutely equal where sex and marital status are concerned. House Bill 507 limits the prohibition against discrimination on the basis of sex or marital status to the issuance or availability of insurance. House Bill 366 retains all availability language and extends the Norris decision to include all sizes of employers in the areas of pensions and retirement plans.

Making insurance rating equal is a costly and unnecessary exercise. Is it a women's issue? I argue that it is not. It is an economic issue. There are absolute and indisputable differences between men and women. Women are better drivers than men well into middle age. Not only do we have fewer automobile accidents, but the ones we have are not as serious. The statistics that support these facts are concrete and will be covered for you more thoroughly during this hearing.

We have been told time and time again that this is a civil rights issue -- that women are discriminated against and that it is not good for them. Men and women are both discriminated against in insurance rating, and I submit to you that it is not unfair discrimination. It seems that discrimination is a word that has gotten a bad reputation, yet it is not an inherently bad practice. According to Funk and Wagnall's standard dictionary, the word discrimination means "The act or power of discriminating: the discernment of

distinctions." The insurance industry recognizes very real distinctions between the sexes in behavior, health, and longevity.

Assuming, as we must, that Unisex will have an immediate adverse financial impact on Montana women, the question is, is the price worth paying for what is only a perceived sense of equality? Members of the committee, 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 -- much more than one-third-- 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." I am told by the state census and data center where I got all this information that new numbers show that the 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 for middle class and professional women. We're 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 -- which I assure you is probably 10 years old and doesn't run too well, to drive to work, this woman must have automobile insurance. If you

do not pass HB366 and HB507, this woman's automobile insurance rates will go up anywhere from $122 to $501 more per year. Do you think that "equality at any price" is a luxury that these women can afford? I think they would tell you no.

Since there is no constitutional or other legal requirement for the unisex law, it stands or falls on its own merits alone. Therefore, the arguments boil down to ones of social policy versus economics. The former are largely philosophical and political in nature, not amenable to objective analysis. The latter are grounded in facts that can be examined and summarized. 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. However, of those women who carry health insurance, only 15% are covered by individually purchased policies. The rest are covered by an employer or group plan and accordingly will not individually recognize a savings on their health or disability premiums. In the areas where women's insurance rates will go up, auto and life, the vast majority of women who are insured for these lines are insured through individual policies. Women will pay additional premiums out of their own pockets for the types of

insurance on which Unisex will raise the rates. Unisex also acts as a subsidy where women and married persons are unfairly charged to cover the risk of young unmarried men. This is because Unisex not only prohibits consideration of sex, but also marital status in rating. Women lose what may be called the women's discount and the married persons lose what may be called a marriage discount for their auto rates. The law as it exists may result in more drivers coming into the assigned risk pool because companies will have to ignore the statistical evidence of young men having bad claims experience. That means that they will have to pay still more. It also means that there will be more underinsured and uninsured motorists, which is against Montana public policy.

The issue of unisex insurance rating policies is highly complex and certainly does attract a lot of numbers. As a matter of fact, the numbers can become quite confusing, with individuals on both sides of the issue throwing them so quickly that it can make your head spin. Some numbers that have been successfully disputed by HB366 and HB507 proponents still keep cropping up. It's almost like, if you say it enough, it makes it so. A good example of this is this February copy of the American Bar Association Journal. In here is an article entitled, Insurers Are Surviving Without Sex. In the article, proponents of Unisex are still presenting as fact the fiction that number of miles driven is more relevant than gender.

This is simply not true. If a female drives 50,000 miles, and a male drives 50,000 miles, the male is much more likely to have an accident, and a serious one, than a female. Many other assumptions that are in error and have been successfully disputed appear here.

You've probably already heard a lot about what other states are doing. It seems that one example I've seen in print a lot is Hawaii. Opponents of HB366 and HB507 will tell you that the year after Hawaii passed a unisex insurance law, insurance rates went down 15%. What they haven't said is that that 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%. Our information shows that other states are just not following Montana's lead in passing sweeping unisex legislation. In 1983, 11 states (other than Montana) 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. Shouldn't that tell us something?

Insurance is incredibly competitive. There are 1,259 companies in Montana offering various types of insurance. If any of these companies felt that Unisex was a demand of the marketplace, they would be offering it. The free enterprise system does work, if it is allowed to.

I have only been involved with the unisex issue for a few months, but one of the easiest things to perceive is that it seems to be a battle between women's groups and insurance companies. Well, some of you probably aren't too fond of the women's groups, and I have no doubt about some of your feelings towards the insurance industry. I ask you to take this issue to a higher level than that -- don't vote for the insurance industry and don't vote for the women's groups.

I ask you to vote for that Montana woman who is divorced with some kids and is living in poverty. Equality is vital, but only if it is real, and real equality to her is not paying hundreds more dollars per year for her automobile insurance. I urge you to pass HB366 and HB507.

DATED: February 14, 1985.

Exhibit C
2/14/85
HB 507 & 366

TESTIMONY OF ELAINE DONNELLY

PRESENTED FEBRUARY 14, 1985, ON BEHALF OF EAGLE FORUM

BEFORE THE MONTANA HOUSE COMMITTEE ON JUDICIARY

IN SUPPORT OF H.B. 507 - TO REPEAL THE 1983 UNISEX INSURANCE LAW (H.B. 358)

Mr. Chairman and members of the Judiciary Committee, I appreciate this opportunity to testify before you today in support of H.B. 507, a bill to repeal the unisex insurance law (H.B.358), which is due to go into effect in Montana on October 1 of this year. Enforcement of this law would be unfair to women because it would force insurance companies in this state to charge women more for insurance, even when they cost less to insure.

I know this from actual experience with Michigan's Essential Insurance Act of 1979, which eliminated sex and marital status as factors in the setting of auto insurance rates. My testimony is based not on speculation, but on official data from my state's Insurance Bureau on how that bill drastically increased insurance rates for young women. Michigan's present unisex insurance law has created a new form of arbitrary, unfair sex discrimination against young women, which violates their civil rights. Hundreds of dollars in rate hikes are being robbed right out of the pockets of young female drivers, even though they tend to have far fewer accidents, and cost much less to insure. Insurance companies have taken advantage of the law by raising rates by as much as 327% in some categories, and rates for some groups of young men have gone up as well. The fact that this has been done in the name of "women's rights" only adds insult to economic injury.

I hope that the facts I am about to present will persuade you to repeal Montana's unisex law before the women of this state suffer the same economic

penalties that have been imposed in my state.

Incidentally, I am not connected with insurance company or coalition; my research was done independently as Special Projects Director for Eagle Forum - a national organization of women and men that has led the pro-family movement since 1972. I am here on the invitation of the Montana Eagle Forum group.

In my home state of Michigan, the Essential Insurance Act was passed in late 1979 (effective January 1, 1981) after a debate that primarily focused on the bill's prohibitions against insurance "redlining" in certain urban areas. There was virtually no public notice or debate on the implications of the few words inserted into the bill to eliminate "sex" and "marital status" as factors in the setting of home and auto insurance rates.

The State Department of Commerce did produce an estimate in 1979 on how rates would change for young men and women, married and single, which predicted that rates for young single females would rise only 17% to 29%. (There were no estimates shown for young married women.) As it happened, these preliminary estimates weren't even close.

Before young women drivers in Michigan knew what had happened, many of them began getting letters from their insurance companies announcing rate increases of hundreds of dollars. Early reports were that auto insurance rates for some classes of young women were raised by as much as 195% - a triple increase. (Auto Club, rate for a married female principal operator, under age 19.)

But the enormity of the situation did not become fully apparent until the publication of the Michigan Insurance Bureau's official report A Year of Change - the Essential Insurance Act in 1981. That Report did discuss a few beneficial

changes made by the comprehensive law, but the few tables and pages that discuss the elimination of sex and marital status in the setting of rates tend to obscure the truth by disguising it in a puzzle of unfamiliar insurance terms and numbers.

It was necessary for me to ask a lot of persistent questions of the Michigan Insurance Bureau, and to use a pocket calculator in order to translate the true meaning of that Report. For example, the first challenge was to interpret Exhibit V on page 26, which displays the rate changes only in terms of "relativity," a term of insurance jargon which compares the risk classification of young drivers to that of adult drivers.

According to an official at the Insurance Bureau, basic classes of adult drivers are assigned a relativity of 1.00. a group of young drivers with a relativity factor of 2.00 are considered to be twice as likely to have accidents, based on statistical probabilities. If the relativity factor of a group of single females was increased by a particular company from 2.00 to 2.95 under the new sex-neutral law, that translates into a percentage increase of 47%. I used a calculator to figure and write in the rest of the percentage changes, as shown on the attached copy of Exhibit V. As you can see, rates for young single women (age 16) rose between 13% and 127%.

But the most interesting thing about the Insurance Bureau's Report was an item that I noticed was missing. Exhibit V displays only three tables - instead of four. The table of rate increases for young married females wasn't there! When I inquired as to why the table was missing, I was told that there was "no room," and that none had been prepared. How strange it is that the missing table was the one that would have shown the steepest increases caused by the unisex insurance law!

I decided to use my calculator and instructions from an official at the Insurance Bureau to prepare my own table, and the results are truly shocking. (Before passage of the unisex law, young married females were assigned the same low relativity factor as adult drivers - 1.00) As you can see, young married women have been hurt most of all.

Auto Owners increased their rates by 103%; TransAmerica by 140%; State Farm by 160%; the Auto Club by 195%; Allstate by 242%; and topping them all, Citizens Insurance raised their rates for that group of young women by a whopping 327% - that's more than four times as much as the policyholder would have paid before the law went into effect. (married female, principal operator, under age 18.) In the face of facts like these, how could anyone declare the unisex law to be "positive" for women? The answer, of course, is to ignore the facts, or disguise them with relativity tables that obscure the truth.

The State Insurance Bureau's standard advice to shocked insurance buyers has been to "shop around" for the best rate, but even the most careful comparison shopper has little to choose when confronted with rate hikes like these.

But cold statistics don't tell the whole story of how some women have been hurt by the unisex insurance law. One of these young women, Kim Dove of Detroit, wrote a letter in 1983 to Rep. John Dingell (D) of Michigan, describing what the unisex insurance law meant to her. (copy attached) Kim is married, the mother of two children, and living on a low income. Even though she has an almost perfect driving record, her insurance company informed her that because of Michigan's unisex insurance law, her rate would be raised from $156 per year to $365 per year - an increase of over 125%.

Mrs. Dove shopped around to try to find a lower rate, but all the companies she talked to quoted the same high rates for the comprehensive coverage she used to have.

Mrs. Dove has therefore been forced to settle for minimum coverage with a high-risk company, and she feels dangerously under-insured. If she has an accident, the other party would be covered, but she and her family would not be. In her letter, she asks:

> "Who is going to take care of my family and pay the bills if I should have a serious accident with this kind of minimum coverage? The answer is no one. I don't feel free to use my own car, even for necessary trips to the doctor with my children. It is demoralizing and disheartening to have to ask others in my family to go out of their way (to drive me) but I simply can't afford to take chances."

Mrs. Dove has found out the hard way that unisex legislation mandates unfairness to women in the setting of auto insurance rates. Because of Michigan's law, young women all over the state are being arbitrarily denied the lower insurance rates that would otherwise be theirs, and the same thing will happen here if Montana's law is allowed to go into effect. Instead of being treated as female individuals in a low-risk group, the young women of Montana will be thrown into a much larger "unisex" category - together with young men. As has happened in Michigan, your low-risk drivers will be forced to pay the same rates as high-risk drivers. In my opinion, Michigan's law has caused violations of women's civil rights; it is neither fair or equitable in the true sense of the word.

I respectfully suggest that Michigan's experience with one of the few unisex insurance laws now in effect proves that predictions of only modest increases are hopelessly unreliable. If the State interferes in the marketplace for well-meaning but misguided reasons, the insurance companies will always have the last word. They can simply pass their losses on to the consumer. This is why it's up to you as responsible legislators to watch out for the interests of women, who cannot pass their losses on to anyone else.

For example, please consider the situation of a single mother who must purchase life insurance to protect the future of her family. As you know, a woman is economically punished by divorce; her standard of living goes down by 42% on the average, and a man's goes up. Now add the supposed protection of a unisex life insurance system. Suddenly, if she's 35 years old and a non-smoker, this woman will have to pay $784 more over a 20 year period for a one-year $50,000 term policy. Because her standard of living has already been reduced by divorce, the woman will probably have to reduce her coverage or drop it altogether, rather than bear that burden. How can anyone claim that an increase in life insurance rates, especially when they are not justified by actuarial tables, would represent an advance for women?

The claim has been made that higher life and auto insurance rates would be offset by lower health and pension rates under a unisex law. I invite you to consider the March 16, 1983 letter written by Mr. E. Paul Barnhart, one of the foremost independent actuaries in the entire country, with regard to S. 372, the so-called "Fair Insurance Practices Act," proposed at the federal level by U. S. Senator Robert Packwood (R-OR). (See copy attached.) Mr. Barnhart makes the point that women are being overcharged by many health insurance plans, but unisex insurance would not correct that problem, it would perpetuate it.

Testimony of the proponents of unisex insurance with regard to pension plans deserves closer scrutiny as well. Up until the recent Supreme Court decision in the case of Arizona v. Norris in July of 1983, about 2% of working women were receiving smaller monthly pension benefits than male retirees. (95% of the 39% of working women with pension plans were already receiving equal monthly benefits before the Norris decision; 5% of 39% = 2%.)

But the Norris decision has taken care of the problem for that 2% of women, without striking down cost-based pricing for individually-purchased life and auto policies. The National Organization for Women has called this an "injustice", but please take a closer look.

Remember that most employer-provided pension and health insurance plans can use the advantage of a group rate to blend the actuarial differences between males and females. On the other hand, auto and life policies are usually purchased by individuals without the advantage of group rates.

Therefore, if the Supreme Court had decided the case using NOW's unisex standard, women buying life and auto policies would have to pay more in individual premiums, while gaining almost nothing in the area of pension and/or medical benefits.

Finally, I must tell you that if you allow Montana's unisex law to go into effect, you would be marching against the trend that has been evident in Congress and several other states. Similar bills have been shelved or defeated in Massachusetts, West Virginia, New Mexico, California, Maryland, Washington, and Oregon. A bill to extend the unisex principle to other types of insurance in Michigan went nowhere last summer; in fact, it has sparked talk of repealing the most harmful sections of the 1979 Essential Insurance Act.

The biggest setback for unisex insurance took place early in 1984 when the U. S. House Commerce and Energy Committee passed four amendments to H.R. 100, the so-called "Non-Discrimination in Insurance"bill (companion to S. 372). Those amendments were designed to exempt individually-purchased insurance policies, to eliminate the retroactive cost of the bill, and to exempt abortion from mandatory health insurance costs. Because of the passage of

these beneficial amendments, sponsors of the bill (Rep. Barbara Mikulski of Maryland and Rep. James Florio of New Jersey) found themselves so out of step with the members of that Committee that they voted NO on their own bill. It was a great victory for female insurance buyers, and a sign of the national trend against unisex insurance.

Mr. Chairman and members of this Committee, the issue is not whether your state's insurance industry would collapse if you allow the unisex principle to go into effect. Again, most companies will simply pass their higher costs along to the consumers. The real issue is the concept of true equity in insurance. Low-risk policy holders should not be forced to pay the same high rates as high-risk policy holders. Under state-mandated unisex legislation, the insurance companies would have the green light to overcharge everyone.

That is exactly what happened with Michigan's Essential Insurance Act of 1979. For this reason, I urge you to learn from Michigan's mistake, and repeal your unisex insurance law before its harmful effects are imposed on the women and citizens of Montana.

* * * * * * * * *

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INITIAL IMPACTS OF ELIMINATION OF SEX & MARITAL STATUS
Pre & Post Essential Insurance Young Driver Factors Applied to Base Rates

Married Females

	Percent Increase	Age 16		Age 17		Percent Increase	Age 18		Age 19		Percent Increase	Age 20		Age 21-22		Percent Increase	Age 23-24	
Principal Operators	↓	1980	1/1/81	1980	1/1/81	↓	1980	1/1/81	1980	1/1/81	↓	1980	1/1/81	1980	1/1/81	↓	1980	1/1/81
Auto Club	+195	1.00	2.95	1.00	2.95	+195	1.00	2.95	1.00	2.55	+155	1.00	2.55	1.00	2.05	+ 65	1.00	1.65
State Farm	+160	1.00	2.60	1.00	2.60	+160	1.00	2.60	1.00	2.60	+160	1.00	2.60	1.00	1.90	+ 90	1.00	1.90
Auto Owners	+103	1.00	2.03	1.00	2.03	+103	1.00	2.03	1.00	1.95	+ 95	1.00	1.95	1.00	1.41	+ 20	1.00	1.20
Citizens →	+327	1.00	4.27	1.00	4.27	+327	1.00	4.27	1.00	3.85	+285	1.00	3.85	1.00	1.79		1.00	1.00
TransAmerica	+140	1.00	2.40	1.00	2.40	+105	1.00	2.05	1.00	1.80	+ 65	1.00	1.65	1.00	1.25	+25	1.00	1.25
Allstate	+242	1.00	3.42	1.00	2.97	+197	1.00	2.97	1.00	2.52	+152	1.00	2.52	1.00	2.07	+92	1.00	1.92
Occasional Operators																		
Auto Club	+100	1.00	2.00	1.00	2.00	+100	1.00	2.00	1.00	1.80	+ 80	1.00	1.80	1.00	1.65	+ 45	1.00	1.45
State Farm	+ 85	1.00	1.85	1.00	1.85	+ 85	1.00	1.85	1.00	1.85	+ 85	1.00	1.85	1.00	1.65	+ 45	1.00	1.45
Auto Owners	+ 54	1.00	1.54	1.00	1.54	+ 54	1.00	1.54	1.00	1.36	+ 36	1.00	1.36	1.00	1.15	+ 8	1.00	1.08
Citizens	+ 98	1.00	1.98	1.00	1.98	+ 98	1.00	1.98	1.00	1.71	+ 71	1.00	1.71	1.00	1.18		1.00	1.00
TransAmerica	+ 70	1.00	1.70	1.00	1.70	+ 70	1.00	1.50	1.00	1.30	+ 20	1.00	1.20	1.00	1.05	+ 5	1.00	1.05
Allstate	+242	1.00	3.42	1.00	2.97	+242	1.00	2.97	1.00	2.52	+152	1.00	2.52	1.00	2.07	+92	1.00	1.92

* THIS IS THE TABLE THAT WAS OMITTED FROM THE REPORT A YEAR OF CHANGE - THE ESSENTIAL INSURANCE ACT IN 1981, PUBLISHED BY THE MICHIGAN INSURANCE BUREAU - 1982 IT SHOWS THE STEEPEST INCREASES IN AUTO INSURANCE RATES UNDER THE NEW LAW. - E.D.

- SEE OTHER SIDE FOR OTHER TABLES AS PUBLISHED. PERCENTAGE CHANGES WERE NOT SHOWN ON THE ORIGINAL 3 TABLES -

% Difference Determined as Follows:
* 4.27
-1.88
2.39 ÷ 1.88 = 127% Increase

INITIAL IMPACTS OF ELIMINATION OF SEX & MARITAL STATUS
Pre & Post Essential Insurance Young Driver Factors Applied to Base Rates

Single Females

	Age 16			Age 17			Age 18			Age 19			Age 20			Age 21-22			Age 23-24		
Principal Operators	% Difference	1980	1/1/81	1980	1/1/81	% Difference	1980	1/1/81	% Difference	1980	1/1/81	% Difference	1980	1/1/81	% Difference	1980	1/1/81	% Difference	1980	1/1/81	% Difference
Auto Club	+47	2.00	2.95	2.00	2.95	+47	2.00	2.95	+27	2.00	2.55	+27	1.70	2.05	-1	1.70	1.65	-3
State Farm	+67	1.55	2.60	1.55	2.60	+67	1.55	2.60	+68	1.55	2.60	+68	1.35	1.90	+26	1.35	1.70	+26
Auto Owners	+50	1.35	2.03	1.35	2.03	+50	1.35	2.03	+44	1.35	1.95	+44	1.00	1.41	+2	1.00	1.20	+2
Citizens	+127	1.88	4.27*	1.88	4.27	+127	1.88	4.27	+115	1.79	3.85	+115	1.65	1.79		1.00	1.00	
TransAmerica	+13	2.12	2.40	2.12	2.40	-3	2.12	2.05	-1	1.82	1.80	-1	1.00	1.25	+25	1.00	1.25	+25
Allstate	+84	1.85	3.42	1.85	2.97	+60	1.85	2.97	+36	1.85	2.52	+36	1.58	2.07	+21	1.58	1.92	+21
Occasional Operators																		
Auto Club	+25	1.60	2.00	1.60	2.00	+25	1.60	2.00	+12	1.60	1.80	+12	1.30	1.65	+11	1.30	1.45	+11
State Farm	+19	1.55	1.85	1.55	1.85	+19	1.55	1.85	+19	1.55	1.85	+19	1.35	1.65	+7	1.35	1.45	+7
Auto Owners	+14	1.35	1.54	1.35	1.54	+14	1.35	1.54		1.35	1.36		1.00	1.15		1.00	1.08	
Citizens	+37	1.44	1.98	1.44	1.98	+37	1.44	1.98	+27	1.35	1.71	+27	1.24	1.18		1.00	1.00	
TransAmerica	-24	2.12	1.70	2.12	1.70	-29	2.12	1.50	-34	1.82	1.30	-34	1.00	1.05		1.00	1.05	
Allstate	+62	1.51	2.45	1.51	2.32	+54	1.51	2.32	+40	1.51	2.12	+40	1.41	2.07	+36	1.41	1.92	+36

