

MINUTES

MONTANA SENATE  
51st LEGISLATURE - REGULAR SESSION  
COMMITTEE ON BUSINESS AND INDUSTRY

Call to Order: By Chairman Gene Thayer, on February 6, 1989, at 11:00 a.m. in Room 410, State Capitol

ROLL CALL

Members Present: Chairman Thayer, Vice Chairman Meyer, Senator Boylan, Senator Noble, Senator Williams, Senator Hager, Senator McLane, Senator Weeding, Senator Lynch

Members Excused: None

Members Absent: None

Staff Present: Mary McCue, Legislative Council;

Announcements/Discussion: Committee Members were informed of new written testimony on SB 205, which had arrived after the hearing.

Ron Kunik Agency - Kalispell, Montana (See Exhibits #2, #3, and #7)

Joe J. Shoemaker - CLU CHFC, Butte, Montana (See Exhibit #6)

Jim L. Brown - Whitehall, Montana (See Exhibit #4)

Patrick M. Driscoll - Attorney, Helena, Montana (See Exhibit #5)

Ann MacIntyre - Letter to Human Rights Commission (See Exhibit #8)

EXECUTIVE ACTION ON SENATE BILL 205

Discussion: Chairman Thayer explained there would be discussion and an opportunity for people wishing to testify to speak before the vote would be taken.

Amendments & Votes: None

Recommendation & Votes: Senator Williams Made a motion SB 205 DO PASS. Senator McLane seconded the motion.

Senator McLane expressed concern that passage of SB 205 would exclude prenatal care, and requested Mr. Tom Hopgood to respond to the concern. Mr. Hopgood said there were no provisions prohibiting the exclusion of

coverage for pregnancy except for complications of pregnancy. He said there were other provisions that mandate coverage for pregnancy related situations. There was a federal mandate requiring coverage for pregnancy if the group contains 15 or more members.

Ann McIntyre said it was true that federal law required the employers to provide maternity coverage, but only if there were 15 or more employees. The Montana law did not have explicit language concerning pregnancies, as

did the federal law. However, the Commission on Human Rights had interpreted Montana law, which said they could not discriminate on the basis of sex, to mean pregnancies would have to be covered by the employer's insurance program irregardless of the number of employees. Passage of SB 205 would free the insurer to exclude coverage for pregnancy, and could also require that all maternity benefits be provided as a rider at an extra cost.

Chairman Thayer asked if there were insurance companies receiving approved plans without providing maternity benefits.

Tanya Ask stated, plans were approved prior to the election of the law, and even within the last couple of years small group plans or group disability plans were not automatically included, but were included with awareness of the Human Rights interpretation of Montana law in 1987. From that point forward all agents within the state, and all companies were made aware of the law. When a plan was formed outside the state, they do not always contain pregnancy allowances.

Senator Noble stated the employer and the employees of the group to be insured had always had the option of discussing the terms and conditions of their insurance plan. Some groups really had no need for pregnancy coverage, and by making it mandatory to all groups, the cost would be driven up whether the group needed it or not.

Chairman Thayer said he thought the written testimony of Marcia Youngman, presented by Brenda Nordlund, contained some contradictory statements compared to the testimony of the insurance industry and asked both sides to defend their position.

Marcia Youngman said although few Montanans were purchasing individual health coverage, the coverage for a mother

with two children had become more affordable since the unisex law had been enacted. She also said that purchasing maternity coverage as a rider would cost the family as much as the normal delivery, so she thought it should be offered as part of group plans at a greatly reduced cost.

Chairman Thayer questioned the testimony, stating he felt there had been testimony disputing her facts. She responded that it wasn't necessarily disagreement, but was a difference in interpretation of available data.

She felt although the costs may have risen the benefits outweighed the costs, and she was opposed to the repeal of the unisex laws.

Chairman Thayer asked her if they were going to have a situation where all gender situations would become unlawful so sports, and other functions normally segmenting gender, would be unlawful because of her interpretation of the Montana Constitution? Where does the gender based equality end?

Brenda Nordlund said they were all aware of Title 9, and exceptions would always be recognized. She said the rationale used for insurance would not fit every situation. Title 7, and Title 9 were very different.