Single Males

Principal Operators																		
Auto Club	-13	3.40	2.95	3.40	2.95	-13	3.40	2.95	-25	3.40	2.55	-25	2.60	2.05	-36	2.60	1.65	-36
State Farm	-28	3.65	2.60	3.65	2.60	-28	3.65	2.60	-29	3.65	2.60	-29	2.80	1.90	-39	2.80	1.70	-39
Auto Owners	-23	2.64	2.03	2.64	2.03	-23	2.64	2.03	-26	2.64	1.95	-26	1.80	1.41	-33	1.80	1.20	-33
Citizens	+43	2.99	4.27	2.99	4.27	+42	2.99	4.27	+50	2.56	3.85	+50	2.56	1.79		1.00	1.00	
TransAmerica	-37	3.82	2.40	3.82	2.40	-46	3.82	2.05	-52	3.41	1.80	-52	3.00	1.25	-58	3.00	1.25	-58
Allstate	+6	3.20	3.42	3.20	2.97	-7	3.20	2.97	-21	3.20	2.52	-21	2.36	2.07	-19	2.36	1.92	-19
Occasional Operators																		
Auto Club	-11	2.25	2.00	2.25	2.00	-11	2.25	2.00	-2	2.25	1.80	-2	1.60	1.65	-9	1.60	1.45	-9
State Farm	-19	2.30	1.85	2.30	1.85	-19	2.30	1.85	-19	2.30	1.85	-19	1.80	1.65	-19	1.80	1.45	-19
Auto Owners	-14	1.80	1.54	1.80	1.54	-14	1.80	1.54	-24	1.80	1.36	-24	1.48	1.15	-27	1.48	1.08	-27
Citizens	-2	1.93	1.98	1.93	1.98	-2	1.93	1.98	-6	1.83	1.71	-6	1.64	1.18	-39	1.00	1.00	
TransAmerica	-16	2.88	2.40	2.88	2.40	-29	2.88	2.05	-36	2.59	1.80	-36	2.06	1.25	-39	2.06	1.25	-39
Allstate	+21	2.01	2.45	2.01	2.32	+15	2.01	2.32	+15	2.01	2.12	+15	1.53	2.07	+25	1.53	1.92	+25

Married Males

Principal Operators																		
Auto Club	+51	1.95	2.95	1.95	2.95	+51	1.95	2.95	+31	1.95	2.55	+31	1.65	2.05		1.65	1.65	
State Farm	+40	1.85	2.60	1.85	2.60	+40	1.85	2.60	+40	1.85	2.60	+40	1.50	1.90	+46	1.30	1.90	+46
Auto Owners	+23	1.65	2.03	1.65	2.03	+23	1.65	2.03	+18	1.65	1.95	+18	1.65	1.41	-27	1.65	1.20	-27
Citizens	+150	1.71	4.27	1.71	4.27	+150	1.71	4.27	+125	1.71	3.85	+125	1.52	1.79		1.00	1.00	
TransAmerica	+7	2.23	2.40	2.23	2.40	-8	2.23	2.05	-22	2.12	1.80	-22	1.82	1.25	-31	1.82	1.25	-31
Allstate	+55	2.20	3.42	2.20	2.97	+35	2.20	2.97	+14	2.20	2.52	+14	1.71	2.07	+12	1.71	1.92	+12
Occasional Operators																		
Auto Club	+2	1.95	2.00	1.95	2.00	+2	1.95	2.00	+2	1.95	1.80	+2	1.65	1.65	-12	1.65	1.45	-12
State Farm	-6	1.85	1.85	1.85	1.85		1.85	1.85		1.85	1.85		1.50	1.65	+11	1.30	1.45	+11
Auto Owners	-6	1.65	1.54	1.65	1.54	-6	1.65	1.54	-17	1.65	1.36	-17	1.65	1.15	-34	1.65	1.08	-34
Citizens	+16	1.71	1.98	1.71	1.98	+16	1.71	1.98		1.71	1.71		1.52	1.18	-42	1.00	1.00	
TransAmerica	-24	2.23	1.70	2.23	1.70	-33	2.23	1.50	-43	2.12	1.20	-43	1.82	1.05	-42	1.82	1.05	-42
Allstate	+55	2.20	3.42	2.20	2.97	+35	2.20	2.97	+14	2.20	2.52	+14	2.20	2.07	-11	2.20	1.92	-11

Notes: 1) Factors are approximations based on company filings. For those companies with factors that differ by coverage, only a simple average is used.
2) Allstate's 1/1/81 factors are based on years of driving experience, not age. They have been converted to age group factors by assuming that a driver with 0-1 years of experience is 16.

EXHIBIT V

Executive Memorandum

The Heritage Foundation 513 C Street N.E. Washington, D.C. 20002 (202) 546-4400

5/17/83 Number 23

RUSH!

THE HIGH COST OF UNISEX INSURANCE

A case recently argued before the Supreme Court focused attention on a longstanding practice of insurance companies and pension funds. A woman pensioner who received $34 less each month than her male counterparts argued that she was suffering from sexual discrimination. Her former employer, the State of Arizona, countered that it was merely taking account of the well-known fact that women tend to live longer than men, and that spreading pensions and retirement annuities over a longer time period for the average woman naturally resulted in lower monthly payments.

At the heart of the issue is the question of whether discrimination is synonymous with any difference in treatment. Congressman John Dingell (D-Mich.) and Senator Robert Packwood (R-Ore.) argue that it is. They have introduced bills (H.R. 100 and S. 372) to outlaw the use of sex as a factor in determining insurance rates and benefits. Either of these bills, or the proposed Economic Equity Act (H.R. 2090 and S. 888) containing similar provisions, would have sweeping effects throughout the insurance industry. But in the name of equality, they could cost some women thousands of dollars in extra premiums.

Advocates of "unisex" insurance and pension funds advance two principal arguments. First, whites as a group live longer than blacks. Yet insurance companies are no longer permitted to differentiate by race in calculating premiums. Why then, they argue, differentiate by sex?

Second, supporters of the bills claim that even though there are differences in insurance rates associated with men and women, insurance companies have exaggerated them. Advocates point out, for instance, that while the "average" woman may live longer than the "average" man, a specific woman may have a shorter life span. Furthermore, it is argued, the probable life span of a particular individual is determined by nongender factors--such as smoking habits, family health history, general health, and recreational or occupational activities.

What supporters of the legislation overlook is that the differences in treatment of men and women by the insurance industry are by no means one-sided. Example: Women present fewer claims than men on their automobile insurance policies, but more on their health insurance. This is reflected in the rates. Moreover, the differences between whites and blacks are insignificant when only insured blacks (generally middle class) are considered, rather than the whole black population.

Since life insurance annuities and pension funds, of course, lack prior knowledge about the life span of any particular individual, they determine the probable longevity of an individual according to statistically significant risk groups. From this, premiums and benefits are set. To make the system as fair as possible, many annuities and pensions attempt to assign individuals to the smallest identifiable group that has demonstrated an average life expectancy longer or shorter than the average. Sex is certainly a key determinant of these groups, but it is not the only one that insurance companies use. Depending on the type of insurance sought, other factors already are considered--just as advocates of unisex insurance have argued they should be.

If unisex insurance is applied to contracts currently in force, the transition costs will be enormous, especially in the case of pension funds. Companies will be forced to make extra payments to female beneficiaries, for which they have set aside no funds. These unfunded liabilities could drive smaller funds into bankruptcy, jeopardizing the pensions of many people--women included. In addition, all insurance premiums will have to be adjusted if the law is changed. The risk averages used would then have to be based on larger groups that included both men and women. Men would be forced to subsidize the health and disability insurance claims of women. Women would pay more for life insurance policies, while men would receive less in pensions. According to Mavis Walters of the Insurance Services Office, the net effect will be that the average woman can expect to pay several thousand dollars more over her lifetime for the typical range of insurance policies.

The practices of insurance companies and pension funds are not discriminatory in a prejudicial sense. If anything, they have had the opposite effect. By recognizing the differences in men and women as well as in smokers and nonsmokers and in accountants and firemen, insurance companies attempt to treat each customer individually, compensating for such differences as sex, personal habits, occupations.

Preventing insurance companies and pension funds from taking account of one of these factors, in this case sex, would actually lead to a more discriminatory practice. It would force safer women drivers to subsidize more reckless men drivers while requiring male pensioners and their families to underwrite female retirees.

A law requiring unisex insurance would introduce unfairness, not end it. It would probably increase the cost of insurance for women, not reduce it.

Catherine England
Policy Analyst

For further information:

"Women Shift Focus on Hill to Economic Equity Issues," Congressional Quarterly, April 23, 1983, pp. 781-789.
William Raspberry, "It Doesn't Pay to Be a Statistic," Washington Post, April 4, 1983.
"Pensions and Probabilities," Washington Post editorial, February 19, 1983.
Lindley H. Clark, Jr., "Men of the World Unite! You Have a Great Deal to Lose," Wall Street Journal, May 10, 1983, p. 35.

Michigan Law

Unisex Insurance No Bargain

By John Chamberlain

The information comes from Washington, D.C., but it originated in Detroit. Elaine Donnelly, a commentator for WJR Radio in Detroit and a women's advocate who can do arithmetic for herself, made a statement before the House of Representatives Subcommittee on Civil and Constitutional Rights that should disabuse all women of the notion that putting the Equal Rights Amendment into the Constitution will actually bring a true equality to women.

ONE OF THE ideas behind the ERA was that it would outlaw sex discrimination in the writing of insurance. Women were to be charged the same annual rates as men no matter what the actuarial tables might say about longevity patterns or regard for safety on the highways. Judy Goldsmith, the president of NOW, the National Organization for Women, was all for the "unisex" interpretation in these matters.

Well, Elaine Donnelly watched and waited until Michigan along with three other states put the unisex interpretation of ERA into effect. The Michigan Essential Insurance Act forebade the auto insurance companies to use "sex" or "marital status" as items bearing on insurance rates.

Elaine Donnelly went to Washington to present the testimony of a young woman, Kim Dove of Detroit, who had been hard hit by the practical consequences of the Michigan unisex law. Even though she had an almost perfect driving record this mother of two children was informed by her insurance company that her rate would be raised to $365 per year from $136. This represented an increase of more than 125 percent.

After a lot of unsuccessful shopping around Mrs. Dove had to settle for minimum coverage with a high-risk company. She is now dangerously underinsured, but it is the best that she has been able to do and still live within her budget. If she has an accident, the "other fellow" will be covered. But she and her family will have to take their chances.

> "Young women all over the state have been arbitrarily denied lower insurance rates."

Elaine Donnelly did not take Kim Dove's personal experience out of statistical context. The Michigan Insurance Bureau's official report, "A Year of Change — The Essential Insurance Act in 1981," which is the first report of its kind, demonstrates that young women all over the state have been arbitrarily denied the lower insurance rates that should be theirs.

Mrs. Donnelly left Democratic Rep. John Dingell of Trenton some figures to ponder. Young single women who are careful drivers in comparison to men have had to choose between increases ranging between 13 percent and 127 percent. It's been even worse for young married women. Auto Owners, for example, has jumped its rates for married women by 103 percent. Trans-America is up by 140 percent. The figure for State Farm is 160 percent. Allstate is up by 242 percent. The most flagrant change is represented by Citizen's Insurance's 327 percent, which is four times what it would have been without the unisex law.

As a male I don't know why I should bother my head about ERA one way or another. I'll get a break on my insurance if the Michigan version of ERA should ever become the law of the land in all fifty states. But I am a wordsmith, and I have a concern for the words that are the tools of my trade. The word "equity" should be subjected to arithmetical tests before it is invoked in sex discrimination cases. It can never be demonstrated that a unisex insurance law depriving women of the benefits of their better driving habits has any "equity" in it at all.

BESIDES ALL THIS, it would be redundant to put ERA into the Constitution, which already declares that the privileges and immunities of the citizen shall be equal. The courts, of course, have tempered this to protect women and children from certain abuses. Maybe this is an inconsistency. But the same courts would be interpreting the law no matter how many times it might be stated in the Constitution.

Detroit News 11-7-83

E. PAUL BARNHART
Consulting Actuary
FELLOW OF THE SOCIETY OF ACTUARIES
MEMBER OF THE AMERICAN ACADEMY OF ACTUARIES

959 GARDENVIEW OFFICE PARKWAY
SAINT LOUIS, MISSOURI 63141

OFFICE 314/569-2232
RESIDENCE 314/434-4910

March 16, 1983

Subject: Senate Bill S372
("Fair Insurance Practices" Bill);
House Bill HR-100
("Non-Discrimination in Insurance" Bill)

I am writing to ask your help in averting the public tragedy that will result if either of the pending bills referred to above is enacted into law. Both bills seek to prohibit the use of sex in insurance rate classification systems, presumably on the ground that this amounts to "unfair discrimination", primarily to the detriment of women, and is contrary to what some regard as desirable "social policy".

Enactment of this foolish legislation will do substantial economic harm to both women and men, because it will drive up the price of individually purchased insurance for everybody. But it will hurt women the most, because it will ABORT the very substantial progress that has been and is continuing to be made toward more fair and equitable rates for women in relation to their actual costs of insurance. It would allow the insurance industry to escape under the cloak of "unisex rates": the industry would no longer be required, as it now is under state regulation, to produce reasonable justification for differences in rates charged to men and to women.

Substantial areas still exist where women are being overcharged, but such inequities are fast disappearing. Either of these bills would DESTROY this progress. It is interesting to note that the industry has never needed any legislative prodding in one area: Medicare Supplement insurance. The industry has always charged "unisex" rates voluntarily. But if sex were used as a factor in rate classification for this insurance, as it should be, women would pay 25 to 30% less than men. The industry has always been quick to charge women MORE when their costs are higher (e.g., retirement annuities). It has always been reluctant to charge women LESS when their costs are lower. Senate Bill S372 or House Bill HR-100 would permit the

industry simply to escape from its ongoing obligation to treat women more fairly, by charging unisex rates to all, with women being worse losers than men as a result.

Let me say something about my expert qualifications in this area, because I want to assure you that I DO know what I'm talking about. I am an independent consulting actuary, a specialist in health insurance, and I can fairly say that I am regarded by large numbers of my professional colleagues as the leading health insurance actuary in the United States.

I was elected President of the Society of Actuaries by its membership for the 1978-79 year. In 1981, the Society of Actuaries organized a Health Insurance Section within its membership, and I was elected the first Chairman of this new Section. I was re-elected Chairman in 1982, and I am currently serving this second term. I am a member of the Committee on Health Insurance of the American Academy of Actuaries, and am presently serving as a member of its Board of Directors. I am also chairman of the Academy's subcommittee for liaison with the National Association of Insurance Commissioners on health insurance matters.

As to my professional activity, I work as an independent consultant, as stated above. I do a considerable amount of work for insurance companies and I have been influential in bringing about lower, more equitable rates for women in disability and major medical insurance. But I also do a lot of work as a consultant to various professional and consumer associations who are buyers of insurance, and I assist them in negotiating terms and rates for insurance plans offered to their members. All told, the various insurance buying associations that I serve include about 1,500,000 members and their dependents. I am familiar with the consumer's problems and viewpoints as much as with those of the industry.

Enclosed with this letter is a "white paper" that I have prepared, directed to the Congress, which sets forth in detail the reasons why these proposed "unisex" laws would be economically harmful and detrimental to the American public. They embody very UNWISE social policy. I urge you to take time to read this paper to understand exactly why.

If I can help to answer any additional questions you might have on this matter, please let me know.

Cordially,

Paul Barnhart

EPB:cg
Enc.

9355 Pierson
Detroit, MI 48228
May 6, 1983

The Hon. John D. Dingell
House Office Building
Chairman, House Committee on
Energy and Commerce
Washington D. C. 20515

Dear Mr. Dingell:

I am angry. I am married, under the age of 25 years, and also the mother of two children. I have an almost perfect driving record. But in the year 1981, I received an announcement that my auto insurance rates were going to be raised from $156 per year to $365 per year - that's an increase of over 125% AAA told me that Michigan's new Essential Insurance Act banned sex and marital status in the setting of insurance rates, so I would have to pay more in order to "equalize" things. I understand that rates for young men were lowered, even though they have more accidents. Why should I suddenly have to pay so much more because of another group's high accident rate? This is very unfair to women, in my opinion.

When I found out that my rates were going up, I did shop around to try to find a lower rate, but all the companies I talked to quoted the same high rates for the comprehensive coverage I used to have with AAA. Mr. Dingell, we are on a very tight budget, and I realized that I would simply not be able to afford comprehensive coverage anymore. I have had to settle for minimum coverage with a high-risk company, and I feel I am dangerously under-insured. If I have an accident, the other party would be covered, but I and my family would not be. Who is going to take care of my family and pay the bills if I should have a serious accident with this kind of minimum coverage?

The answer is - no one. I don't feel free to use my own car, even for necessary trips to the doctor with my children. It is demoralizing and disheartening to have to ask others in my family to go out of their way to take me shopping for necessities or to the doctor's office, but I simply can't afford to take chances.

I feel that many young women in this state are being unjustly over-charged like I am, and yet the women's liberationists are saying that I should be happy because of my new "equal rights" to pay high insurance premiums. I'm all for women's rights, but I can't afford this kind of "equality", which is costing me a lot in terms of security and peace of mind.

I am writing to you because I understand that you are sponsoring a bill to sex-neutralize insurance in all 50 states. I think you should remember, Mr. Dingell, that passage of your bill would cost young women like myself a lot of money, and many of us simply can't afford it.

Unisex insurance may sound fair, but I don't think it is fair at all to charge more for young female drivers, and less for the young male drivers who are more likely to have accidents.

To me, this system is unfair, and I hope you won't impose this problem on young women in all 50 states.

Sincerely,

Kim Dove

Kimberly Dove

CC: Members, House Committee
on Energy and Commerce

Exhibit D
2/14/85
HB. 507 & 366

STATEMENT OF BARBARA J. LAUTZENHEISER

ON

UNISEX LEGISLATION

ON BEHALF OF

THE AMERICAN COUNCIL OF LIFE INSURANCE

My name is Barbara Lautzenheiser. I am a fellow of the Society of Actuaries and Past President of that professional organization, a member of the American Academy of Actuaries, and President of The Signature Group's insurance operations.

I am appearing on behalf of The American Council of Life Insurance and myself, an informed, concerned woman and appreciate the opportunity to do so.

Sometimes in our zeal for what we deem right we lose sight of the reality that comes from effecting that right. I firmly believe in equality of opportunity. Were it not for that, I wouldn't be here. But, reality forces me to accept the fact that equality of opportunity does not always lead to equality of result. Equal education does not lead to equal intelligence; equal medical treatment does not lead to equal health; and equal insurance rates for men and women do not lead to equal financial security.

It's on these grounds I'm opposed to unisex legislation such as is currently on Montana's books to become effective later this year. Its intent is constructive and laudable, but its effect is destructive and implausible. Its solution is appealingly simple, but appallingly simplistic.

Clearly women need and want financial security. And a major element of that financial security is insurance - the mechanism which provides financial security for unforeseen and unpredictable events in the individual's unpredictability by the use of a large number of individuals' predictability. To price insurance fairly and equitably, the price is determined by charging the person according to her or his own characteristics - according to her or his own age, health, occupation, avocation, smoking habits - and sex, so that the individual's own expected experience is used for pricing as much as possible in a mechanism that must of necessitry put people into groups.

I find it ironic that a practice established to benefit women, i.e., the practice of having separate prices for women, is now being accused of being a detriment to women. As a former employer of mine once said - "No good deed goes unpunished"!

In the 50's, recognizing that more women were working and would want to buy more life insurance, and following its long recognized policy of providing the lowest price possible, and especially lower prices for any group it can identify as a lower cost group, several companies began selling life insurance at lower rates to women. Simultaneously, these companies moved to charging a <u>unisex</u> policy fee - the same fee regardless of policy size, regardless of sex because neither of these two elements affects the cost. This unisex per policy cost based charge is now accused

of being "sexist". It is the "higher unit price" NOW says is discriminatory. It's ironic NOW chooses to call a unisex factor sexist. Similarly, two companies began to give non-smoker discounts - as early as the mid 60's.

That's how competition in the insurance industry works. Any group which can be identified as having lower costs which are expected to continue into the future, is given a cheaper price. Thus, the insurance consumer and the insurance company have both benefited - the insurance consumer through lower prices, reflecting more and more of her or his own individual characteristics - the insurance company, through more sales because of lower, more competitive, prices. That's not a gimmick - that's good business practice. A newborn girl is expected to live more than 7 years longer than a newborn boy - clearly a significant difference. Women are a lower cost group, justifying lower, more competitive life insurance prices.

There are those who have said that we can find a substitute for sex in pricing. I can assure you we have not been able to do so. We've known that "sex" has been a "suspect" rating characteristic for over 10 years now - my first testimony to a governmental body on this issue was in 1974. Many studies have been done in an attempt to find a substitute. It clearly would have been easier to change to a new classification system than to attempt to educate the entire nation on actuarial science,

rating classifications and their appropriateness. I'm frequently not even capable of educating some in the industry on these aspects - let alone the nation. But, no substitute, in spite of our attempts, has been found in those 10 years.

It may be fashionable to have unisex jeans, but science has not yet found any unisex genes. This genetic difference shows up even before the child is born. There are 150 baby boys conceived for every 100 baby girls. But, a 20-25% higher mortality prior to birth, prior to any socioeconomic impact, produces only 106 baby boys born for every 100 baby girls. Eighty-five percent of all children born with genetic defects are male. Throughout life, females continue to live longer than males, as is the case in all animals. This genetic difference is due to different chromosome structures. In the entire animal kingdom, females have an XX chromosome structure and males an XY. In the entire animal kingdom females live longer than males. In the bird kingdom, the chromosome structure is reversed and males live longer than females.

These genetic differences also lead to significant differences in why, how, and for how long men and women become disabled and hence lead to different claim costs for health and disability insurance - even excluding maternity disabilities. And similarly, in auto, for young men and women driving the same number of miles, women have fewer accidents and hence lower costs.

Will the differences narrow? Quite the contrary! As the socioeconomic conditions have been equalizing, the differences in mortality between the sexes have been widening. In 1920, a newborn baby girl lived only 1.2 years longer than a newborn baby boy. By 1950, the difference had increased to 5.7 years. Now it is over 7 years.

And what about smoking? A study recently done in Erie, Pennsylvania claimed that smoking totally accounted for the differences in mortality between the sexes. That study has many faults. But, the two major ones were that accidents, suicides and homicides were all eliminated from the study. No insurance contract I know eliminates payment of these types of claims - hence to ignore them makes the data meaningless for insurance purposes. The other major flaw in the data for any purpose, including insurance, is that other than they're living in Erie, Pennsylvania there was no relationship of the death population to the living population. This type of technique has been regarded as faulty by actuaries for over 100 years. Science Magazine, September 9, 1983, quoted William Castelli, Director of the Framingham Heart Study, as saying, "I'm afraid they're missing a lot of women because they haven't died yet".

We have valid, insured data on smokers and non-smokers - for men and women. Smoking does make a difference. At any age, women who don't smoke live 3 years longer than women who do, and

men who don't smoke live 5 years longer than men who do. But our data indicates that all women would have to smoke and all men would have to not smoke, for the mortality of the sexes to be equal.

Deborah Wingard, an epidemiologist at Berkeley did a study attempting to identify the socioeconomic characteristics that cause men to die earlier, hoping to enable men to change their habits and live as long as women. She identified 16 socioeconomic characteristics and then removed their impact by a mathematical formula. To her surprise, instead of the mortality of the sexes coming together when the socioeconomic impacts were removed, they widened even further. Women have 6 major socioeconomic characteristics affecting their mortality, i.e., inactivity, over or underweight, unmarried, not belonging to a group, disability and dissatisfaction with their lives. Men, however, had only 3 - smoking, drinking and not attending church. The differences are not going to narrow and some of the best minds in the country think they will widen even further.

Recognizing these differences in costs in the pricing of products was not to "get even" with some groups, not to unfairly discriminate against some groups. Not to disadvantage some groups, but to fairly price insurance according to its costs, hence producing better prices to the consumer both because the prices are closer to the individual's own costs and because the better an insurance

company can identify its costs, the smaller the margins it needs to build into its prices.

Right now, based on sex distinct rates, auto and life insurance are less expensive for women - 15-25% for whole life and up to 52% for term life, and 18-66% less for auto. With a unisex rate, a 23 year old single woman in Helena could have her yearly auto rate raised by as much as $367. In Butte, as much as $411.

And 58% of the minority women in the labor force are single. So where does this bill hit the hardest - on the minority woman - on the insurance she must have - on the woman who has to work to support herself and her dependents because there's no one else to do so.

And what about life insurance? Over a 20 year period a 25 year old non-smoking woman would have to pay $184, 10% more for a one year term, $50,000 policy. A 35 year old $784, 29% more, and a 45 year old $2,479, 42% more. My $500,000 policy would cost $24,790 more with unisex. I can assure you, for that amount of money I'd go across the state line where they didn't have unisex, to buy my insurance. Women of all ages, single and married would pay more. Again, where does this hit the hardest - on the 17% of American families which are headed by a single parent woman who needs that life insurance on herself to assure that her children will be taken care of.

Mandating that prices be equal for the sexes will not make costs any more equal than would mandating that hot fudge sundaes have the same number of calories as celery, make the calories equal. I made a uni-calorie table once that made them equal. The hot fudge sundaes were great. But look at me now. My body didn't obey my uni-calorie law. And when mother nature breaks the law and makes women live longer than men, there is no recourse. The costs will be different regardless of the law and regardless of the prices. And when guarantees are made for life insurance, annuities and pensions, and an insurance company's first responsibility is to guarantee that money will be there when it's needed, prices will be increased to make sure this can be guaranteed.

Yes, the insurance industry and employers would cope, but the American public, employers, buyers of employers' products, and taxpayers would pay - through reduced or eliminated pension benefits, higher costs of goods produced by these employers and higher taxes. All to try to equalize something which just isn't equal.

I care about women.

I care about people.

I care about the real means to equality - financial security.

But this legislation, alleged to do something <u>for</u> women, instead does something <u>to</u> women.

Its impact is higher prices for women:

- 15-25% more for all women for whole life insurance
- 10-52% more for all women for term life insurance
- 18-66% more for many women for auto insurance

With no offset to these higher prices for a vast majority of women since:

- Nearly all - 85% of all health benefits and
- over 95% of all pension benefits are provided by the employer are at the same price for the same benefit to women and men.

Non-unisex insurance pricing is not discriminatory. Discriminatory practices consistently disadvantage. Non-unisex insurance prices provide an economic advantage for women in auto and life insurance.

This legislation, as currently standing on the books, discriminates against women. That's what Congress decided last year when it voted to amend legislation that was being proposed. That legislation was similar to the legislation that Montana has on the books to become effective October, 1985. The amendment would have required equal benefits from equal premium only under employee benefit plans under ERISA. That amendment would essentially have made the Norris Supreme Court decision, applicable to employers under Title VII, applicable to all employers.

That's what the second bill we'd like you to pass does.

Doing something that only looks like it benefits women is the worst and most common form of sex discrimination in the nation today.

I therefore urge you to repeal this legislation or at a minimum amend it to apply only to employers.

This legislation may look like an orchid, but it smells like an onion.

(This sheet to be used by those testifying on a bill.)

NAME: Judy K. Mintel DATE: 2/14/85

ADDRESS: E9 1 STATE FARM PLAZA BLOOMINGTON ILL 61701

PHONE: _____

REPRESENTING WHOM? STATE FARM INSURANCE

APPEARING ON WHICH PROPOSAL: HB 507, HB 316

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

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

EXHIBIT E
2/14/85
HB 507 & 366

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 affected 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 by State Farm in Hawaii were +20.2% on 10/76 and +16.4% on 12/77.

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 as a rating factor became effective in 1975. Sex and marital status were eliminated as rating factors 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. In 1977 inexperienced operator surcharges were dramatically increased resulting in rate increases for young women 16 to 17 years old. Currently, the business use classification in North Carolina has a higher indicated rate 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

well as the range of rating differentials between territories. A sample of applicants for insurance through the residual market in Michigan indicates that underpriced male drivers under age 25 represent only about 11% of the driving population while comprising over 21% of residual market applicants. Women under age 25 make up less than 5% of the residual market applicants, although they comprise over 10% of the licensed drivers in the state. Examples of State Farm rates before and after January 1, 1981 are attached.

State Farm Mutual Automobile Insurance Company

MICHIGAN

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

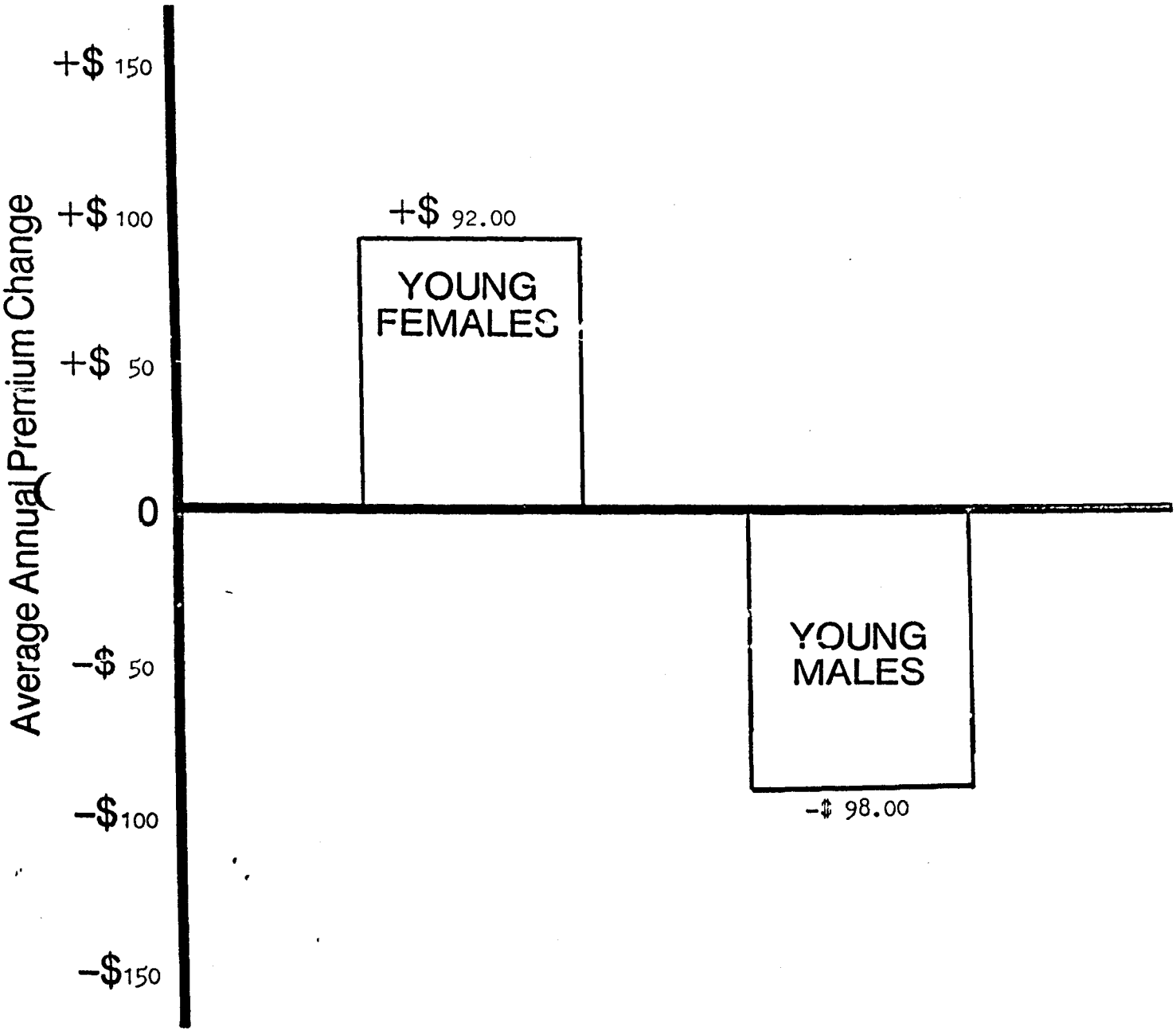
These rates reflect premiums applicable before and after the elimination of sex and marital status as rating variables, effective January 1, 1981 for youthful (under 21) principal operators, with no accidents or convictions, for a 1981 Oldsmobile Cutlass Supreme (IRG II, Age Group I) with the following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

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.



MONTANA

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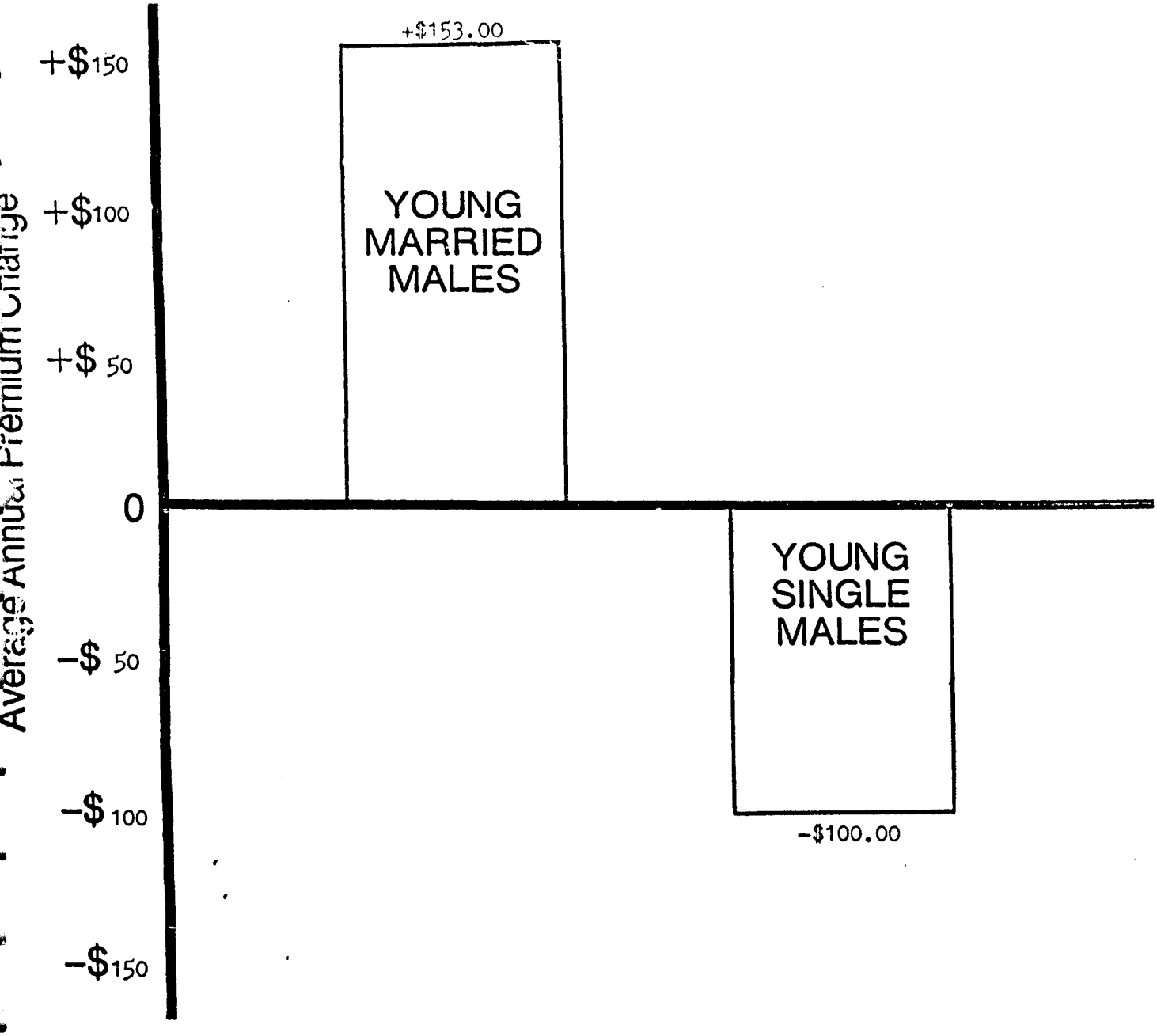

MONTANA

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY

EXAMPLES OF THE EFFECT OF ELIMINATING
MARITAL STATUS OF DRIVER AS A RATING FACTOR

	Married Male Age Under 21 Commuter Use			Single Male Age Under 21 Commuter Use		
	Current Annual Premium	Approximate Annual Change	% Change	Current Annual Premium	Approximate Annual Change	% Change
Billings	$ 746	$ +517	+69%	$1,388	$ -125	- 9%
Helena	$ 683	$ +472	+69%	$1,270	$ -115	- 9%
Missoula	$ 611	$ +422	+69%	$1,137	$ -104	- 9%

* These examples are for a 1982 Ford Escort (IRG-11), owned or principally operated by the described driver and with the following coverages:

25/50/25 BIPD Liability
$5,000 Medical Payments
Full Comprehensive
$100 Deductible Collision
25/50 Uninsured Motor Vehicle

MONTANA

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY

EXAMPLES OF THE EFFECT OF ELIMINATING
SEX OF DRIVER AS A RATING FACTOR

	Single Female Age 21-24 Pleasure Use			Single Male Age 21-24 Pleasure Use		
	Current Annual Premium	Approximate Annual Change	% Change	Current Annual Premium	Approximate Annual Change	% Change
Billings	$ 571	$ +211	+37%	$1,018	$ -236	-23%
Helena	$ 522	$ +193	+37%	$ 932	$ -217	-23%
Missoula	$ 468	$ +171	+37%	$ 834	$ -195	-23%

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$5,000 Medical Payments
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MONTANA

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MONTANA

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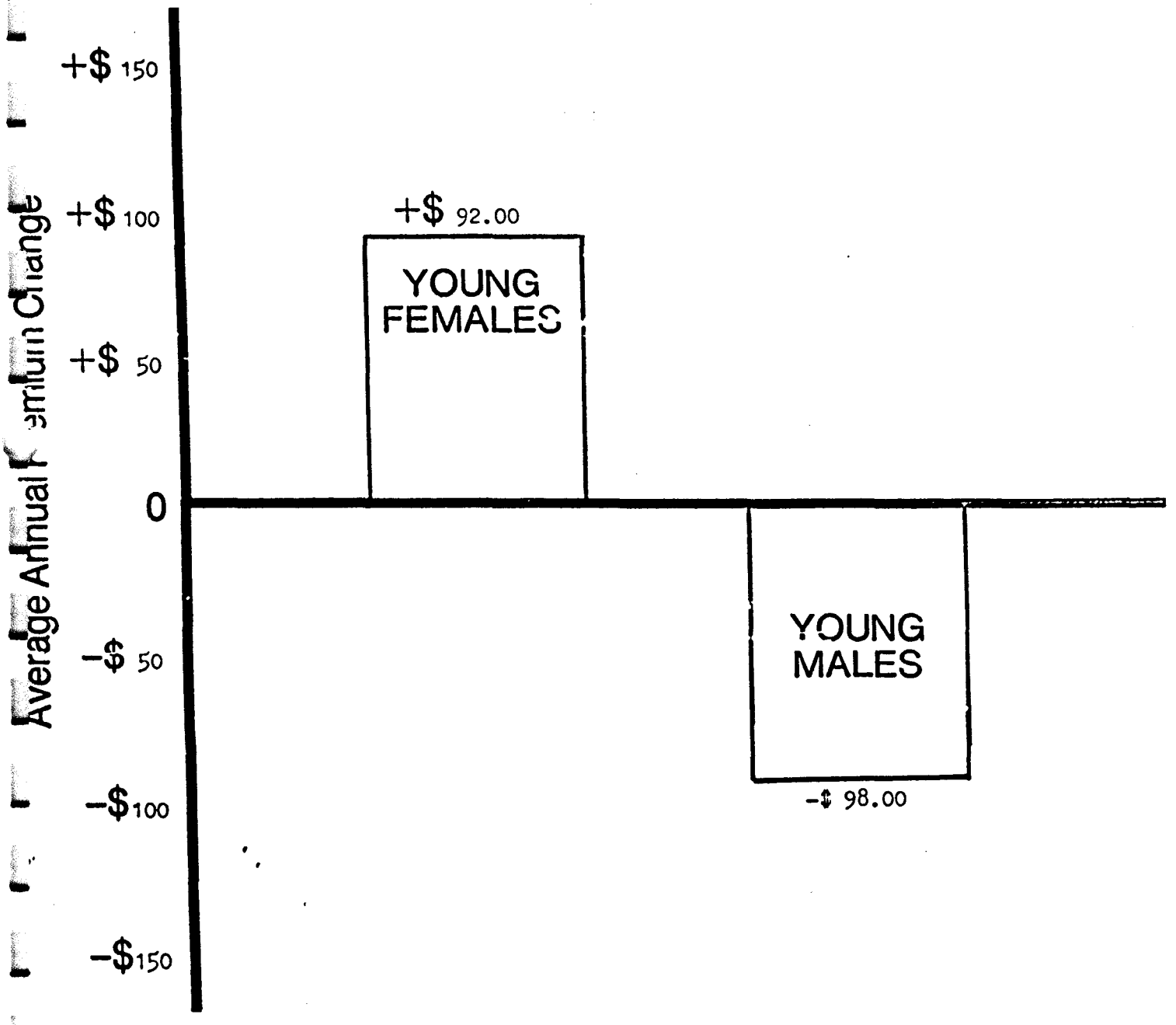

MONTANA

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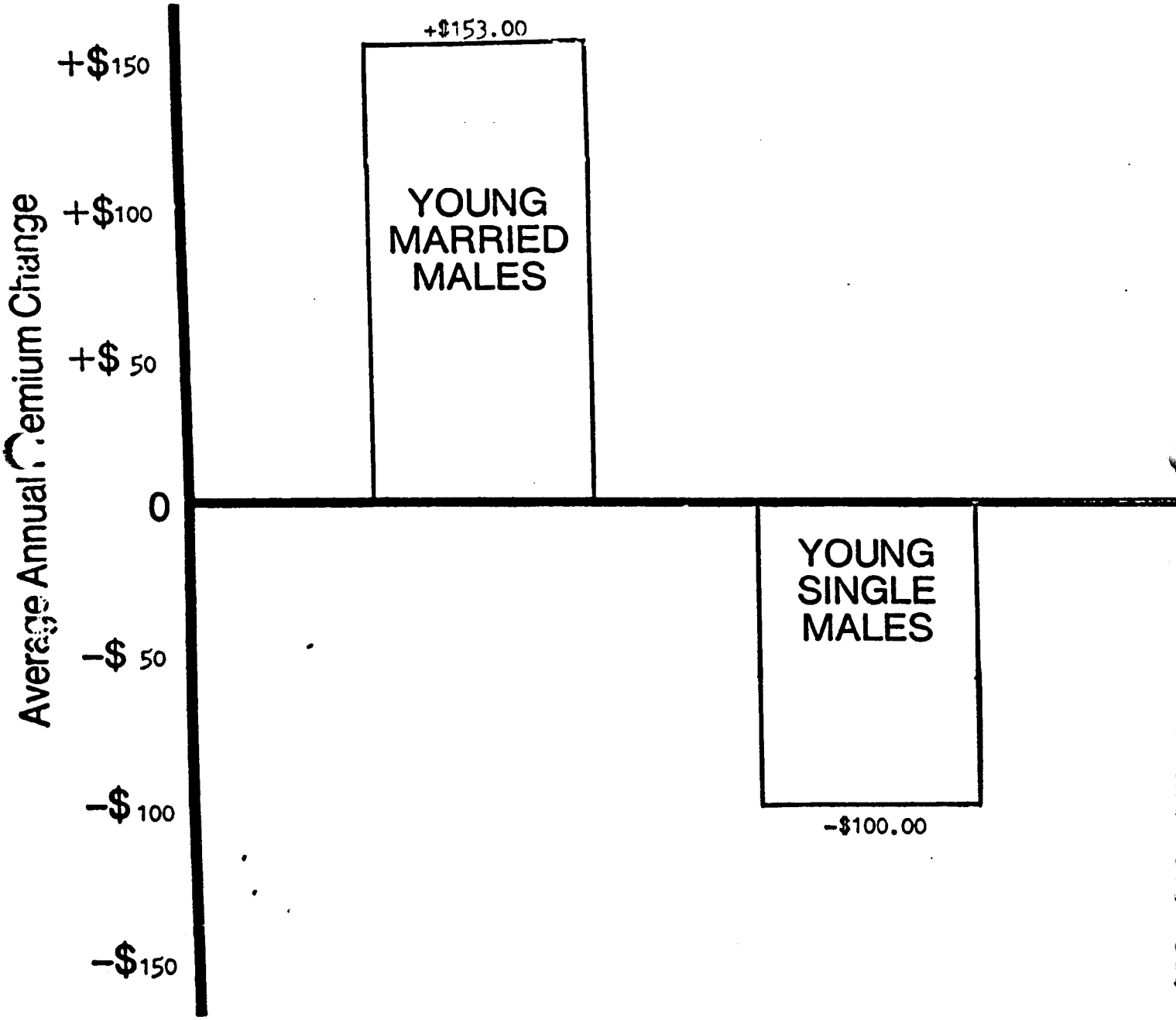

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A review of the situation in each of the four states follows:

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 by State Farm in Hawaii were +20.2% on 10/76 and +16.4% on 12/77.