Senator Williams commented on the facts and figures of Ms. Youngman's testimony. He said some were not true. He said she had testified that unisex bills were introduced 41 times in 20 states in the last three years, and would have them believe there was great support, but they were all defeated. The rulings stated sex discrimination of insurance does not violate human rights. He spoke of cases in California where the industry had challenged unisex laws, and in every case the industry won. He stated the comment had been made, in opposition to SB 205, that Montana was leading the way with unisex laws, but the reason was because no one else was following.

Senator Weeding said the committee was led to believe there were other states following Montana in passage of unisex laws.

Marsha Youngman said unisex laws were like other women's rights, and took years of work before being accepted and passed into law. She felt they were being supported in other states and would make progress in years to come.

Chairman Thayer commented, it was stated that people of Montana wanted the unisex laws, but the people from his district don't want them. He said he had surveyed his constituents twice and they overwhelmingly were opposed.

The Question was called for on the motion to DO PASS SB 205. Seven senators voted in favor of passage, with Senator Boylan and Senator Weeding voting no. The Motion Carried.

#### EXECUTIVE ACTION ON SENATE BILL 191

Discussion: Chairman Thayer said people from the Secretary of State's Office were present for questioning if the committee so desired. He asked what the cost of administering the bill would be?

Garth Jacobson stated he would identify with the proposed amendments, and then address the cost of implementation of the bill. He said, in essence, what they were doing was delegating the enforcement duties to various entities, spreading the costs over a wide group of people, therefore, the fiscal impact would be minimal. The income to the state would be around \$30,000. The way it would work, no one could operate their business without obtaining the registration of their assumed business name.

Senator Meyer asked if the delegation of duties was such that if a problem was in Cascade County, would they delegate someone from Great Falls to carry out the cease and desist order so the county and the state would share the expense? Mr. Jacobson agreed that was correct, but before the item was delegated out, they would notify the people in violation of registering and inform them to come in and register their business name. Most of the cases would be resolved before further action would be necessary.

Senator Meyer asked if the Secretary of State's Office couldn't notify the people in violation at the present time? Mr. Jacobson said generally not. They could write a letter, but there were no laws to enforce so the letter would be useless. The situation was, people can ignore the registration of their business name until they want to go into court. At present, an unregistered business could not go to court to recover debts or other claims they may have. This was an attempt to iron things out before the problems arose.

Chairman Thayer asked Florence Armagost if it was correct that there were only ten to twelve claims of misused business names, but SB 191 would affect maybe 3000 small businesses in Montana, who had never registered their business name. She said that was the case. They would be happy to send the letter but they could only suggest. They had no authorization to enforce the suggestion.

Senator Lynch asked if every Mint Bar in Montana, except the original, would have to change their name? Mrs.

Armagost said they simply would have to add the city, in which they were located, to their name.

Amendments & Votes: Senator Boylan made as motion SB 191 DO NOT PASS. The motion was seconded by Senator Weeding.

Senator Lynch made a Substitute Motion to AMEND SB 191. Senator Meyer seconded the substitute motion. Mary McCue gave a copy of the prepared amendment to the committee members. (See Exhibit #1) Eight Senators voted in favor of Amending SB 191, with Senator Hager voting against the amendments. The Motion Carried.

Recommendation & Vote: Senator Boylan amended his motion to read SB 191 DO NOT PASS AS AMENDED. Senator Meyer seconded the motion. The Motion Carried, with eight Senators voting in favor of the motion, and Senator Lynch voting "NO". Senator Thayer agreed to carry the adverse committee report to the Senate floor.

ADJOURNMENT

Adjournment At: 12:02 p.m.

  
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SENATOR GENE THAYER, Chairman

GT/ct

B&IMINE.206

ROLL CALL

BUSINESS & INDUSTRY COMMITTEE

DATE 2/6/89

51st LEGISLATIVE SESSION 1989

NAME	PRESENT	ABSENT	EXCUSED
SENATOR DARRYL MEYER	✓		
SENATOR PAUL BOYLAN	✓		
SENATOR JERRY NOBLE	✓		
SENATOR BOB WILLIAMS	✓		
SENATOR TOM HAGER	✓		
SENATOR HARRY MC LANE	✓		
SENATOR CECIL WEEDING	✓		
SENATOR JOHN "J.D." LYNCH	✓		
SENATOR GENE THAYER	✓		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

February 6, 1989

MR. PRESIDENT:

We, your committee on Business and Industry, having had under consideration SB 205 (first reading copy -- white), respectfully report that SB 205 do pass.