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 as a rating factor became effective in 1975. Sex and marital status were eliminated as rating factors 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. In 1977 inexperienced operator surcharges were dramatically increased resulting in rate increases for young women 16 to 17 years old. Currently, the business use classification in North Carolina has a higher indicated rate 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

well as the range of rating differentials between territories. A sample of applicants for insurance through the residual market in Michigan indicates that underpriced male drivers under age 25 represent only about 11% of the driving population while comprising over 21% of residual market applicants. Women under age 25 make up less than 5% of the residual market applicants, although they comprise over 10% of the licensed drivers in the state. Examples of State Farm rates before and after January 1, 1981 are attached.

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

EXHIBIT F
2/14/85
HB 507 & 366

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February 14, 1985

TO: MEMBERS OF THE HOUSE JUDICIARY COMMITTEE

FROM: LESTER H. LOBLE, II, LOBBYIST FOR THE AMERICAN COUNCIL OF LIFE INSURANCE

At the hearing on Thursday, February 14, Mr. Don Garrity made reference to the opinion which he did as well as the opinion done by Mr. Greg Petesch of the Legislative Council. Enclosed are copies of both opinions. Note that on page 8 of Mr. Petesch's opinion he references the opinion of Mr. Garrity and comes to the same conclusion. See also the final paragraph of his opinion beginning on page 12 where he concludes that the Montana Supreme Court has interpreted the individual dignity clause in terms of traditional federal equal protection analysis. In other words, unless there is state action involved, private individuals such as insurance companies, are not prohibited from rational distinctions based upon sex or marital status.

Both of these opinions are contrary to the testimony of Mr. Meloy. Furthermore, there is a recent case from the Montana Supreme Court in which a school district excluded all males from consideration for a guidance counsellor position. The guidance counsellor was going to counsel high school girls. The district reasoned that high school girls would not discuss some subjects with a male guidance counsellor. A male guidance counsellor sued. The Montana Supreme Court held that the school district's concern that female guidance counsellors should be available for female high school students was a valid and rational distinction. That is a recent and direct answer to Mr. Meloy's assertion that under no circumstances may sex be used as a distinguishing factor. Note that this involved an arm of government so it is even a stronger case in opposition to Mr. Meloy's position that if it had been a private organization such as an insurance company.

Very truly yours,

Lester H. Loble, II

LHL/vjz
Enclosures

DONALD A. GARRITY
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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.)

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

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 Nibt, 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); McLansthan 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.

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).

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 prohibiited 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).

Montana Legislative Council
State Capitol
Helena, MT. 59620
(406) 444-3064

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

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.

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

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]

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

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,

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

[4]Ibid., p. 1644.

[5]Ibid.

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]

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[6]See 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).

[7]See 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.

> 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.[8]

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.[9]

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

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[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.

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

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[10] Transcripts, supra at 1644-1645.

[11] Supra, Note 2.

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.

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[12]See 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 pursuasive 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]

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[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

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

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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."

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

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[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)

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 Pensylvania 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.

[22]See 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.

GP1EE/hm/Gender-Based Insurance

any [illegible] commission [illegible] business accommodation subject to this chapter to post, in a conspicuous place on his premises or in the accommodation, a notice to be prepared or approved by the commission containing relevant information that the commission considers necessary to explain this chapter. Any person or institution subject to this section who refuses to comply with an order of the commission respecting the posting of a notice is guilty of a misdemeanor and punishable by a fine of not more than $50.

History: En. 64-314 by Sec. 12, Ch. 524, L. 1975; R.C.M. 1947, 64-314; amd. Sec. 3, Ch. 177, L. 1979.

49-2-203. Subpoena power. (1) The commission may subpoena witnesses, take the testimony of any person under oath, administer oaths, and, in connection therewith, require the production for examination of books, papers, or other tangible evidence relating to a matter either under investigation by the commission staff or in question before the commission. The commission may delegate the foregoing powers to a person within the staff for the purpose of investigating a complaint.

(2) Subpoenas issued pursuant to this section may be enforced as provided in 2-4-104 of the Montana Administrative Procedure Act.

History: En. 64-313 by Sec. 11, Ch. 524, L. 1975; R.C.M. 1947, 64-313.

49-2-204. Commission to adopt rules. The commission shall adopt procedural and substantive rules necessary to implement this chapter. Rulemaking procedures shall comply with the requirements of the Montana Administrative Procedure Act.

History: En. 64-315 by Sec. 13, Ch. 524, L. 1975; R.C.M. 1947, 64-315.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Part 3

Prohibited Discriminatory Practices

Part Cross-References

No discrimination based on evaluation or treatment relating to mental illness, 53-21-189.

49-2-301. Retaliation prohibited. It is an unlawful discriminatory practice for a person, educational institution, financial institution, or governmental entity or agency to discharge, expel, blacklist, or otherwise discriminate against an individual because he has opposed any practices forbidden under this chapter or because he has filed a complaint, testified, assisted, or participated in any manner in an investigation or proceeding under this chapter.

History: Ap.p. Sec. 2, Ch. 283, L. 1974; amd. Sec. 2, Ch. 121, L. 1975; amd. Sec. 3, Ch. 524, L. 1975; amd. Sec. 7, Ch. 38, L. 1977; Sec. 64-306, R.C.M. 1947; Ap.p. Sec. 9, Ch. 283, L. 1974; amd. Sec. 10, Ch. 524, L. 1975; Sec. 64-312, R.C.M. 1947; R.C.M. 1947, 64-306(9), 64-312(2); amd. Sec. 4, Ch. 177, L. 1979.

49-2-302. Aiding, coercing, or attempting. It is unlawful for a person, educational institution, financial institution, or governmental entity or agency 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; amd. Sec. 10, Ch. 524, L. 1975; R.C.M. 1947, 64-312(1); amd. 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 an apprenticeship or training program or to discriminate in any way against a 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 an 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.

History: En. 64-306 by Sec. 2, Ch. 283, L. 1974; amd. Sec. 2, Ch. 121, L. 1975; amd. Sec. 3, Ch. 524, L. 1975; amd. Sec. 7, Ch. 38, L. 1977; R.C.M. 1947, 64-306(1), (2); amd. Sec. 1, Ch. 279, L. 1983.

Compiler's Comments

1983 Amendment: In (1)(a) and (1)(b), allowed marital status discrimination when the reasonable demands of the position covered by (a) or the program covered by (b) require an age distinction by deleting one reference to "marital status" before "or because of" and inserting two references after that phrase.

Cross-References

Work-study program, 20-25-707.

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. 5, part 5.

Right to refuse to participate in abortion, 50-20-111.

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; amd. Sec. 2, Ch. 121, L. 1975; amd. Sec. 3, Ch. 524, L. 1975; amd. 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; amd. Sec. 2, Ch. 121, L. 1975; amd. Sec. 3, Ch. 524, L. 1975; amd. Sec. 7, Ch. 38, L. 1977; R.C.M. 1947, 64-306(4); amd. Sec. 6, Ch. 177, L. 1979; amd. Sec. 1, Ch. 335, L. 1981.

Compiler's Comments

1981 Amendment: Inserted subsection (1)(d); substituted "subsection (1)" for "this section" at the end of (2); and added subsection (3).

Cross-References

Urban renewal, 7-15-4207.

49-2-306. Discrimination in financing and credit transactions. (1) It is an unlawful discriminatory practice for a financial institution, upon receiving 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 of record.

History: En. 64-306 by Sec. 2, Ch. 283, L. 1974; amd. Sec. 2, Ch. 121, L. 1975; amd. Sec. 3, Ch. 524, L. 1975; amd. Sec. 7, Ch. 38, L. 1977; R.C.M. 1947, 64-306(5), (8).

Cross-References

State District Court jurisdiction, Title 3, ch. 5, part 3.

Municipal Court jurisdiction, 3-6-103.

Power to contract, Title 28, ch. 2, part 2.

No discrimination by certain insurers, 33-18-210.

Medical and health insurance — continuation of coverage for handicapped child, 33-22-304, 33-22-506, 33-30-1003, 33-30-1004.

Minors' power to contract, Title 41, ch. 1, part 3.

49-2-307. 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 the terms, conditions, or privileges of the institution because of race, creed, religion, sex, marital status, color, age, physical handicap, or national origin or 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 a 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; or

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

Cross-References

Nondiscrimination in education, Art. X, sec. 7, Mont. Const.

Exemption from immunization requirements on religious grounds, 20-5-405.

49-2-308. 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 local, 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: En. 64-306 by Sec. 2, Ch. 283, L. 1974; amd. Sec. 2, Ch. 121, L. 1975; amd. Sec. 3, Ch. 524, L. 1975; amd. Sec. 7, Ch. 38, L. 1977; R.C.M. 1947, 64-306(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.

Classified service employees — municipal commission-manager government, 7-3-4415.

Sex discrimination — records of military discharges, 7-4-2614.

Urban renewal, 7-15-4207.

Employment by county Board of Park Commissioners, 7-16-2326.

Use of hospital district facilities, 7-34-2123.

Veterans' benefits, Title 10, ch. 2, part 3.

Sheltered workshops — public contracts to purchase, Title 18, ch. 5, part 1.

Special education supervisor, 20-3-103.

Exemption from school immunization requirements on religious grounds, 20-5-405.

Special education for exceptional children, Title 20, ch. 7, part 4.

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.

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 5.

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.

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.

History: En. Secs. 1, 3, Ch. 531, L. 1983.

49-2-310. Maternity leave — unlawful acts of employers. It shall be unlawful for an employer or his agent to:

(1) terminate a woman's employment because of her pregnancy;

(2) refuse to grant to the employee a reasonable leave of absence for such pregnancy;

(3) deny to the employee who is disabled as a result of pregnancy any compensation to which she is entitled as a result of the accumulation of disability or leave benefits accrued pursuant to plans maintained by her employer, provided that the employer may require disability as a result of pregnancy to be verified by medical certification that the employee is not able to perform her employment duties; or

(4) require that an employee take a mandatory maternity leave for an unreasonable length of time.

History: En. 41-2602 by Sec. 2, Ch. 320, L. 1975; R.C.M. 1947, 41-2602(1); amd. Sec. 1, Ch. 285, L. 1983; MCA 1981, 39-7-203; redes. 49-2-310 by Sec. 2, Ch. 285, L. 1983.

Compiler's Comments

1983 Amendment: Deleted former (4), which read: "retaliate against any employee who files a complaint with the commissioner under the provisions of this part".

49-2-311. Reinstatement to job following pregnancy-related leave of absence. Upon signifying her intent to return at the end of her leave of absence, such employee shall be reinstated to her original job or to an equivalent position with equivalent pay and accumulated seniority, retirement, fringe benefits, and other service credits unless, in the case of a private employer, the employer's circumstances have so changed as to make it impossible or unreasonable to do so.

History: En. 41-2602 by Sec. 2, Ch. 320, L. 1975; R.C.M. 1947, 41-2602(2); MCA 1981, 39-7-204; redes. 49-2-311 by Sec. 2, Ch. 285, L. 1983.

Part 4

Exceptions to Prohibitions

49-2-401. Procedure for claiming exemption. A person, educational institution, financial institution, or governmental entity or agency who or which seeks to be exempted from the requirements of part 3 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 granting an exemption exist, it may issue a ruling exempting the petitioner from the particular provision. This section, however, shall be strictly construed, and the burden is on the petitioner to demonstrate that an exemption should be granted.

History: En. 64-306.1 by Sec. 4, Ch. 524, L. 1975; amd. Sec. 1, Ch. 27, L. 1977; R.C.M. 1947, 64-306.1(1); amd. Sec. 7, Ch. 177, L. 1979.

EXHIBIT H
2/14/85
HB 507 & 366

WOMEN'S LOBBYIST FUND

Box 1099
Helena, MT 59624
449-7917

February 14, 1985

TESTIMONY IN OPPOSITION TO HB 366 AND HB 507

Mr. Chairman and Members of the House 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. In 1983, the law passed in the House of Representatives on a 63 - 35 vote and in the Senate on a vote of 33 - 17 (both on third reading). I am here today to voice our strong opposition to HB 366 and HB 507 and, for that matter, any weakening of the gender-free insurance law that comes before the 1985 Legislature.

Much of the debate you have and will be hearing today repeats the testimony given in the 1983 Legislature and before the interim study committee, which studied the law during the 1983 - 84 interim and tabled all proposals to alter the law. I can think of only 2 things that have changed since passage of the law in 1983: (1) our position is more fully developed through observation of gender-free insurance laws in operation; and (2) the courts have given credence to the position we have maintained all along, that is that Article II, sec. 4 of the Montana Constitution prohibits discrimination on the basis of sex in the availability, rates, and benefits of any type of insurance or pension plan.

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 tne issue is a civil rights issue and an economic one, and the two are <u>always</u> inextricably related. Discrimination means "to make a distinction, as in favor of or against a person or thing." Women, similar to other protected classes, have experienced discrimination in countless ways, and you and I know that discrimination never works to the economic advantage of women. This is the case in insurance.

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. But sex, like race, is not causally related to the risk of the insurance. This is illustrated by a statement of the Florida Insurance Commissioner, Bill Gunter (reported in a December, 1984 news conference), that "Sixty to 70% of all health insurance claims are for lifestyle-related illnesses. And the finger is pointing directly at these six villains: smoking, obesity, high blood pressure, stress, alcohol and drug abuse." So why does a woman, even if an excellent health risk as an individual, get charged more for her insurance throughout her lifetime than a man who may be a poor health risk? Insurance should be based on factors under the control of the individual, such as the 6 named above, not on the "immutable

characteristic" of sex.

Of course the essence of insurance is the pooling of risks. This is unchanged by Montana's law. However, there are legal forms of subdividing the risk pool, and there are unconstitutional ones. The unconstitutional ones include those protected under the Montana Constitution: sex, race, and religion.

In the four states which prohibit the use of sex and marital status in insurance rates (Hawaii, Massachusetts, Michigan, and North Carolina), factors such as the number of years a person has been licensed, whether the person is an occasional or principal driver, the number of miles driven from home to work, completion of a driver's training course, and other factors are used to successfully determine rates. Incidentally, those 4 states report excellent public acceptance of their gender-free insurance laws. And in North Carolina, the Insurance Commissioner at the time gender-free rates were adopted in that state, testified at a congressional hearing that "no safe driver's rates went up" because of their law banning sex discrimination.

Resistance to change is strong within the insurance industry. I quote from a reprint of the Congressional Quarterly, which appeared in last Sunday's Great Falls Tribune. "A century ago, the insurance industry found itself under attack for charging black customers more than for whites for life insurance...'Not only justified but necessary for (the company's) own safety and equity to the white policy holders...' said Prudential Insurance Co. in 1881." The same arguments for resisting change as were used in 1881 are used today by the insurance industry in trying to repeal Montana's law.

This resistance to change is detrimental to the consumer. If the law were to result in harming consumers, and women consumers in particular, then why has no major women's or consumers' organization with a record of service to women opposed the law in Montana or in this country?

Since Montana's law passed in 1983, the U.S. Supreme Court issued its Norris decision (1983), stating that it is illegal for employer-based pension plans to pay women lower benefits than similarly situated men. In Pennsylvania, in 1984, the State Supreme Court ruled that the state's constitution makes it unconstituitional for the Insurance Commissioner to approve sex-based rates. The Montana Constitution is equally strong. We should not have to rely on lawsuits in Montana to put meaning into our state Constitution.

Finally, I wish to speak briefly to the bills. I have heard discussions to the effect that HB 366 is being regarded as a "compromise bill," i.e., it is not an outright repeal of the law. I contest this implication. 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 pursuant to the Norris decision. Employers in Montana must abide by that holding, regardless of passage of HB 366. The bill is, therefore, in effect, a repeal of the gender-free insurance law, just as HB 507 is..

I also point to another element of HB 366, found in subsection (1). It states that an insurer may take"marital status into account for the purpose of defining persons eligible for dependent benefits." This means that a single mother could be denied availability of insurance for her children.

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 Legislature to move backwards. The law should be given a chance to work.

I ask you to give HBs 366 and 507 a do not pass recommendation.

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

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P.O. Box 1099
Helena, Montana 59604

Dear Ann:

I am more than happy to respond to your request for a letter about the equal rights provision in Montana's constitution. As a lawyer and author of the "Speaker's Handbook on the Equal Rights Amendment," published by the State Bar of Montana, I have a real interest in seeing that the provision is interpreted properly by all lawmakers. . .whether they are legislators or judges.

The equal rights provision is new law, intended to eliminate discrimination on the basis of gender. The theory behind the provision is that such discrimination is always wrong, and any attempt to justify it is paternalistic and misdirected. In other words, the intent of any equal rights statement in a constitution is to view sex discrimination in the same way our society looks at race discrimination. It is wrong, and can never be rationalized.

Some jurists argue that the ERA is not so pure. They point to court decisions that apply a "14th Amendment, rational basis" test to sex discrimination cases. If that is the correct interpretation, we wouldn't need equal rights language in constitutions, however. If ERAs don't go beyond the 14th Amendment, if they don't break new ground and develop new legal theories, then they are unnecessary. The 14th Amendment would be enough. . .

Montana adopted equal rights language in its new constitution because it wanted to make a clear statement on sex discrimination. It wanted to grant new protections to its citizens. To fall back on traditional federal interpretations would be a grave injustice.

The Montana Legislature should recognize the spirit and the mandate of the state constitution by adopting laws that treat men and women the same. Any other attitude would be a great step backward, to a time when women were excluded from jury duty, shut out of public office, and relegated to one career choice. . .all in the name of some "rational need to protect our womenfolk."

Sincerely,

Roger Barber

Roger Barber

PREGNANCY DISCRIMINATION IS SEX DISCRIMINATION

Testimony by Montana NOW

House Judiciary Committee

Montana State Legislature

February 14, 1985

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 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 an amendment to continue assessing maternity costs to women 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.

EXHIBIT J
2/14/85
HB 507 & HB 366

TESTIMONY ON SEX DISCRIMINATION IN LIFE INSURANCE

by

Sharon Eisenberg, State Coordinator

Montana National Organization for Women

Judiciary Committee

Montana Legislature

14 February 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 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 adopted the "female discount" as a sales gimmick, and they quietly adopted price banding to recoup the discount with higher unit prices. 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 pay for 10 years for the average policies size 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.

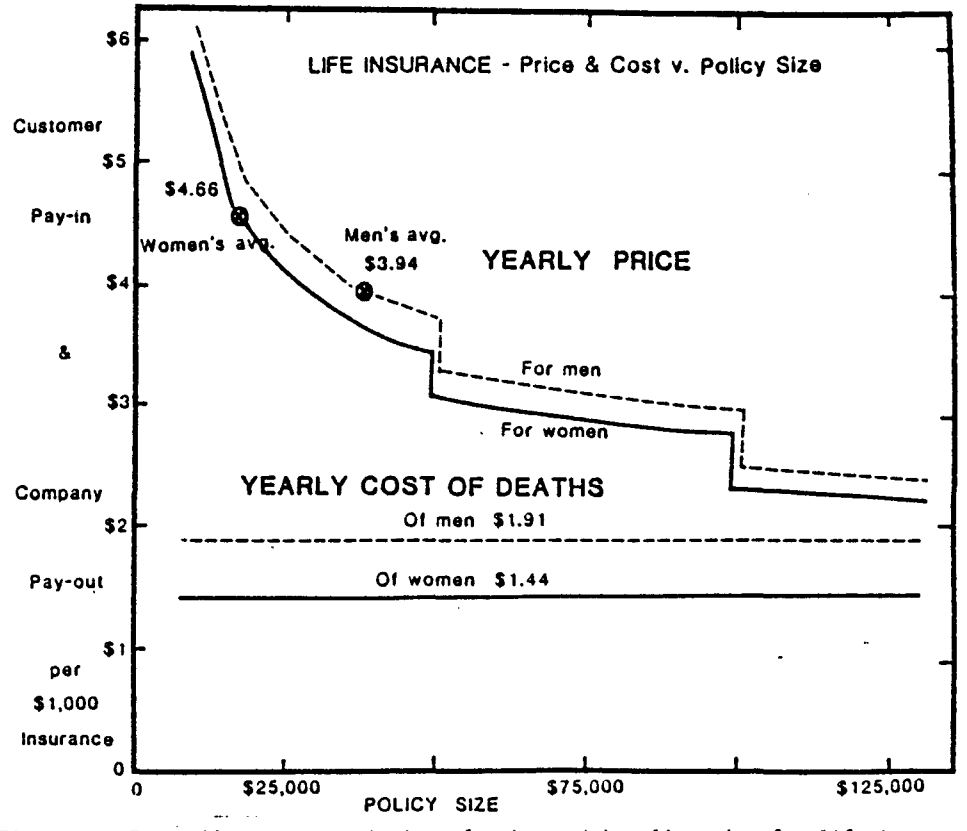


Figure Typically strong variation of prices with policy size for life insurance. Yearly prices for a 10 year term policy, ages 35-44. The mortality costs derive directly from mortality tables that at age 40 show 1.44 deaths per 1,000 women and 1.91 deaths per 1,000 men. The prices per $1,000 insurance 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 <u>false</u> discount on men's prices. Many major insurers are selling what are represented as men's Whole Life policies at a "discount" to women, but women get <u>less</u> 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 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:

Ages 25 - 64 40 years	Women	Men	Difference	Favors
Total pay-ins (premiums)	$ 32,400	$ 35,960	$ 3,560	Women
Total refunds (dividends)	38,119	42,185	4,066	Men
Guaranteed cash value at 65	50,600	54,500	3,900	Men
Ages 65 - 79				
Annuity purchased with the cash value guarantees monthly income to women $286.90, men $340.63.				
15 year totals	$ 51,642	61,313	9,671	Men

Total advantage for men, life insurance combined with annuity, is $10,177 (= $ 4,066 - 3,560 + 9,671).

NOTE that for the life insurance alone, men's advantage is $4406. The Insurance Commissioners' 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.

- Nationwide, the cash values of women's Whole Life policies are $2 billion less than "identical" policies sold to men. Insurers are covering up this scandal by superimposing a mythical cost for "equalizing" men's 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. Only ongoing contracts are involved. When the Norris decision made it inescapably clear that individual life insurance sold through employee payroll deduction could not discriminate by sex, insurers promptly began selling unisex policies. That is exactly what they will do when the Montana law goes into effect in October.

- 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 Interested 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 permitting "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 Montana state constitution assumes -- that there is no such thing as "fair sex discrimination." That is the principle at the heart of nondiscrimination law and the Equal Rights Amendment as well. We oppose the proposed amendments to the Montana unisex insurance law because they violate this principle and attempt to re-legalize sex discrimination in insurance. The legislature has done what is right and must not be forced to undo it on behalf of insurers acting against the best interests of the people.

0013454 DIST 100 AGCY MJL WASHINGTON D C

PREPARED FOR MS NOW

BY A. SAMPLE
SUMMARY ILLUSTRATION OF POLICY DATA

PLAN: WHOLE LIFE

CLASSIFICATION: NONSMOKER

AGE: 25-FEMALE

AMOUNT OF INSURANCE: $100,000

BASIC POLICY

ANNUAL PREMIUM $811.00

YEARS PAYABLE LIFETIME

SUMMARY FOR PERIOD SHOWN	AT AGE 62	AT AGE 65
TOTAL ANNUAL PREMIUMS	$30,007	$32,446
TOTAL ANNUAL DIVIDENDS	31,190	38,119
ADDITIONAL INSURANCE BOUGHT BY ANNUAL DIVIDENDS	107,168	127,592
ILLUSTRATIVE DEATH BENEFIT WITH ANY TERMINAL DIVIDEND	210,568	231,092
ILLUSTRATIVE PAID-UP INSURANCE AVAILABLE - SEE PAGE 2 PAID-UP IN 23 YEARS FOR $100,000	189,268	212,592
GUARANTEED CASH VALUE OF BASIC INSURANCE	45,600	50,600
CASH VALUE OF ADDITIONAL INSURANCE	59,540	76,035
TERMINAL DIVIDEND	3,400	3,500
ILLUSTRATIVE CASH VALUE	108,540	130,135
GUARANTEED MONTHLY LIFE INCOME - (10 YEARS CERTAIN)		286.96
ILLUSTRATIVE MONTHLY LIFE INCOME - (10 YEARS CERTAIN)		1,130.39

INTEREST-ADJUSTED 5% INDEXES (BASIC POLICY)	10 YRS	20 YRS
LIFE INSURANCE SURRENDER COST INDEX	$2.04	$0.56-
LIFE INSURANCE NET PAYMENT COST INDEX	$6.73	$5.55
EQUIVALENT LEVEL ANNUAL DIVIDEND	$1.38	$2.56

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.

C.O.D. - $74.00

PAGE 1 OF 4 PAGES

DATE 08/8

Metropolitan Insurance Companies

METROPOLITAN LIFE INSURANCE COMPANY

01418-47-MO-1

0013448 DIST 100 AGCY MJL WASHINGTON D C

PREPARED FOR MS NOW

BY A. SAMPLE
SUMMARY ILLUSTRATION OF POLICY DATA

PLAN: WHOLE LIFE

CLASSIFICATION: NONSMOKER

AGE: 25-MALE

AMOUNT OF INSURANCE: $100,000

BASIC POLICY

ANNUAL PREMIUM $899.00

YEARS PAYABLE LIFETIME

SUMMARY FOR PERIOD SHOWN	AT AGE 62	AT AGE 65
TOTAL ANNUAL PREMIUMS	$33,263	$35,966
TOTAL ANNUAL DIVIDENDS	34,522	42,185
ADDITIONAL INSURANCE BOUGHT BY ANNUAL DIVIDENDS	107,609	128,496
ILLUSTRATIVE DEATH BENEFIT WITH ANY TERMINAL DIVIDEND	211,109	231,996
ILLUSTRATIVE PAID-UP INSURANCE AVAILABLE - SEE PAGE 2 PAID-UP IN 23 YEARS FOR $100,000	190,509	214,296
GUARANTEED CASH VALUE OF BASIC INSURANCE	49,400	54,500
CASH VALUE OF ADDITIONAL INSURANCE	64,126	81,711
TERMINAL DIVIDEND	3,500	3,500
ILLUSTRATIVE CASH VALUE	117,026	139,711
GUARANTEED MONTHLY LIFE INCOME - (10 YEARS CERTAIN)		340.63
ILLUSTRATIVE MONTHLY LIFE INCOME - (10 YEARS CERTAIN)		1,283.57

INTEREST-ADJUSTED 5% INDEXES (BASIC POLICY)	10 YRS	20 YRS
LIFE INSURANCE SURRENDER COST INDEX	2.10	$0.57-
LIFE INSURANCE NET PAYMENT COST INDEX	$7.55	$6.26
EQUIVALENT LEVEL ANNUAL DIVIDEND	$1.44	$2.75

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.

C.O.D. - $91.00

PAGE 1 OF 4 PAGES

DATE 08/8

Metropolitan Insurance Companies

METROPOLITAN LIFE INSURANCE COMPANY

01418-47-MO-3

EXHIBIT K
2/14/85
HB 356 + 507

AUTO INSURANCE: SEX-BASED PRICES OVERCHARGE WOMEN
Testimony Against Sex Discrimination
by
Montana National Organization for Women

Judiciary Committee
Montana State Legislature
14 February 1984

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 three NOW charts, -- Chart A, Chart B, and Chart C -- demonstrate this, as do the attached insurance industry charts -- Chart D and Chart E.

Chart A -- UNISEX: THREAT VS. REALITY

- This chart is a comparison between what insurers threaten to do and what they really do in changing from sex-based to unisex prices. (Price levels are shown as relative to $1.00 for the cheapest insurance.)

- The upper figure [left side] shows the 1983 prices that three companies (A, B, and C) charged 19-year old women for auto insurance in BILLINGS. (Driver, driving record, and car are identical.)

- (Q. -- Why would anybody buy from Company C? A. -- Because companies A and B may refuse insurance to applicants who may be divorced, or have changed jobs or moved several times, or have low income, or other reasons.)

Chart A -- UNISEX: THREAT VS. REALITY Continued.

- 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 19 year old women drivers in DETROIT, as reported by the Michigan Insurance Bureau in a survey covering major companies selling 80% of auto insurance in Michigan.

- Two companies lowered rates, and one company 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.)

- Because Michigan made it illegal for a company to refuse to sell its cheapest insurance to any customer, women could compare prices and change to another company if their prices were raised.

- Without this requirement, insurers often refuse to sell their cheapest 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. (In Montana, for example, Dairyland is the high-priced subsidiary of Sentry Insurance. Dairyland has sent a letter to women policyholders threatening that unisex insurance will make their prices go up.)

Chart B. -- AUTO RATES 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.

- If SEX-BASED auto insurance prices were COST-BASED, as insurers assert, 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 more than adult men, although young women have a 10% lower accident rate (4.0 vs. 4.4).

- Also 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.

- (Married women are rated as men, although marital status is wholly irrelevant to miles driven. The 10% discount sometimes offered to single women does not accurately reflect the nearly 40% difference between men's and women's accident rates. The fact that it is offered inconsistently or not at all further indicates that it is not related to cost.)

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.

- YOUNG WOMEN ARE OVERCHARGED too. They pay more than adult men, but their accident rate is 10% lower. Insurers' threats that rates for young working women will go up are a cruel deception, without the slightest foundation in fact.

- 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. NOW 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 (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 statistics like the ones cited by the blue Q & A booklet on "Unisex Insurance Legislation" by the 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 major contributor to this difference.

Concluding statement. The only productive result of the auto insurers' attack on the Montana unisex insurance law 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 a reasonable law 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 their 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, Montana's unisex insurance law promises real benefits to consumers. We urge that these benefits be realized through full implementation of the present law. That will be a genuine break for women.

APPENDIX. Background Information.

Chart A. -- Unisex; Threat vs. Reality

Billings prices are from 1983 Congressional testimony by T. Lawrence Jones, American Insurance Association against S.372/HR.100, the Nondiscrimination In Insurance Act, before the Senate Commerce Committee and the House Energy and Commerce Committee. 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 women age 19.

The Essential Insurance Act made it easy for Michigan automobile owners to change insurance companies to get the best 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 cheapest insurance for a customer's category from among the companies they represent.

Chart B. -- Auto Rates Not Cost-based

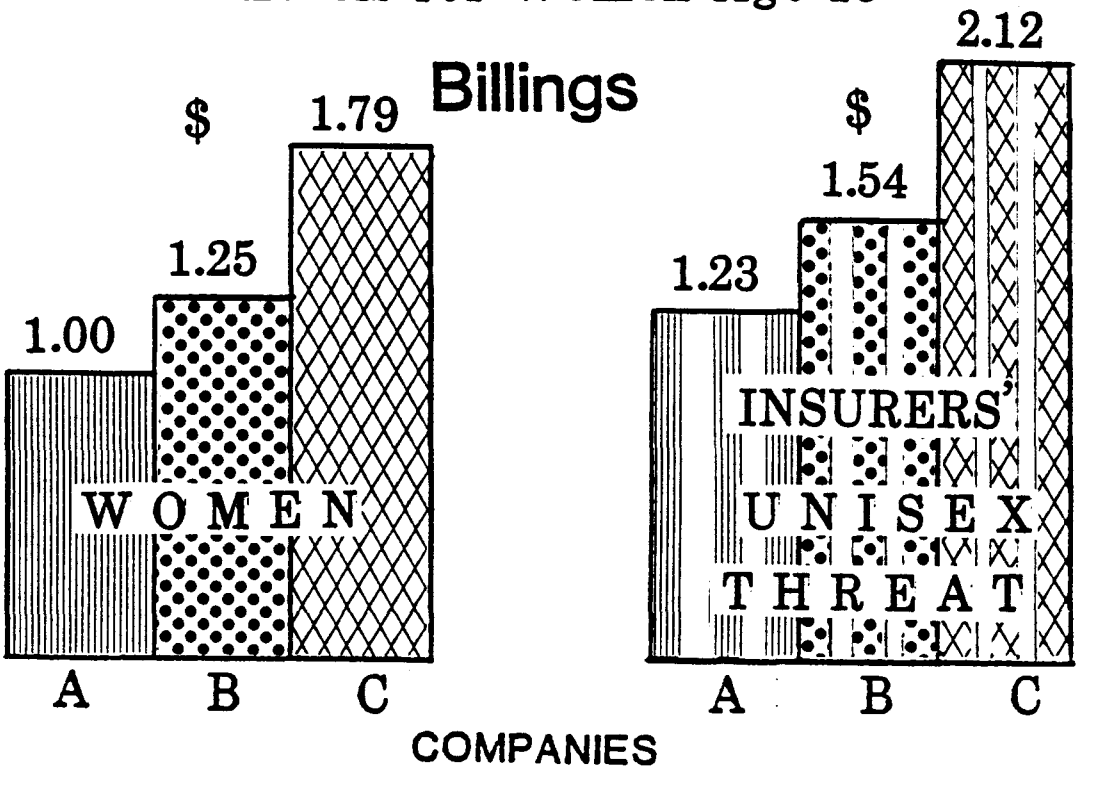
Mileage and accident rates are from Congressional testimony by the Alliance of American Insurers (1983) in the same hearings cited above.

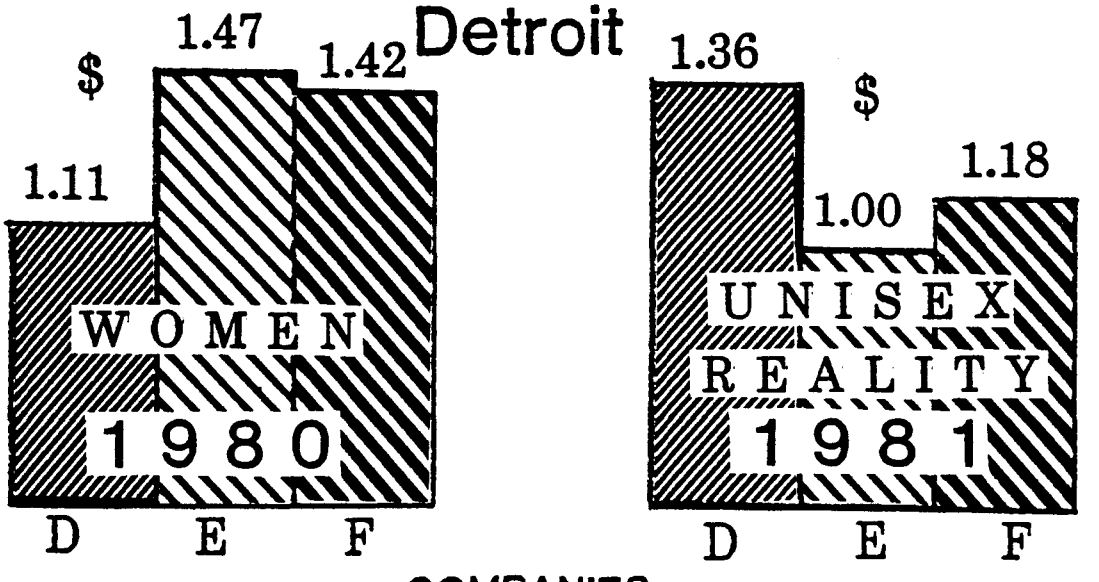
Insurance price levels are from the Insurance Services Office's, rating manual "Personal Auto Manual," 1980. ISO is an industry association for comparing data.

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."

UNISEX: THREAT VS. REALITY

Price Levels for Women Age 19



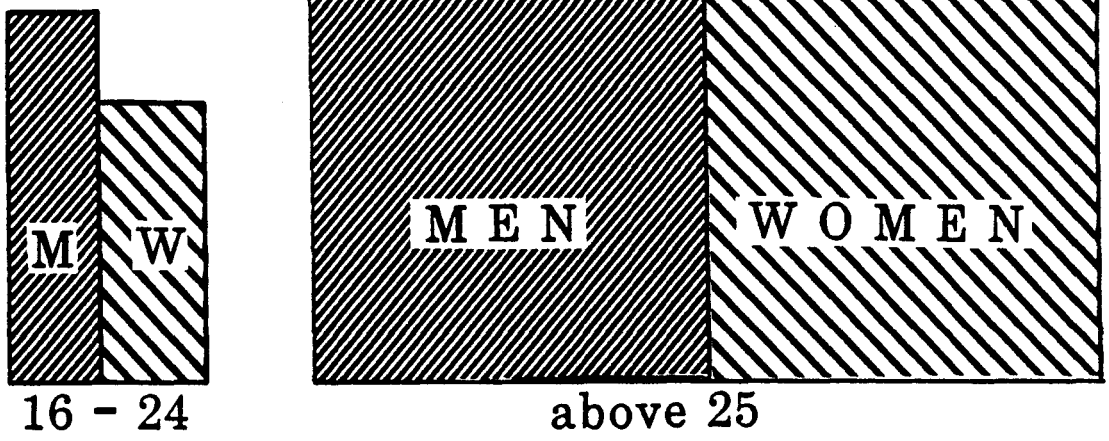


SOURCES BILLINGS: Amer. Insurance Assn, Cong. Test. 1983
DETROIT: Mich. State Insurance Bureau study "1981 - A YEAR OF CHANGE"