DO PASS

Signed: 

Gene T. Bayer, Chairman

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scrsb205.206

SENATE STANDING COMMITTEE REPORT

February 7, 1989

MR. PRESIDENT:

We, your committee on Business and Industry, having had under consideration SB 191 (first reading copy -- white), respectfully report that SB 191 be amended and as so amended do not pass:

1. Title, following line 6.

Insert: "REQUIRING THE LICENSING ENTITY OR SECRETARY OF STATE TO ISSUE A CEASE AND DESIST ORDER TO A PERSON CONDUCTING BUSINESS UNDER AN ASSUHED BUSINESS NAME WITHOUT A CERTIFICATE;"

2. Title, line 7.

Strike: "AND"

Following: "MCA"

Insert: "; AND PROVIDING A DELAYED EFFECTIVE DATE"

3. Page 1, following line 15.

Insert: "(1) conduct or transact business;"

Renumber: subsequent subsections

4. Page 1, following line 20.

Insert: "NEW SECTION. Section 2. Cease and desist order. (1) A license, permit, or other authority from the state or a local government issued to a person conducting or transacting business under an assumed business name is not valid unless the person has registered its assumed business name as required by this part.

(2)(a) If a person who is required to register its assumed business name under this part fails to do so, the secretary of state shall notify the licensing authority of the person's failure to comply with this part.

(b) The licensing entity shall take action to issue and enforce a cease and desist order upon the person requiring him to cease and desist from further engaging in that business until the requirements of this part are met. If the person is not subject to any licensing requirement, the secretary of state shall issue and enforce a cease and desist order to the same effect.



NEW SECTION. Section 3. Extension of authority. Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

NEW SECTION. Section 4. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 30, chapter 13, part 2, and the provisions of Title 30, chapter 13, part 2, apply to [section 2].

NEW SECTION. Section 5. Effective date. [This act] is effective January 1, 1991."

AND AS AMENDED DO NOT PASS

Signed: 

Gene Thayer, Chairman

Amendments to Senate Bill No. 191  
First Reading Copy

For the Committee on Business and Industry

Prepared by Mary McCue  
February 6, 1989

1. Title, following line 6.

Insert: "REQUIRING THE LICENSING ENTITY OR SECRETARY OF STATE TO ISSUE A CEASE AND DESIST ORDER TO A PERSON CONDUCTING BUSINESS UNDER AN ASSUMED BUSINESS NAME WITHOUT A CERTIFICATE;"

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Strike: "AND"

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Insert: "; AND PROVIDING A DELAYED EFFECTIVE DATE"

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(b) The licensing entity shall take action to issue and enforce a cease and desist order upon the person requiring him to cease and desist from further engaging in that business until the requirements of this part are met. If the person is not subject to any licensing requirement, the secretary of state shall issue and enforce a cease and desist order to the same effect.

NEW SECTION. Section 3. Extension of authority. Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

NEW SECTION. Section 4. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 30, chapter 13, part 2, and the provisions of Title 30, chapter 13, part 2, apply to [section 2]."

Ex. #1  
2/6/89

NEW SECTION. Section 5. Effective date. [This act] is  
effective January 1, 1991."

Ex. # 1  
2/6/89

Amend SB 191 as follows

Amend Page 1 section 1 line 21 as follows:

Insert (3) operate or conduct business trasactions.

Insert new section Operating a business without a registered assumed business name. 1. No license, permit, or other authority issued by the state or a local government to a business using an assumed business name shall be valid if business which is required to registered its assumed business name has failed properly register its name.

2. If a business is operating without an assumed business name the secretary of states office shall notify a business that its is operating improperly and must comply with

3. If the business refuses to register its assumed business name then the Secretary of States office shall notify the appropriate licensing authority of the noncompliance. The licensing entity shall take an action to issue and enforce cease and desist order. If the entity is not subject to licensing requirements then the Secretary of State's office shall issue and enforce a cease and desist order.

New Section. Delayed applicability date. This act shall go into effect January 1, 1991.