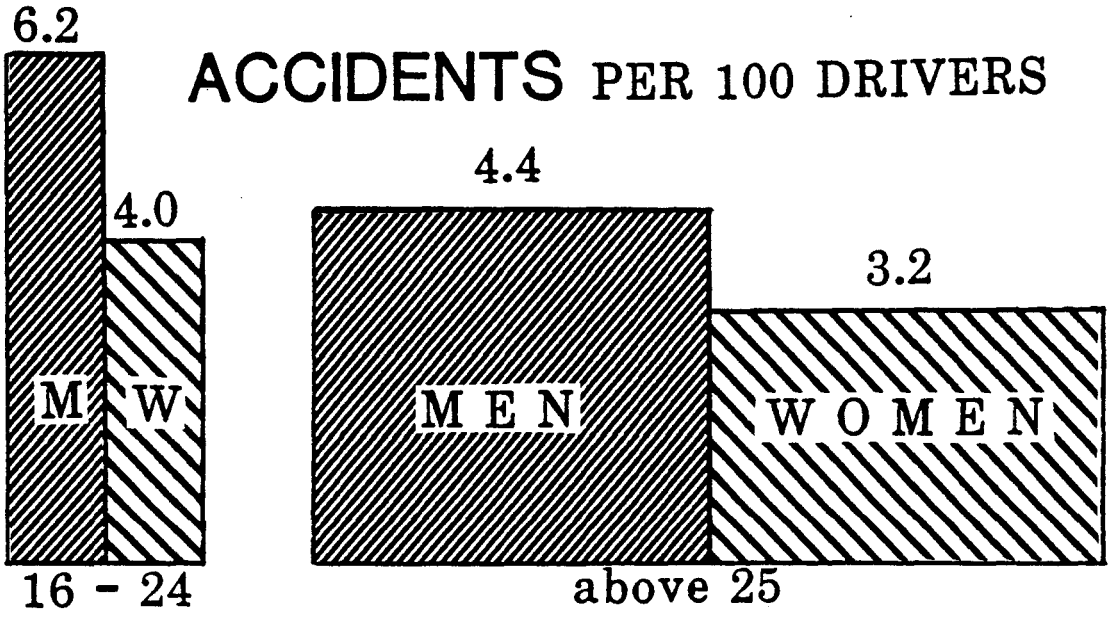
CHART A

AUTO RATES NOT COST-BASED

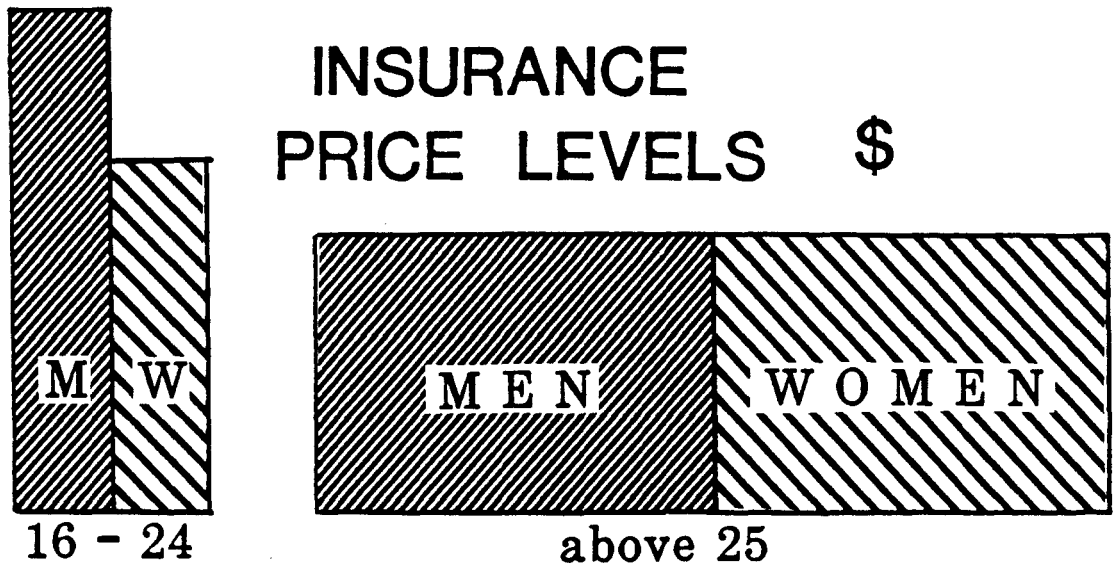
MILEAGE



ACCIDENTS PER 100 DRIVERS



INSURANCE PRICE LEVELS $



SOURCES see accompanying diagram

CHART B

WOMEN PAY MORE PER MILE

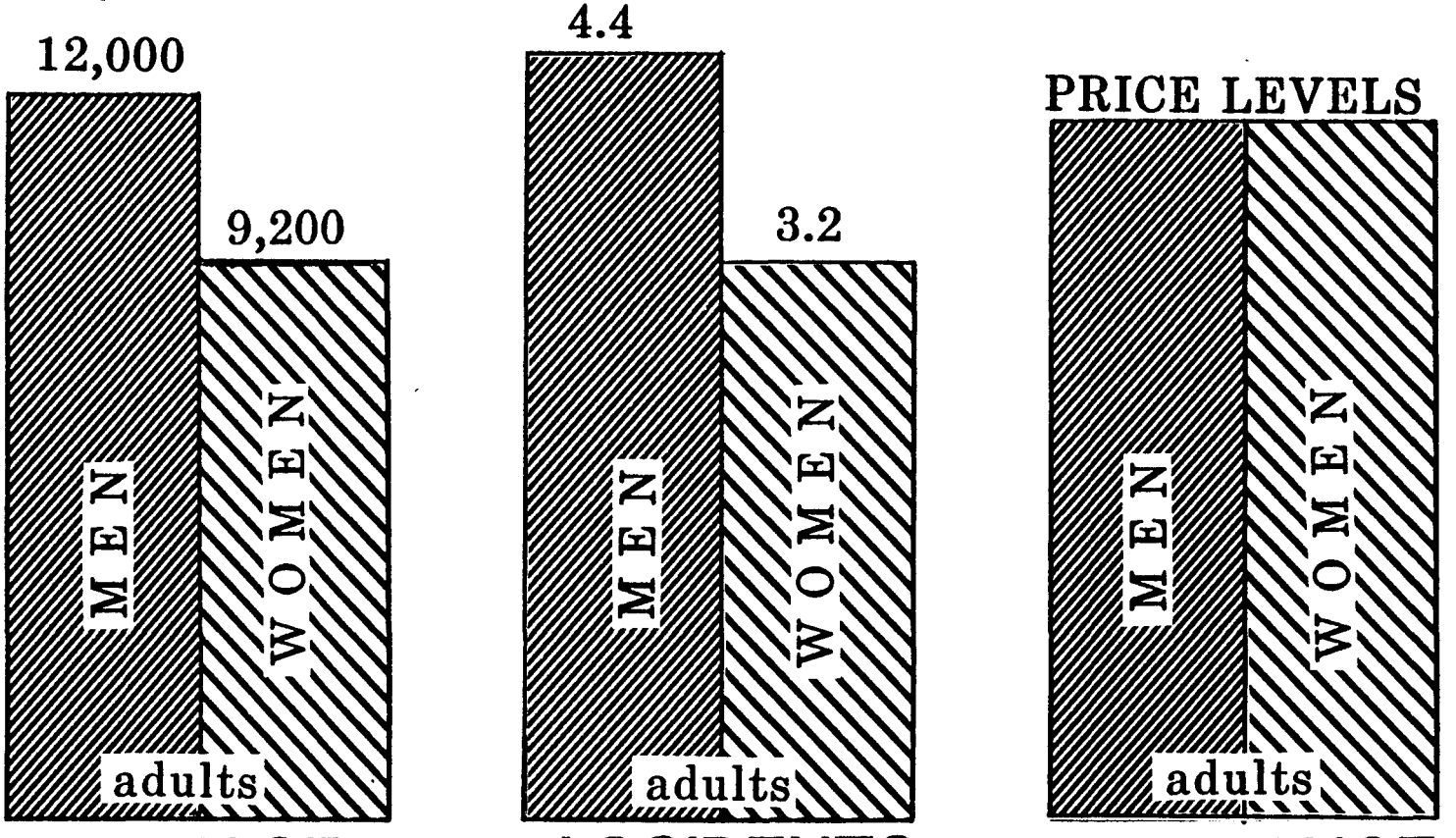
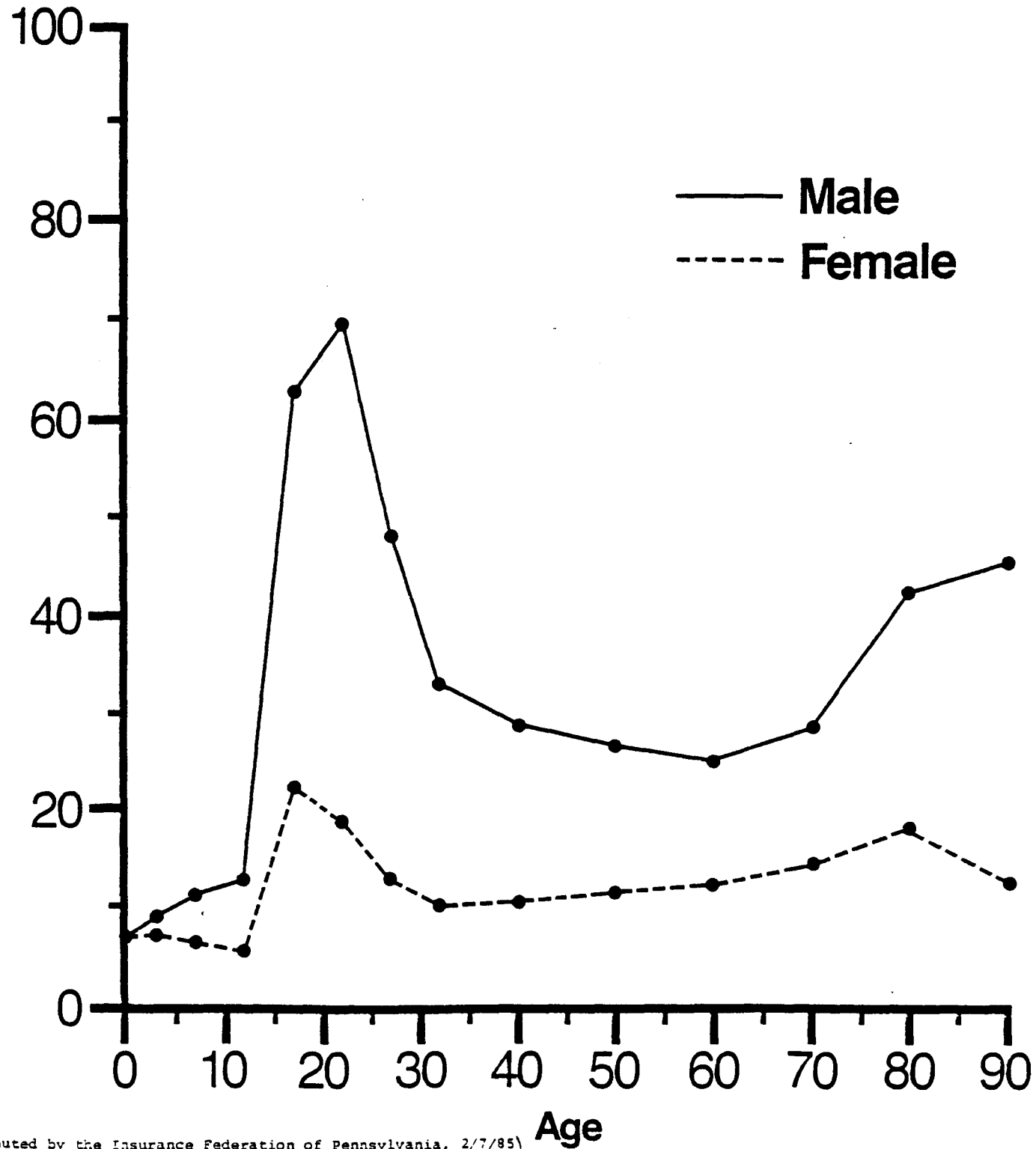


CHART C

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

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

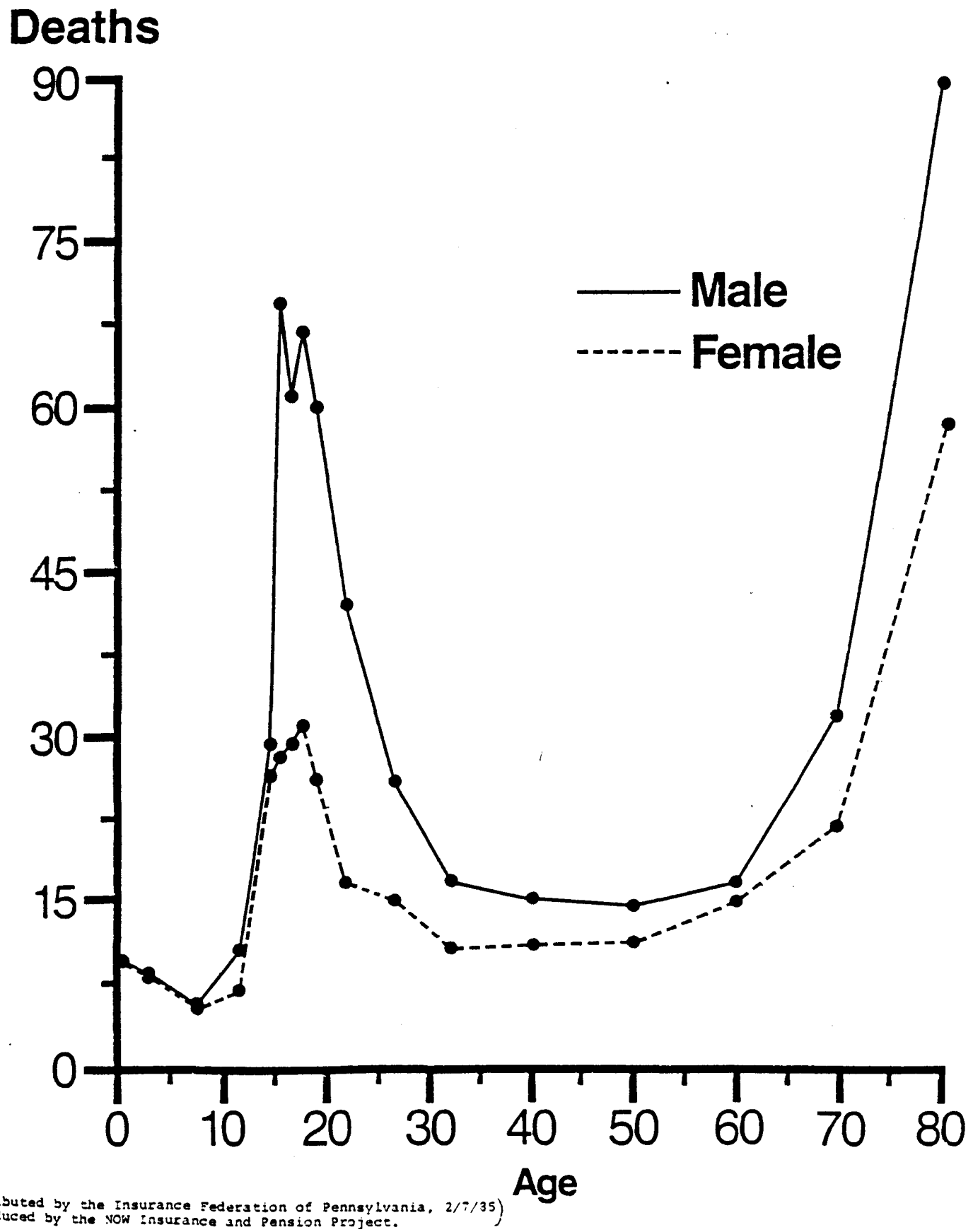


Distributed by the Insurance Federation of Pennsylvania, 2/7/85
Reproduced by the NOW Insurance and Pension Project.

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

CHART D

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



Distributed by the Insurance Federation of Pennsylvania, 2/7/35)
Reproduced by the NOW Insurance and Pension Project.

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

Rep Tom Hagemeier - he knows insurance
This clarifies an important point
PButler

National Organization for Women, Inc.

1401 New York Avenue, N.W., Suite 800 • Washington, D.C. 20005-2102 • (202) 347-2279

Editor, Great Falls Tribune
Box 5468, Great Falls, MT 59403

February 15, 1985

The Tribune's report (2/15/85) on the House Judiciary Committee's hearing on the state's unisex insurance law, fails to distinguish between two quite different things pertinent to auto insurance costs for men and women -- accident rate and driving record.

Accident rate mainly depends on mileage driven. Expert testimony for Montana NOW by me that "Women over 25 -- 80% of women drivers -- are charged the same as adult men, despite adult men's 38% higher accident rate," refers to data (from the insurance industry) on number of accidents per 100 drivers per year that prove that auto insurance prices are not cost-based, i.e. that insurance companies' current sex-based prices are not based on risk of accident. Such prices are, therefore, unfair to a predominance of women.

Driving record, however, cannot account for much of the 38% difference in accident rates between adult men and women. The reason: mileage directly accounts for most of the difference. Men on average drive 30% more than women each year. Charging each individual for insurance on how far their car is driven each year would benefit all low mileage car owners -- and women predominate in this category. Relative to this major factor, adjustments in price according to the records of any of the drivers of the car would be a lesser benefit to women.

Patrick Butler

Patrick Butler, PhD
Insurance and Pension Project
Local contact is care of Sharon Eisenberg, Coordinator of Montana NOW, RR 3, Box 461, Conrad, MT 59425, Tel: 278-5523 (business), 278-3384 (home)

Charges fly at hearing on unisex insurance bills

By SUE O'CONNELL
Tribune Capitol Bureau

HELENA — The insurance industry has put out a "barrage of threats and misinformation" in an attempt to have Montana's unisex insurance law repealed, a proponent of the law contended Thursday.

Such "misinformation" most often involves automobile insurance by singling out possible increases in rates for young women, said Patrick Butler of Washington, D.C., a member of the National Organization for Women's insurance task force.

But opponents of the law said they merely want to show that it would adversely affect women by hiking rates for some types of insurance.

And a Michigan woman said the unisex auto insurance law in her state has allowed insurers to raise rates in what amounts to "profiteering," predicting the same would happen in Montana.

The testimony came as the House Judiciary Committee heard two bills that would repeal or substantially alter the law, which prohibits the use of gender as a basis for setting insurance rates and benefits. Scheduled to go into effect in October, Montana's law is the most far-reaching non-gender insurance law in the nation.

Rep. Kerry Keyser, R-Ennis and sponsor of the bill to repeal the law, contended it was passed last year by a vocal "sexist, feminist movement" and would actually result in higher auto and life insurance rates for many women.

Rep. Jack Ramirez, R-Billings, has sponsored a bill that would require equal rates and benefits for men and women in employer-sponsored insurance plans but allow differences in individual plans.

That would allow people a choice, he said.

But opponents of the bills said Ramirez's measure would amount to a repeal because the U.S. Supreme Court has already ruled that employer-sponsored pension plans cannot be based on gender.

Anne Brodsky of the Women's Lobbyist Fund said the unisex insurance law "is a civil rights issue and an economic issue."

"Discrimination never works to the economic advantage of women," she added.

Several insurance industry representatives, all of them women, spoke against the gender-free law and in favor of the bills to change it.

Bonnie Tippy, representing the Alliance of American Insurers, said the law would result in higher rates for people who can least afford them — single mothers, many of them living below the poverty level.

"Do you think equality at any price is a luxury these women can afford?" she asked. "I think they would tell you no."

The effects of gender-free auto insurance laws in four states — Michigan, Massachusetts, Hawaii and North Carolina — were used by both sides as arguments on the matter.

Elaine Donnelly of Michigan said she has researched the effects of her state's law and contended it amounts to "arbitrary, unfair sex discrimination against young women."

Rates for auto insurance for women under 25 have jumped greatly, she said, adding that the highest increase by an insurer amounted to 327 percent.

"The fact that this kind of profiteering has been done in the name of equal rights only adds insult to economic injury," she said.

Donnelly said she was speaking on behalf of the Montana Eagle Forum, a conservative women's group.

Rep. Kelly Addy, D-Billings, later asked Donnelly how many women had bought the policy that increased by 327 percent. When she said she was uncertain, he said a report by the state's insurance commissioner said five people held the policy in 1981 and two in 1982.

And NOW's Butler contended women are overcharged in all areas of auto insurance under the existing system. Women over 25 usually pay the same rate as men but often have better driving records, he said. *

He also said insurance companies would change their rates as needed to capture the market if the unisex provision went into effect, predicting ** rates would not skyrocket.

Proponents of the unisex law also said it would address other discriminatory practices.

Karen Zollman of the state's NOW chapter said numerous inequities exist in health insurance. She cited expenses related to pregnancy as one example, saying insurance often doesn't cover pregnancies, abortions or other costs related to reproduction.

Rep. Tom Hannah, R-Billings, later asked her if the unisex law would allow or require insurance coverage of abortions. Zollman said she was uncertain and also said NOW had no position on whether abortions should be covered by insurance.

* This is the confusion of accident record with driving record.

** The reported facts, such as the one presented by Elaine Donnelly about the 327% rate increase in Michigan and qualified by Repesentative Addy's observation that few policyholders were involved, serve as a good basis for the public to decide what might happen in Montana. Similarly, to have eported on the figures cited in the NOW testimony showing that, with the change to unisex prices, some rates went down in Michigan for young women, would have served to inform readers better than paraphrasing such figures as a prediction (when none was stated) that "rates would not skyrocket" in Montana.

EXHIBIT L
2/14/85

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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 scruitiny 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 prefacatory 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

> 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 interferring 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 <u>all</u> 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" analsysis. 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 impingment 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 soverign 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 govenmental 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 touchtone 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, annunity and pension plans) and there is no important or persuasive justification, therefore.

EXHIBIT M
2/14/85

WEAL
Women's Equity Action League

Specialists in Women's Economic Issues

Testimony by Patricia Blau Reuss, Legislative Director of Women's Equity Action League, a national membership organization specializing in women's economic issues through research, education projects, litigation and legislative advocacy.

As a resident of Bozeman, Montana when the new state Constitution was ratified, I was proud of the equal rights and dignities clause. Later, as a Helena resident, I was one of the many advocates who worked for the passage of legislation which implemented this important Constitutional statement. Today, as someone who travels the 50 states speaking on behalf of economic equity for women, I continue to point with pride to Montana's efforts. It is a pleasure and a privilege to be back before the Montana legislature in support of non-discrimination in insurance.

For 6 years, as WEAL's spokesperson before Congress, I have been working at the national level to end the economic discrimination that women face, especially in the area of insurance rates and benefits. A broad coalition of consumer, aging, religious and labor groups have joined with women's and civil rights organizations to work for passage of legislation to end insurance discrimination. Our single opposition has been the insurance industry. You know them, for they have the tallest buildings in every major city and three lobbyists for every one of us. While insisting that this legislation to regulate them will cause many of their companies to face bankruptcy or fiscal insolvency, they in turn outspend and outadvertise us. They develop computerized mailings to targetted policy holders in an attempt to generate support for discrimination through fear and intimidation.

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They have spent millions of dollars - thousands of them here in Montana - to tell us that discrimination is good for us. Recent Court cases have proven that their arguments won't hold nationally and if my memory serves me right, they won't work here in Montana. Montana meant her commitment to the dignity of the individual, regardless of race, color, sex, culture, social origin or condition, or political or religious ideas. The insurance legislation passed last session underscores that commitment and must not be withdrawn or weakened.

None of us want our insurance rates to go up. Buying insurance as individuals is an expensive proposition to begin with. I would venture that all of us in this room have smoke detectors to keep our homeowners and renters insurance low. Some of us have stopped smoking and taken up jogging to enable us to buy life insurance at a reduced rate. Many of us have considered keeping our teenagers away from all cars until they reach that magical age of 25. All of us agree that it is no longer acceptable to single out blacks or Indians, Mormons or Methodists as groups of people who statistically vary from the norm. We insist that they be treated as equals, socially, politically and economically. We would be appalled if the insurance industry today insisted that it is cost-effective and "fair" to charge these groups different rates and pay them different benefits. If the industry ran ads and came before you insisting that you are being "seduced" by ranchers...if they maintained that Mormons lived longer and Blacks and Indians died younger...if they maintained that these distinctions are important to maintain sensible insurance rates, you would run them out of the state. Yet they feel perfectly comfortable in maintaining that all the women in Montana are different...as a group we live longer, drive better (but only until 25 when some mystical force turns our heads), get sicker. As women business owners and single home owners, we are higher risks and as widows or divorced women, we are practically derelict.

Montana's individual dignities clause and the ensuing non-discrimination legislation prohibits this grouping according to immutable characteristics. Instead, come this October, insurance will be sold to customers on other bases beside the now-illegal sex distinction. New drivers will continue to pay a surcharge until they have established a driving record. Good drivers will continue to enjoy low rates. A large majority of these good drivers will be women, but they will be judged on their lack of accidents and fewer miles driven, not the shape of their skin. Women over 25, especially those who do not live in multiple-car families will actually see their rates go down if they continue to be good drivers.

Life insurance will be discounted when the purchaser can prove good health and good habits. Women who buy small amounts will continue to pay a surcharge, but for those of us who can afford the larger amounts, our good health will ensure our low rates, not the fact that we have a womb. Our fathers, husbands and sons who also have good health habits may see their rates reduced as well, and our family incomes will benefit.

We will all be better consumers. The industry has shown us that fact. Their propaganda sheet for New Jersey shows the teen-age driver 2 things - NOT that she will pay more for unisex, for no bill has passed there. What it shows is that she should change from company C($1526) to company A ($1184) for the same coverage and also that she should move from Newark to Trenton, where the same coverage is $686 from company B - and all of this under discriminatory laws that the industry tells us are fair and save us money.

Finally, the industry makes an argument for us. They insist that national legislation is not necessary and that insurance regulation is an area reserved to the states. They insist that "the American people have repeatedly expressed

their preference to be governed at a local level, by officials they know, understand and find accountable." * Montana legislators have done just that. They have acted in accordance with their state Constitution and in the best economic interests of the state's individual citizens. I urge you to reject any legislation that will undermine or destroy that commitment to equality and accountability in the area of non-discrimination in insurance.

* Galen R. Barnes, speaking for the National Association of Independent Insurers before the House of Representatives Subcommittee on Commerce, Transportation and Tourism, February 22, 1983.

New Jersey

Effect of Unisex Rates on Automobile Insurance Premiums for Women Drivers

Trenton

19 year old occasional driver

	Premium as of 1/1/83	Unisex	Difference
Company A	$794	$1065	+$271
Company B	686	806	+$120
Company C	709	846	+$137

23 year old principal driver

	Premium as of 1/1/83	Unisex	Difference
Company A	$906	$1147	+$241
Company B	580	790	+$210
Company C	604	884	+$280

Newark

19 year old occasional driver

	Premium as of 1/1/83	Unisex	Difference
Company A	$1184	$1593	+$409
Company B	1502	1793	+$291
Company C	1526	1855	+$329

23 year old principal driver

	Premium as of 1/1/83	Unisex	Difference
Company A	$1355	$1716	+$361
Company B	1249	1756	+$507
Company C	1273	1947	+$674

Examples:

1. **Single Female** **19 years old with no discounts or surcharges**

Car	1980 Chevy Malibu	
Coverage	Bodily Injury/Property Damage	$50/100/25
	Medical Payments (PIP)	$2000 (Basic)
	Uninsured Motorists	Basic Limit
	Comprehensive	$50 Deductible
	Collision	$200 Deductible

2. **Single Female** **23 years old, drives to and from work.**
All other characteristics the same as Example 1

In the next five minutes...

FICTION

what you do could affect the cost of your insurance for the rest of your life.

Which would you rather have your insurance rates based on: politics or common sense? The answer seems obvious, doesn't it, but a bill is moving through Congress right now to take the common sense out of the way insurance rates are computed. And unless you act now, nearly every insurance plan you depend on—auto, health, life, pensions, and annuities—is likely to be rewritten. If this bill becomes law, insurance companies will have to ignore the facts.

FOR EXAMPLE:

FACT: On average, women live seven years longer than men.

FACT: Women are involved in half as many automobile accidents as men.

As a result of these statistically verified facts, women pay less for life and auto insurance than men do. That sounds logical and reasonable, doesn't it?

Yet, there is a movement in Congress to axe this common sense system and replace it with one based on politics and ideology. Under the proposed legislation, S.372/H.R.100, any facts related to gender would have to be ignored by insurance companies when they compute rates. *If Congress passes S.372/H.R.100, women will pay $360 million a year more for life insurance and $700 million more for auto insurance. Some women will pay as much as $700 to $800 more per year for their auto insurance.*

Life insurance premiums for women will increase—up to 50%.

A TYPICAL EXAMPLE

If S.372/H.R.100 is passed, here's what the effects would be over a 20-year period on a non-smoking woman buying a $50,000 term life policy.

Age	Amount	Percent Increase
25	$ 184	9.5%
35	$ 784	29.0%
45	$2,475	47.0%
55	$4,854	52.0%

Facts supplied by Phoenix Mutual Life. Documentation furnished on request.

States and cities would be required to pay billions of additional tax dollars to adjust pension plan benefits *retroactively*. The Department of Labor has calculated the cost of this legislation to public and private pension plans at $1.7 billion *each* year.

This bill has been labeled an "equal rights" bill by some political groups in Washington. It doesn't deserve the label.

We believe everyone should have an equal right to fair insurance rates, too, but this legislation will hurt everyone, including the very people it is designed to help.

In the next five minutes, *you can do your part to keep fair, sensible insurance rates.* This legislation is racing through Congress and will become law unless thousands of individual Americans act now. In the next few days, the Senate will vote on S.372. Your Senator, The Honorable Paul S. Trible, could cast the deciding vote. Please take the time now to write to Senator Paul S. Trible at the U.S. Senate, Washington, D.C. 20510, or call his office (202) 224-3121 and ask him to stop S.372 from becoming law. In the interest of fairness—for everyone.

Committee for Fair Insurance Rates

Barbara J. Lautzenheiser, Chairman
600 Pennsylvania Avenue, S.E.
Suite 200
Washington, D.C. 20003

In the next five minutes... FACT

what you do could affect the cost of your insurance for the rest of your life.

Do you want your insurance rates based on politics or common sense?

The answer seems obvious, doesn't it? A bill is moving through Congress right now to put common sense into the way insurance rates are computed. Nearly every insurance plan--auto, health, life, pensions and annuities is likely to be rewritten. If this bill becomes law, insurance companies will have to end the politics of discrimination and rely on facts.

FOR EXAMPLE

FACT: 86% of men and women aged 65 will die at the same age.
FACT: Those who drive more miles have more auto accidents.

In spite of these facts, women receive less in annuities than do men; and women over 25, who drive less than men, pay the same auto insurance rates as men.

There is a movement in Congress to end these unfair practices and institute a common sense, non-discriminatory system.

If Congress passes S. 372/H.R. 100 women will receive more in pension and life insurance benefits and will pay less for auto, health and disability insurance. Some women will pay as much as $1500 a year less for disability insurance and receive as much as $3000 a year more in pensions.

LIFE INSURANCE PREMIUMS FOR SOME WOMEN WILL DECREASE UP TO 8%

An example

Monthly payments for a $250,000 GEICO life insurance policy

age	male	female
20	$27.70	$30.20
24	$27.70	$30.20
28	$27.70	$30.20
32	$27.70	$30.20
36	$30.20	$30.20

These rates are for non-smokers. In general, in life insurance rates, gender serves as a proxy for life style factors such as smoking, drinking, and stress. Therefore, when smoking is factored out, the life expectancy of young men is greater than that of young women.

STATES AND CITIES WILL BE UNAFFECTED BY S. 372 and H.R. 100 SINCE THEY ARE REQUIRED TO EQUALIZE BENEFITS BY TITLE VII OF THE CIVIL RIGHTS ACT.

S. 372/H.R. 100 IS A CIVIL RIGHTS BILL WHICH HELPS WOMEN. WE URGE EACH MEMBER OF CONGRESS TO SUPPORT S. 372/H.R. 100.

EXHIBIT N
2/14/85
HB 366 & HB 507

Testimony of Anne L. MacIntyre in opposition to HB 366 and HB 507

Chairman Hannah, members of the Committee, I am Anne MacIntyre, Administrator 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. The majority of these problems are contained in HB 366 but they also exist to a lesser extent in HB 507.

I. ERISA - related problems

HB 366 eliminates the operative provisions of the law enacted by the 1983 legislature except with respect to insurance plans which are a part of an employee benefit plan defined in the federal Employee Retirement Income Security Act of 1974 (commonly referred to as ERISA). This raises several problems:

1. It is already illegal under the federal Title VII of the Civil Rights Act of 1964 and the Montana Human Rights Act for an employer to provide an employee benefit plan which discriminates on the basis of sex. Because of this, HB 366 is redundant and does nothing to improve the situation of individuals who are subjected to discrimination in insurance on the basis of sex or marital status.

Furthermore, to the extent that HB 366 purports to regulate the operation of employee benefit plans beyond the existing requirements of federal law, the bill is actually preempted by ERISA, which provides in §514(a) that its provisions "shall supercede any and all state laws insofar as they may now or hereafter relate to any employee benefit plan [covered by its provisions]." 29 U.S.C. §1144(a).

2. The employee benefit plans of public employers are not subject to ERISA. Even though public employers may not now discriminate on the basis of sex or marital status in the provision of employee benefit plans under the employment discrimination laws, HB 366 would permit an insurance company to sell to a public employer an employee benefit plan which discriminates on the basis of sex when the same insurance company would be prohibited from selling the same plan to a private employer. Such a scheme is confusing and might subject public employers to liability by leading them to believe that they are somehow not required to provide non-discriminatory employee benefit plans.

II. Duplicative Enforcement

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 on 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.

III. Pregnancy Discrimination

HB 507 would permit an insurance company to refuse to insure, refuse to continue to insure and limit availability of coverage because of pregnancy. Employers, however, are required by federal law to provide insurance benefits for pregnancy if they provide coverage for other medical conditions. Again, such a statutory scheme is confusing and might lead employers to believe they are not required to provide insurance and disability plans with pregnancy coverage. If pregnancy discrimination is considered to be illegal sex discrimination in the employment arena, sound public policy considerations would dictate consistency in the insurance arena.

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.

EXHIBIT O
HB 366 & 507

2/14/85

House Judiciary Committee

I am Pat Simmons from Bozeman. I am employed as a Manager in the Physical Plant Division of Montana State University, on vacation today.

I oppose HB366 and HB507. Insurance should be based on the risk that is insured and not on the basis of sex or marital status. For example, auto insurance should be based on your driving record, occupation, mileage driven and wearing a seat belt. I should have a low rate because in 21 years of driving, I have had one ticket and one accident, I wear a seat belt, and I drive only 8000 miles a year and none for my employer. It is irrelevant that I'm a woman - I'm a good driver and all good drivers including male and female teenagers should pay low rates irregardless of sex and marital status. But currently men and women pay the same rates after age 30. With the enactment of the nongendered insurance law this October I will not be paying a higher premium and if insurance companies will charge rates based on risk factors, I stand to receive a lower rate. So also will teenage boys who are good drivers. Basing rates on sex and marital status is discrimination.

and unconstitutional. I urge you to defeat HB 366 and HB 507

Pat Simmons
1103 Cherry Drive
Bozeman, MT 59715

GREAT
FALLS AREA
CHAMBER OF COMMERCE

P.O. BOX 2127
926 CENTRAL AVENUE
GREAT FALLS, MONTANA 59403
(406) 761-4434

February 5, 1985

To: House Judiciary Committee

From: Roger W. Young, President

Subject: ***UNI—SEX INSURANCE HB 507 (KEYSER)***

The Great Falls Area Chamber of Commerce supports the passage of legislation which restores the legitimate consideration of gender as a method of rating insurance risks and/or premiums. While we are wholeheartedly in accord with efforts to eradicate unwarranted sex discrimination in society, we seriously doubt that uni-sex legislation will result in the overall benefits promised. More likely, rates for all insurance purchasers, individuals in particular, will be larger than currently paid.

We prefer to regard the work of an actuary as the science of discrimination, of being able to accurately predict on the basis of distinction. In many cases, the distinction of gender is appropriately one of the distinctions which have a relevant bearing on the cost of insurance to the purchaser. As a business organization, we believe it unreasonable to disregard these principles.

We've heard both sides of this issue. It's quite easy to get conflicting graphs and charts and pretty soon it's difficult to know which statistics to believe. A survey of our membership in January, nevertheless, showed 50% of our members in favor of repeal; 39% favor leaving it intact, and 11% are undecided. Although it is not a black and white matter, we believe the preponderance of evidence is on the side of repealing the uni-sex insurance system created in 1983. It may be providing equal treatment in insurance, but "equal" isn't necessarily the same as fair or just.

cc: Cascade County Legislative Delegation

EXHIBIT P-1
2/14/85
HB 643

TESTIMONY FOR H.B. 643 PREEMPTION LEGISLATION
SUBMITTED BY LOUIS J. BRUNE, III, NRA NW STATE LIAISON

FEBRUARY 14, 1985

MY NAME IS LOUIS J. BRUNE, III. I AM THE NRA STATE LIAISON FOR THE NORTHWESTERN REGION AS WELL AS A LIFE MEMBER OF THE 3 MILLION MEMBER NATIONAL RIFLE ASSOCIATION.

ON BEHALF OF OUR 26,536 NRA MEMBERS IN MONTANA, I WOULD LIKE TO THANK THE CHAIRMAN AND THE HOUSE JUDICIARY COMMITTEE FOR THE OPPORTUNITY TO SPEAK ON BEHALF OF H.B. 643, THE STATE FIREARM PREEMPTION BILL.

THIS BILL PROVIDES FOR A STANDARDIZATION OF FIREARM LAWS THROUGHOUT THE STATE OF MONTANA BASED UPON CURRENT AND FUTURE STATUTES ENACTED IN THE LEGISLATURE.

IT MAKES NULL AND VOID ANY LOCAL ORDINANCES THAT ARE MORE OR LESS RESTRICTIVE THAN CURRENT STATE LAW (SUCH AS A MORTON GROVE, ILLINOIS HANDGUN BAN).

A STATE FIREARMS PREEMPTION LAW WILL PREVENT A HODGEPODGE EFFECT OF FIREARMS LAWS WITHIN THE STATE AND CREATE UNIFORMITY OF FIREARMS LAWS WITHIN MONTANA. SUCH A UNIFORM CODE IS NECESSARY TO PROTECT THE LAW-ABIDING CITIZEN FROM UNWITTING VIOLATION

PUBLICALLY OWNED BUILDING WITHIN THE CITY OF MISSULA. THE PASSAGE OF THIS ORDINANCE WOULD HAVE MEANT THAT ANY LAW-ABIDING FIREARMS OWNER, HUNTER, OR COMPETITIVE SHOOTER WOULD HAVE BEEN IN VIOLATION OF THIS LAW AND SUBJECT TO A FINE OF $500 OR 6 MONTHS IN JAIL FOR TRANSPORTING A FIREARM THROUGH THE MISSULA AIRPORT!

THIS WOULD HAVE SERIOUSLY LIMITED OUT-OF-STATE HUNTERS FROM ENTERING INTO MONTANA, WHICH WOULD RESULT IN A CATOSTROPHIC LOSS OF REVENUE TO THE STATE AND OUTDOOR INDUSTRY.

A STATE FIREARM PREEMPTION LAW WILL CURTAIL THIS MOVEMENT IN MONTANA AND ENSURE THAT STATE FIREARMS LAWS WILL BE ENFORCEABLE THROUGHOUT THE STATE ON AN EQUAL BASIS.

IN CLOSING, I WOULD LIKE TO NOTE THAT WE HAVE RECEIVED NUMEROUS LETTERS AND TELEPHONE CALLS FROM OUR MEMBERS IN MONTANA ASKING THAT WE ASSIST IN SECURING THE PASSAGE OF H.B. 643. FURTHERMORE, AT RECENT ANNUAL MEETINGS OF THE MONTANA RIFLE AND PISTOL ASSOCIATION, THE NORTHWEST MONTANA ARMS COLLECTORS AND OTHER SPORTSMEN ORGANIZATIONS HERE IN MONTANA, THE COLLECTIVE MEMBERSHIP VOTED UNANIMOUSLY IN FAVOR OF THIS TYPE OF LEGISLATION TO PREVENT MORTON GROVE STYLED BANS OR ANY POTENTIAL HARASSMENT OF LAW-ABIDING FIREARMS OWNERS HERE IN THE STATE OF MONTANA.

I WOULD LIKE TO THANK THE COMMITTEE ON BEHALF OF ALL OF US FOR THE OPPORTUNITY TO DISCUSS H.B. 643 WITH YOU TODAY, AND ENCOURAGE YOUR SUPPORT OF THIS LEGISLATION.

AND/OR UNDUE HARASSMENT THAT COULD RESULT IF EVERY COUNTY, CITY, TOWN OR CONSOLIDATED LOCAL GOVERNMENT IN MONTANA HAD DIFFERENT FIREARMS LAWS. PASSAGE OF H.B. 643 WILL ALSO ENSURE THE EQUAL PROTECTION CLAUSE FOR ALL GUARANTEED IN THE 14TH AMENDMENT TO THE U.S. CONSTITUTION.

HOWEVER, THIS BILL, H.B. 643, WILL IN NO WAY LESSEN CURRENT FEDERAL LAW, STATE LAW OR LOCAL ORDINANCES WHICH REGULATE THE CARRYING OF CONCEALED WEAPONS, THE CARRYING OF WEAPONS TO A PUBLIC ASSEMBLY OR SCHOOL WITH THE INTENT OF CAUSING TERROR OR ALARM AND THE POSSESSION OF FIREARMS BY CONVICTED FELONS, ADJUDICATED MENTAL INCOMPETENTS, ILLEGAL ALIENS, AND MINORS.

SINCE THE PUSH FOR LOCAL GUN LAWS THAT SUPERSEDE STATE LAW IS A RELATIVELY RECENT PHENOMENON, BEING BACKED IN MOST CASES BY THOSE GROUPS THAT WISH TO BAN AND/OR RESTRICT THE RIGHTS OF LAW-ABIDING CITIZENS TO OWN AND USE FIREARMS FOR LEGITIMATE PURPOSES, THE NEED FOR A STATE FIREARM PREEMPTION LAW IS CLEAR.

SINCE THE PASSAGE OF THE MORTON GROVE HANDGUN BAN, OVER 100 COMMUNITIES HAVE ATTEMPTED TO PASS SIMILAR LEGISLATION NATIONWIDE. SUCH PLACES IN THE NORTHWEST INCLUDE: SEATTLE, WASHINGTON; EUGENE, OREGON; ANCHORAGE, ALASKA; BOULDER, COLORADO; GREEN RIVER AND PINEDALE, WYOMING AND MISSULA, MONTANA.

IN MAY, 1984, THE CITY OF MISSULA CONTEMPLATED AN ORDINANCE WHICH WOULD HAVE PROHIBITED CARRYING A FIREARM INTO ANY

NATIONAL RIFLE ASSOCIATION OF AMERICA
INSTITUTE FOR LEGISLATIVE ACTION
1600 RHODE ISLAND AVENUE, N.W.
WASHINGTON, D.C. 20036

WHY DOES YOUR STATE NEED A FIREARMS PRE-EMPTION LAW?

The right to keep and bear arms is at the forefront of the various emotional issues that currently confront our society. Legislators, judges and bureaucrats at all levels of government — federal, state and local — are being called upon by citizens who wish to see this right expanded or restricted.

One underlying question is at what level should such legislation occur. The National Rifle Association has traditionally believed that the government most representative of the people is best. The explosion over the past few years of local ordinances that are more restrictive than current state law has, however, created the need for the states to preempt these local actions. Such legislation will prevent a hodgepodge of varying gun laws within a state, and thereby protect the law-abiding citizen not only from unwitting violation of the law, but also from arbitrary infringements of his or her rights. Indeed, in enacting pre-emption legislation, thereby expressly preventing local governments from infringing the rights of citizens and effectively eliminating the need for citizens to undertake costly litigation to protect their rights, state legislators fulfill their constitutional duty to protect the rights of citizens.

A state firearms pre-emption law will guarantee to the citizens of your state their right to own and use firearms for legitimate purposes based on state statutes and federal law.

Federal Law

Many people do not realize the full extent of federal law. Under the Gun Control Act of 1968, anyone convicted of a felony, adjudicated mentally defective, or addicted to drugs is prohibited from owning, purchasing, receiving or transporting any firearms or ammunition. The Gun Control Act also bans mail order sales of firearms and ammunition by other than federally licensed dealers and requires that the purchaser and seller of firearms to residents of the same state, although most states have enacted contiguous-state statutes for long gun purchases from dealers.

Federal law also requires all persons engaged in the business of dealing in firearms to be federally licensed. Dealers must require from all firearms purchasers proof of identity and residence, and buyers must sign, under penalty of perjury, a statement certifying eligibility to purchase. Dealers are required to keep records of all firearms sales and are forbidden from selling handguns to persons under 21 or rifles and shotguns to persons under 18. Additionally, dealers are prohibited from making any sale of firearms or ammunition which would place the buyer in violation of state or local law.

The History of Firearms Pre-emption Legislation

The first pre-emption firearms law was passed in the late 1960s, when, in response to the assassinations and urban rioting of that time, a number of localities passed "gun control" measures. Recognizing that these ordinances were based on emotional response rather than logical efforts to control crime, citizens in California and Pennsylvania led the way in enacting firearms

pre-emption statutes. Today, some 15 states have firearms pre-emption either by statute or by legal precedent including: Alabama, Arizona, California, Indiana, Maryland, Massachusetts, Minnesota, New Jersey, New York, North Dakota, Pennsylvania, South Dakota, Virginia, Washington and West Virginia.

The Problem Behind Local Firearms Laws

The renewed popularity in passing local ordinances effecting gun ownership has triggered a great debate over the benefits of local rule on this issue. Clearly, all legislation — whether federal, state, or local — must be designed to ensure uniform and nondiscriminatory access to the rights and privileges of the citizenry as guaranteed by the U.S. and State Constitutions. Yet, a close look at the passage of the Morton Grove, Illinois, handgun ban, the most infamous of these local ordinances, proves beyond doubt that local firearms legislation does not guarantee this. In passing their ban, the Morton Grove Village Trustees were acting in defiance of a majority of the village citizenry as the opponents of the measure greatly outnumbered supporters at all public hearings on the ban. Morton Grove was acting not to control crime, which was minimal in the village, but rather to gain the attention of national media and to create a situation of harassment for individual firearms owners. Their gimmick worked! Today, Morton Grove is almost a household word and it is estimated that close to a thousand formerly law-abiding citizens are now technically "criminals" for exercising a right guaranteed by both the U.S. and the Illinois Constitutions.

The local intent to harass gun owners and sportsmen, rather than control crime, is even more apparent in the recent actions of the Friendship Heights (Maryland) Township. This tiny community on the outskirts of Washington, D.C., originally attempted to ban possession of all handguns. The Montgomery County Council refused, however, to consider the proposal because it was a clear violation of the Maryland State Firearms Pre-emption Statute. Friendship Heights then attempted to subvert state law by passing a complete ban on possession of all ammunition. Possession of ammunition for self-defense would have been outlawed, and anyone passing through Friendship Heights with a single bullet could have been subject to arrest and conviction — a $500 fine for the first offense and up to six months in jail for the second offense.

The attempted F.H. bullet ban was defeated by the county council; Montgomery County, nonetheless, ultimately passed an ordinance which will prohibit the purchase of ammunition unless a firearm registration certificate is produced, although registration is not required in Maryland. While Councilman David Scull claims it is a symbolic step towards gun control at the state and federal level, in reality, this ordinance "is an abysmal waste of governmental energy and corrodes the respect without which law is a husk." (The Washington Times, June 20, 1983)

In response to this ban and other similar restrictive ordinances, a number of local jurisdictions have gone in the opposite direction and required all individuals or household heads to own a firearm. The NRA does not condone these mandatory ownership ordinances because we believe it is an individual's choice whether or not to possess a firearm.

How Can Pre-emption Help?

Local firearms legislation serves only to create a crazy quilt of laws, resulting in gun owners running the risk of arrest, prosecution and confiscation of personal property for unwitting violation of local law by transporting a gun for sporting or other legitimate purposes across city or county

lines. Such legislation clearly interferes with the "uniform application of laws" as citizens from one city are treated differently from citizens of another. Such legislation also puts an undue burden on the nation's 28 million hunters and 7 million competitive shooters who would be required to know the firearms laws of each various city and county they may pass through on their way to hunting areas or shooting matches.

We are greatly concerned by this eruption of hostile camps of "pro-gun" and "anti-gun" localities in states who do not have firearms pre-emption legislation. A state firearms pre-emption law will curtail this movement and ensure that state law will be enforced uniformly throughout the state on an equal basis.