Amend title to reflect these amendments.

## Ron Kunik Agency

Life - Health - Disability - Pension

February 2, 1989

Business & Industry Commission  
Office #442  
Capitol Station  
Helena, MT. 59620  
Attention: Gene Thayer, Chairman

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 2

DATE 2/6/89

BILL NO. SB205

Dear Chairman Thayer:

In reference to our recent telephone conversation pertaining to Senate bill #205, I am writing to further address the considerations I feel must be given to any new insurance laws in the state of Montana.

First, I feel UNISEX must be removed as it now stands. In its' present context, it has an adverse effect on the insureds of Montana, due to the fact that it causes rates to be higher where they should be lower.

Secondly, I feel we should keep maternity covered, as any other illness, with the following two considerations given great attention:

- A.) Maternity as any other illness, as an option, with an additional premium for this coverage. The problems with this are that the insurance company could make the option so high as to not be affordable; and, the potential for client misuse is possible in that the client may elect to take the option when they plan to have a child, and may drop the option when they do not plan to have a child. This could be very costly to the insurance company.
- B.) Maternity as any other illness, not optional, but included in every policy. This would spread the cost and make it more affordable for females, and would assure the insurance company would receive adequate premiums to cover the claims.

Third, I believe the Insurance Commission should be made to adhere to, and to enforce, any Human Rights law that pertains to insurance and to health coverage.

Fourth, it appears there is an immediate need to redefine "pre-existing" laws, and in my opinion, there should be a two year maximum on "pre-existing" conditions. After the two year period is met, "pre-existing" conditions then must be covered. Currently, individual health policies have that provision covered under Montana law. Group policies have a different law that seems to be unenforceable. I have a client that falls in this category, and it has cost that client over \$50,000.00.

Last, but not least, the Insurance Commission states that if a Trust is domiciled in another state they do not have to adhere to Montana law. I strongly believe that we should mandate compliance by every Trust, or deny the Trust the privilege of doing business in the state of Montana.

## Ron Kunik Agency


Life - Health - Disability - Pension

Page 2

In order that you may see some examples of the current confusions and problems that prevail, I am enclosing copies of some of the correspondence I have had with the Montana Insurance Commission and the Human Rights Commission.

I plan to be at the meeting on Monday, the 6th of February, and I will be glad to answer any questions you may have concerning my views, and my experiences in attempting to alleviate some of the problems.

Respectfully,



Ronald P. Kunik

RPK/hc

enc:

November 5, 1987

Mr. James W. Zion, Attorney at Law  
Montana Human Rights commission  
P O Box 1728  
Helena, MT. 59624

Dear Counsellor Zion:

I am in receipt of your letter of October 28, 1987, which replies to my questions concerning statutes S49-2-310(3) and S49-2-309 of Montana Law, and I fully appreciate the time and attention you are giving to this matter and to your efforts to assist me in resolving the dilemmas inherent in these laws.

My first concern is how the Human Rights Commission and/or the Montana Insurance commission can expect or demand Insurance company agents to conform to laws that we are not informed of. It seems reasonable to me to expect that all Insurance companies and agents would be provided with printed matter citing all Montana Law that pertains to the insurance business, and it follows that one should also be able to expect those laws to be consistent and compatible.

However, in the case of the aforementioned laws, incompatibility and confusion are inherent, and it seems no one involved in either Commission is willing to take a definite stand to clarify or resolve the conflicting rules.

I was made aware of S49-2-310(3) by an annual "Newsletter", which contained an article by a guest writer. This article and law deal with employer responsibility to treat pregnancy as any other illness. I have polled a goodly number of employers in the last few days, and not one was aware of this law. In conjunction with this poll I contacted several insurance agents and insurance companies, and NOT ONE of them knew of this law. If it weren't for guest editorial writer Ann McAntyre in the State auditor News bulletin, we would still be uninformed of it.

In addressing S49-2-310(3), which deals with employer responsibility to treat pregnancy as any other illness, let me draw your attention to the fact that in small groups of 1 to 3 employees, it is almost impossible to find a group health company that will cover maternity as any other illness. In groups of less than 15 employees, we insurance agents, in discussing group health coverages, have always given the employer the option to buy group health with or without maternity benefits. Since no one knew the employer was responsible for maternity whether it was included in the group health coverage or not, where will the responsibility lie if a pregnancy claim occurs in that group? According to your opinion, Mr. Zion, the employee can make the employer pay the claim. So now where does the employer turn?

I spoke with an attorney in Kalispell this morning, and he fully believes the employer could and would seek recourse of financial liability from me, and that in a court of law the employer would win the case.

Conversely, according to the Montana Insurance Commission and the Human Rights Commission, Group health companies are NOT required to conform to Montana Unisex laws, as the trusts are domiciled outside the state of Montana. They can contain male-female rates, etc., as long as they conform to the laws of the state in which lies the trust.

It is obvious then, that unisex law is unenforceable. Otherwise we would have two sets of rules on unisex. The State is in error in allowing legislation that cancels itself out, which of course creates confusion, not to mention the fact that such inconsistency passes on the liability to the insurance agent, who has no control over the situation to begin with, and cannot possibly meet both laws; yet is held responsible in the final analysis.

In choosing one law over the other, the agent is totally at risk in either situation, and financially vulnerable. The State, having created the conflict, should be solely responsible for any financial repercussions that arise, and should show acceptance of that responsibility by written notification to all Montana agents, followed by legislation enacted as soon as possible to amend/correct the conflicting statutes.

If, as according to S49-2-309, there shall be no discrimination on the basis of sex in any insurance policy, why are insurance companies allowed to sell health insurance policies without maternity benefits????????? And, why are they allowed to sell policies with limited coverage for maternity??? As far as Group health goes, I have already addressed that issue, but what about Individual health policies????

Mr. Zion, your opinion is that the Insurance companies themselves are at risk here, and not the individual agents; the Insurance Commission says "not necessarily so". In the meantime, what are we agents to do?

If, indeed, if S49-2-309 is the law, when why do we allow and approve individual health policies to be sold in Montana without maternity benefits, or with limited maternity benefits?

I do not believe any insurance agent should be placed at such risk because of the inconsistency of State law. The error is not the agents'. Neither should the liability be. Actually, even the employer should not be held financially accountable, if, as it appears, the State has done nothing to inform them of the



Ex. #3  
2/6/89

existence of the law....let alone to inform him of the conflict and confusion.

Please advise me as soon as possible as to what approach is best for us agents to use to conduct our daily business. I would also appreciate advice as to what course to take for those businesses already contracted under insurance plans that do not include maternity benefits.

Sincerely,

Ronald P. Kunik

RPK/hc

cc: Montana Insurance Commission  
Andrea Bennett  
Helena, MT. 59604  
(reply requested)

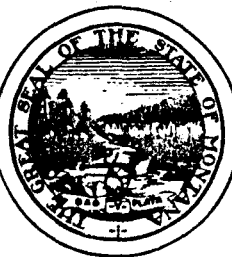
cc: Montana Insurance Commission  
Tanya Ask

cc: Montana Human Rights Commission  
Ann McAntyre

cc: Governor Ted Schwinden

Ex. #3  
2/6/87

# HUMAN RIGHTS COMMISSION



TED SCHWINDEN, GOVERNOR

1236 SIXTH AVENUE

## STATE OF MONTANA

(406) 444-2884

October 28, 1987

P.O. BOX 1728  
HELENA, MONTANA 59624

Ron Kunik  
Kunik Insurance Agency  
No. 1 5th. Street East  
Kalispell, MT 59901

Re: The Montana Maternity Leave Act

Dear Mr. Kunik:

To follow up on our telephone conversation this morning I am enclosing photocopies of our maternity leave statute from the 1987 edition of the Montana Code Annotated as well as our 1984 maternity leave rules.

As you can see from the statute and the rules the primary thrust of the maternity leave statute is to require employers to treat pregnancy, whether with or without complications, as other disability or health conditions. Please note from §49-2-310(3), MCA that the legal obligation imposed is primarily upon the employer. I do not read the term "agent" in the statute to include an insurance agent because the context of the statute is such as to include only direct agents of the employer, under its control.

There is the additional problem, however, that §49-2-309, MCA prohibits discrimination on the basis of sex in insurance policies. There is case precedent to the effect that pregnancy or the status of maternity is related to one's sex, so there is potential liability on the part of insurance companies which do not provide equal coverage.