NRA
Institute for Legislative Action

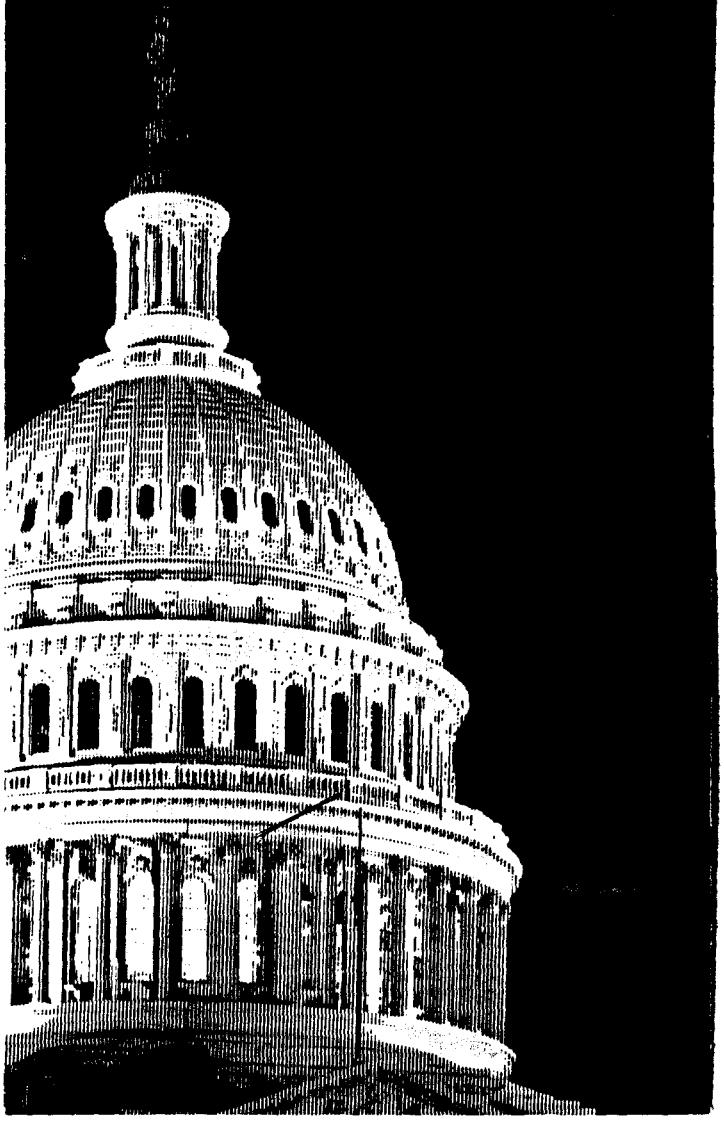

EXHIBIT P
EDUCATION - CONSERVATION HB 643
2/14/85

Montana Wildlife Federation

AFFILIATE OF NATIONAL WILDLIFE FEDERATION

P.O. Box 3526
Bozeman, MT 59715
(406) 587-1713

MONTANA WILDLIFE FEDERATION

TESTIMONY ON HB643

The Montana Wildlife Federation is strongly supportive of HB643. Our membership, which consists of approximately 4600 sportsmen in 17 local clubs throughout the state, includes a very high percentage of gun owners. We are keenly aware of actions taken by several city governments in other states to ban, register or otherwise restrict the possession of firearms by members of the general public.

Although we are not aware of any such actions contemplated by any of our local governments, we recognize that there is a possibility that a Montana city or county could be asked to adopt such an ordinance. If that should happen, we would feel much more comfortable if state law clearly prohibited the action in the first place. And we suspect that the local government involved would also feel more comfortable if they could cite a clear prohibition in state law.

For these reasons, we urge this committee to recommend passage of HB643.

Thank you.

Harold M. Price

Montana Wildlife Federation

(This sheet to be used by those testifying on a bill.) EXHIBIT Q
2/14/85
HB 643

NAME: James McConnell DATE: Feb 14, 1985

ADDRESS: Lincoln mt.

PHONE: 362-2573

REPRESENTING WHOM? ~~Montana Rifle & Pistol Association~~ M/self

APPEARING ON WHICH PROPOSAL: HB643

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

COMMENTS: This Bill is very important to the gun owners of montana. There is much concern among the gun owners that what has taken place in other States, namely prohibiting ownership or possession of firearms ~~of firearms~~ by local Jurisdiction, will happen in Montana. Of all the time I have been Legislative Chairman of the MT. Rifle & Pistol Assoc, there has been no issue that has brought more interest from the gun owners of the State.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

EXHIBIT R
2/14/85

MONTANA
FARM BUREAU
FEDERATION

502 South 19th
Bozeman, Montana 59715
Phone (406) 587-3153

TESTIMONY BY: Lorna Frank

BILL # HB 594 DATE 2/14/85

SUPPORT X OPPOSE

Mr. Chairman and members of the committee, for the record I am Lorna Frank representing the Montana Farm Bureau Federation.

Our members whole heartedly support HB 594. We believe it is a basic right of land owners to know when, why and who is on your property. We believe that HB 594 adequately covers this and urge the committee to recommend a "do pass".

Lorna Frank
SIGNED

EXHIBIT S
2/14/85

MONTANA FARM BUREAU FEDERATION

502 South 19th
Bozeman, Montana 59715
Phone (406) 587-3153

TESTIMONY BY: Lorraine Gillies

BILL # HB 17 DATE 2/14/85

SUPPORT X OPPOSE

Mr. Chairman, members of the committee.

For the record I am Lorraine Gillies representing the Montana Farm Bureau Federation.

In keeping with our policy of protecting private property rights, and in an effort to promote landowner-recreationist compatability Montana Farm Bureau endorses HB 17. By making trespass and littering private land a criminal offense subject to arrest by Fish, Wildlife and Parks officers, and punishable under law, we feel that responsibility for maintaining good relationships between the stewards of the land and those who recreate is clearly defined. This definition is necessary in order that access by the recreationists to the waters of the State of Montana, as mandated by the Supreme Court, will be orderly and unobtrusive as possible to the livelihood and privacy of the landowner..

We urge the committee to recommend a do pass. Thank you.

SIGNED

EXHIBIT S
2/14/85
HB 17

Testimony Concerning H. B. 17 Presented
To the House Judiciary Committee by The
MONTANA CATTLEMEN'S ASSOCIATION

Mr. Chairman, members of the committee, the present trespass law in Montana leaves the property owner, rather than the trespasser, in a position of disadvantage. The conspiciousness of any posted notice will always be open to question. Most working ranchers in Montana have little time for maintaining "No Trespassing" signs, let alone for personally patroling their premises. H. B. 17 corrects the definition of "enter or remain unlawfully" by striking out the requirement that notice be posted or personally given. This change makes sense. After all, a person can hardly claim that he or she needs a sign in order to know whether or not a piece of land belongs to them. And, if it does not, then surely they would expect to ask permission before useing that piece of land.

The stream access bills which have recently occupied so much of your time cry out for H. B. 17 as a companion. Without a strong trespass law, the rules concerning public use of water on private land would be unenforcable. Under the present trespass law, streambanks would have to be lined with "No Trespassing" signs, a situation which would scarcely add to the recreational value of a body of water.

The Montana Cattlemen's Association takes issue on all points with the Fiscal Note provided with this bill:

1. Where does the Budget Office get the idea that a stronger law will result in 3 1/2 times more cases? A tougher law will certainly reduce violations. The assumption that ranchers will press charges more often is pure speculation.

2. Cost-wise, cases should be less expensive to prosecute under the new law. The revised wording is clearer and more specific concerning penalties. With the burden of proving notice removed from the side of the property owner, most deliberate violators will simply plead guilty.

3. The Budget Office anticipates that enforcement costs will continue to increase into the future. We can find nothing to support this supposition. Ranchers and other property owners normally report only the most flagrant cases of trespass. Even on heavily posted land, where the present law is on the side of the landowner, violators are rarely taken to court. To the contrary of statements made in the Fiscal Note, we believe that as the public becomes aware that prosecution of deliberate trespass will be successful, violations,and therefore reported cases, will actually decrease.

The Montana Cattlemen's Association asks for a "do pass" on this bill. Thank you for your attention.

EXHIBIT T
2/14/85
HB 17

TESTIMONY OF NANCY MCILHATTAN representing Park County Legislative Association.

DATE: February 14, 1985

TO: House of Representatives, Judiciary Committee
Montana 1985 Legislature
Written testimony in favor of House Bill 17

FROM: Nancy McIlhattan
Secretary, PCLA
Route 38 - Box 2240
Livingston, Montana 59047
Occupation: Dairy and Child Development Teacher

House Bill 17 was drafted by the Interim Subcommittee on Stream Access. It is a legitimate attempt to rectify a situation that has been plaguing landowners for a long time. This is the inability of landowners to evict people who are on private property. The existing trespass laws are such that they can't be enforced very effectively. "A person who enters or remains upon land does so with privilege unless notice is personally communicated to him by an authorized person or unless such notice is given by posting in a conspicuous manner." This means that people are allowed to be on land unless they are told otherwise. This is a seemingly nebulous statement because the "conspicuous posting" becomes a matter of interpretation by the trespasser. Landowners need more than this to protect their private property.

PCLA likes the stringent enforcement of a stiff fine outlined in this bill.

We also like the idea of not having to post signs in a conspicuous manner. People will be trespassing unless they have

permission on private property.

There is one aspect of this bill which does concern us. The idea of how someone distinguishes private property from federal or state lands when it comes to the forest ground's checkerboard ownership does present a problem. If people will make the effort to become informed about their choice of where they are going, there shouldn't be a problem. The problem lies with people taking the responsibility to know where they are at all times.

Respectfully submitted,

Nancy McIlhattan

Nancy McIlhattan
Secretary, PCLA

HB 17

Testimony presented by Jim Flynn, Department of Fish, Wildlife & Parks

February 14, 1985

This legislation contains a number of revisions in current law, one of which we can and do support; others which we cannot support.

The revision we can support is on page 3, section (4), subsection (2) which expands the authority for state game wardens to clearly enforce all recreational trespass. Under present law such clarity only exists for big game hunting.

The revisions we cannot support are embodied in sections 2 and 3 on pages 2 and 3. These revisions would basically provide that any individual who knowingly or unknowingly trespasses is automatically subject to a fine of up to $500.

These two sections would alter the present situation in such a manner that the result could have some unwarranted effects.

There is no question that an individual who is recreating should have permission from the landowner if private land is to be used for recreation. However, HB 17 allows no difference in treatment between the recreationist who knowingly trespasses and the one who unknowingly trespasses. This shortcoming is of concern to those who must enforce the law.

The concern exists because Montana is a large and diversified state with many different types of intermingled landownership. Some of this land is clearly fenced and some is not - some is publicly owned and some is not. As a result, there are many circumstances afield which can and do lead to unknowing trespass.

Of additional concern is the question of proper notice by posting. It is not realistic to require an undue amount of posting to notify the public of the boundaries of private land. And yet, it is not realistic to allow no posting and establish a certain penalty if trespass occurs.

The contents of HB 17 would appear to address these two matters in too drastic a manner, and thus we would urge its defeat.

EXHIBIT V
2/14/85 HB 17
EDUCATION - CONSERVATION

montana wildlife federation

Montana Wildlife Federation

AFFILIATE OF NATIONAL WILDLIFE FEDERATION

P.O. Box 3526
Bozeman, MT 59715
(406) 587-1713

MONTANA WILDLIFE FEDERATION

Testimony on HB17

February 14, 1985

Mr. Chairman, Members of the Judiciary Committee:

My name is Dan Heinz, and I'm here today representing the Montana Wildlife Federation. The Federation is a long-time supporter of the "Ask Before You Enter" ethic.

Landowners now have good protection from big game hunting trespass. They also have good protection against trespass for any reason if they choose to post their boundaries.

We are concerned about the fairness of assigning criminal penalties for unknowing trespass during fishing or shotgun hunting recreation activities which have less potential for damage than big game hunting.

Land patterns of intermingled public and private ownership are often complex. Fencing often holds no relationship to land boundaries.

The BLM and Forest Service status are the only readily available reference of ownership for the recreationist. The latest revision

EDUCATION - CONSERVATION

Montana Wildlife Federation

AFFILIATE OF NATIONAL WILDLIFE FEDERATION

P.O. Box 3526
Bozeman, MT 59715
(406) 587-1713

of these maps was about four years ago. Many have not been revised for ten years. Approximately 500 tracts totaling 100,000 acres have changed hands in the last five years. These changes do not yet show on any map currently available.

We have heard landowner complaints of sign removal by recreationists and agree that this can be a real problem. We suggest line 18 on page 2 be changed to read "posting at all gates and normal points of access."

Such a change would reduce posting requirements to an absolute minimum thereby greatly reducing maintenance of signs. For instance, a landowner desiring to restrict use above the ordinary high-water mark on streams would only have to place a sign on the stream at the entrance to his property stating "No trespassing for the next two miles" or something to that effect.

We must oppose all other changes to sections 2 and 3 outlined in this bill that pertain to recreationists.

We do not object to expanding warden duties to include all recreation activities.

EXHIBIT W
2/14/85
HB 276

SRS-EA-4(a)
(new 9/79)

STATE OF MONTANA
DEPARTMENT OF SOCIAL & REHABILITATION SERVICES
Economic Assistance Division

RELEASE OF CONFIDENTIAL INFORMATION

AUTHORIZATION TO MONTANA SOCIAL & REHABILITATION SERVICES TO OBTAIN PERSONAL INFORMATION

Client's Name: _____ SSN: _____

Address: _____
(STREET) (CITY) (STATE) (ZIP CODE)

I authorize the individual, company or agency shown below to disclose to the _____ County Department of Welfare of the Montana Social and Rehabilitation Services, the information specified below, which relates to my eligibility to receive Public Assistance benefits. I understand any information obtained will be kept confidential and will be used only for purposes directly connected with the administration of benefits or services. I further understand that any information obtained may be released to a proper governmental agency or court of law enforcement agency for purposes of legal and investigative actions concerning fraud, collection of support or establishment of third party liability.

INFORMATION SOURCE: Landlords, Neighbors, Employers, Social Security Administration, Doctors, Hospitals, Veterans Administration, Bureau of Indian Affairs, Department of Labor and Industry, Assessors, Treasurers, County Clerks of Court, Banks, Credit Unions, Savings and Loans, etc.

INFORMATION TO BE REQUESTED: Earned Wages, Unearned Wages, Checking Accounts, Savings Accounts, Stocks, Bonds, Time Certificates, BIA-IIM Funds, Veterans Benefits, Unemployment Compensation, Workmens Compensation, Loans, Family Composition, Personal Property, Mortgages, Real Estate, etc. Also, Medical Reports or conditions to exempt participation in employment or County Work Program.

Signature of applicant or person signing in his/her behalf:

X _____ Date: _____

I strongly support the "Non-Gendered Insurance" law, which was passed during the 1983 legislative session. My reasons for supporting this law are because:

1. the Equal Rights Clause of the Montana Constitution prohibits discrimination by government and private corporations. If this law is repealed or eliminated, it will undoubtedly prompt litigation as it did in Pennsylvania in 1984.

2. Montana requires all drivers to be insured, therefore the state of Montana has a responsibility to see that drivers have the opportunity to buy insurance which is affordable and non-discriminatory. Drivers should be able to obtain insurance at rates based on the logical risk factors under their control, that is, good driving records excess drinking habits and miles driven. If the rates were based on these factors, young men with good driving records would pay less.

3. Health and disability insurance rates will be decreased for women with unisex rates. Life insurance rates will remain approximately the same if women are non-smokers. Again, life insurance rates should be based on the risk factors under the insured's control, that is, smoking and drinking habits, obesity, fitness and health factors.

I urge each of you to carefully consider these facts and support the unisex insurance law of 1983.

Norma Boetel
Insurance Agent, Bozeman

(This sheet to be used by those testifying on a bill.)

NAME: MARK J MURPHY DATE: 2/14/85

ADDRESS: 3846 - KIKI DR
HELENA MONTANA

PHONE: 444 - 3816

REPRESENTING WHOM? MONTANA COUNTY ATTORNEY ASSOCIATION

APPEARING ON WHICH PROPOSAL: HB 17

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

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

(This sheet to be used by those testifying on a bill.)

NAME: Lenora Houldson DATE: 2-14-85

ADDRESS: 2301 S. 3rd W Missoula MT 59801

PHONE: 406-549-3678

REPRESENTING WHOM? Myself

APPEARING ON WHICH PROPOSAL: HB 643

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

COMMENTS: I am concerned about legislation being enacted on local level that would make criminals out of law abiding citizens

International & National competition can be curtailed by local laws that infringe our right

Need to assure Constitutional rights as guaranteed by U.S. Constitution

Need to guarantee our rights as stated in our MONTANA State Constitution to protect our right to protect our home, property, & person

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

(This sheet to be used by those testifying on a bill.)

NAME: Lavina Lubinus DATE: Feb 14

ADDRESS: 1501 Chestnut Helena

PHONE: 442-8729

REPRESENTING WHOM? Women Involved in Farm Economics

APPEARING ON WHICH PROPOSAL: HB 17

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

COMMENTS: Because of more and more impact on private lands a stronger trespass law is needed to protect the property and private rights of a land owner.

Thankyou

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

DATE 2/14/85

COMMITTEE ON JUDICIARY

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppos
Judy K Mintel	STATE FARM	HB366 507	✓	
Barbara J Lautzenheiser	Am. Council of Life Ins	366 507	✓	
Donald GARRITY	— " —	366 507	✓	
Bonnie Tippy	Alliance of Am. Insurers	366 507	✓	
Randall Gray	STATE FARM	366 507	✓	
Sherry DANIELS	Transamerica	366 507	✓	
Marie Deonier	- self -	366 507	✓	
Jim Higgins	Farmers Ins Group	366 507	✓	
Chuck Mitchemann	ST. Farm	366 507	✓	
Lori Hamm	- self -	366 507	✓	
DON HEULRICH	ST Farm	366 507	✓	
Jim Brown	Aetna	366 507	✓	
Ed Zimmerman	Am Council of Life Ins	366 507	✓	
Kristin Hartley	Deer Lodge	366 507		✓
Laura Nicholson	Helena	366 507	✓	✓
Elaine Shaw	Deer Lodge	366 507		✓
Ray A. Hoffman	Clancy	643	✓	
James L. McConnell	Mt. Dental Assoc	643	✓	
Lorna Frank	Mt. Farm Bureau	594	✓	
John Burnside	Prudential	594		
Joan Crum	self	366 507		✓
Katherine Orr	self	366 507		✓
Anne Brodsky	Women's Lobbyist Fund	366 507		✓
Diane Sands	Mt Women's Resource Center	366 507		✓
Martha Fabricius	self	366 507		✓
Leanne Gulbrandson	MEA	366 507		✓

(Please leave prepared statement with Secretary.)

DATE February 14, 1985

COMMITTEE ON HOUSE JUDICIARY

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
Lynn Gibson	Montana Professional Business and Women	507		✓
Laura Stafford	Women's Lobbyist Fund	507/366		✓
Kelly Chandler	Women's Lobbyist Fund	507/366		✓
Linda McCusker	Self	366	✓	
Mark J. Murphy	Montana County Atty Assn	17		✓
Esther Kund	Montana Cattlemens Assn	17	✓	
Jay McCallister	Park County Legislative Assn	17	✓	
Jane MacIntyre	Human Rights Commission	366 & 507		✓
James Lehberg	Self	507 + 366	✓	
Richard Meckler	self	507/366		✓
Riley Johnson	Professional Insurance Agents	507-366	✓	
Eileen Robbins	Montana Indian Assoc	507-366		✓
Shirley Harrison	Self	507 366	✓	
Lavina Labinus	WIFE	17	✓	
Joanne Sullivan	WLF			✓
Mike Dahlem	Mont. Fed. of Teachers	507 366		✓
Margaret Bones Miller	self	507 366		✓
Melinda MacArthur Artz	self	507/366		✓
Laura Clifford Samson	Women's Lobbyist Fund	507/366		✓
Jim Jensen	self	507/366		X
Sharon Eisenberg	MT NOW	507/366		X
Jim Gamble	Self	507/366	X	
B. PEARSON	MONTPIRG	507/366		*
Gail Kline	WLF	507/366	*	X
Ann Campbell	self	507/366		✓
Patricia Butler	Montana National Organization for Women	507/360		X

(Please leave prepared statement with Secretary)

DATE February 14, 1985

COMMITTEE ON HOUSE JUDICIARY

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One Support	Check One Oppose
Elaine Donnelly	Montana Eagle Forum	507	✓	
Betty M. Jansen	" "	507	✓	
Dorothy Traxler	" " "	507	✓	
Betty L. Babcock	Mont Eagle Forum	507	✓	
Pat Spurlin	" "	507	✓	
Connie Waclin	" " "	507	✓	
Helen Losek	" " "	507	✓	
Lois Halsey	Mt. State Eagle Forum	507	✓	
Karen Larson	Helena Eagle Forum	507	✓	
Marge Nebb	Great Falls Mt	507	✓	
Dorothy Christiansen	Gt Falls Mt	507	✓	
Beverly Glueckert	Helena, myself	507	✓	
Mary Ann Jrca	Helena	507	✓	
Mary Doubek	Helena Pioneer Chp E. Forum	507	✓	
Elmer Hausken	Mt Assn for Ins	366 507	✓	
Lester H. Loble II	Am. Council of Life Ins	HB 366 507	✓	
Burton L. Amsterry	Mt Eagle Forum, Helena	366 507	✓	
Kathy Karp	Mont. League of Women Voters	366 507		✓
Twiss Butler	National Organization for Women	Support the law		✓
Constance J. Waterman	myself, NOW	507	~~✓~~	✓
Linda Brock	Bozeman, myself BPW	507, 366		✓
Melinda L. Dyke	Bozeman Myself, ~~BPW~~	507, 366		✓
Pat Simmons	Bozeman myself	507, 366		✓
Tori Scharff	" NOW BPW, WLF	"		✓
Sally Chelini	Butte Mont Myself		✓	
Dayna Mitchell	Helena Mt Myself	507, 366		✓

(Please leave prepared statement with S...

DATE 2/14/85

COMMITTEE ON HOUSE JUDICIARY

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One Support	Oppose
Joan Tonkel	Women's Law Caucus, Bx 1868 Missoula	HB366 HB507		X
Martha Newell	MSLA WRC	HB 366 HB507		X
Betsey Hurd	MSLA [illegible]	HB366 HB507		X
John Vandeven	Helena	507	✓	
Karen L. Zollman	NOW	507, 366		✓
Harriett Meloy	AAUW	507 366		✓
[illegible]	VIPP	507 366	✓	
James S. Connole	Farmers Agent	507 366	✓	
Mike Keesler	Self	507 ~~366~~	✓	
Calvin L. Burr	Self	643	✓	
Lorraine Gillies	Mont. Farm Bureau	17 636	✓	
Russell H. Waterman	MSGA	17 with amend	✓	
Don Heinz	M. Wildlife Fed	17		X
Lorna Frank	Mont. Farm Bureau	HB 17	✓	
Hal Price	Mont Wildlife Fed	HB643	✓	
Jo Brunner	M. Grange, MT Cattlefeeders	HB17	✓	
Mike Micone	Helena - WETA	HB17	✓	
Norman Starr	Melville, Mt.	HB17	✓	
Nancy J. Harte	Helena - Mt. Demo. Party	507 366		✓

(Please leave prepared statement with Secretary)