I hope this information is of use to you and I thank you for your concern in asking us for it. If I may be of any other assistance, please let me know.

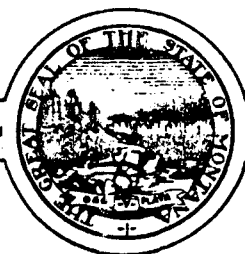
Sincerely,

A handwritten signature in cursive script that reads "James W. Zion".

James W. Zion  
Attorney

Ex. #3  
2/6/87

# HUMAN RIGHTS COMMISSION



TED SCHWINDEN, GOVERNOR

1236 SIXTH AVENUE

## STATE OF MONTANA

(406) 444-2884

November 6, 1987

P.O. BOX 1728  
HELENA, MONTANA 59624

Ronald P. Kunik  
John Alden Life Insurance Co.  
2505 MT. 35  
Kalispell, MT 59901

Re: The Maternity Leave Act and employer-insurer obligations

Dear Mr. Kunik:

I'm writing to give you an immediate reply to your letter, which I received this morning.

I have been receiving many requests for answers to questions such as yours over the past couple of weeks, and as a result I am working up some more precise answers for you and the others who have been calling. This is an area of concern to many employers and insurers, and as soon as I have prepared a position from my research I will send you a copy.

Thank you for your interest in this issue.

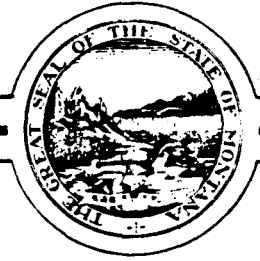
Sincerely,

A handwritten signature in cursive script that reads "James W. Zich".

James W. Zich  
Attorney

# HUMAN RIGHTS COMMISSION

EX. #3  
2/6/89



TED SCHWINDEN, GOVERNOR

1236 SIXTH AVE.

STATE OF MONTANA

(406) 444-2884

P.O. BOX 1728  
HELENA, MONTANA 59624

November 13, 1987

Ronald P. Kunik  
John Alden Life Insurance Company  
2505 Montana 35  
Kalispell, Montana 59901

Dear Mr. Kunik:

Thank you for your courtesy in providing me with a copy of your letter to Mr. Zion.

One of the main concerns of the Montana Human Rights Commission is to work with industry representatives, not only to inform them of the standards of the law we administer, but to receive information for the formulation of our enforcement policies. I have spoken with Mr. Zion regarding your letter and I understand he is doing research in order to reach some more precise answers to your questions. I am working closely with him, sharing your hope for solutions to the problems you posed.

Again, your interest is appreciated.

Sincerely,

A handwritten signature in cursive script that reads "Anne L. MacIntyre".

Anne L. MacIntyre  
Administrator  
Human Rights Division

ALM:llw

JIM L BROWN  
PO BOX 215  
WHITEHALL MT 59759 30AM

Western  
Union Mailgram



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SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 4

DATE 2/6/89

BILL NO. SB 202

SEN GENE THAYER  
HELENA MT 59601

CONCERNING SENATE BILL 205 ON THE UNISEX INSURANCE RATINGS, I AM ASKING THAT YOU WOULD CONSIDER REVOKING THE UNISEX LAW IN THE STATE OF MONTANA. THE LAW HAS COST WOMEN HIGHER LIFE INSURANCE AND, IN PARTICULAR, YOUNG WOMEN HIGHER CAR INSURANCE RATES AND HAS LIMITED AVAILABILITY OF CERTAIN INSURANCE LINES DUE TO MONTANA'S SMALL SIZE, AND THE FACT THAT MONTANA IS CURRENTLY THE ONLY STATE, TO MY KNOWLEDGE, WITH THIS LAW IN EFFECT. THANK YOU.

JIM L BROWN  
PO BOX 215  
WHITEHALL MT 59759

17:39 EST

MGMCOMP

# CHRONISTER, DRISCOLL & MOREEN

ALLEN B. CHRONISTER  
PATRICK M. DRISCOLL  
J. DENNIS MOREEN

ATTORNEYS AT LAW  
CAPITOL ONE CENTER  
208 NORTH MONTANA AVENUE  
HELENA, MONTANA 59601

TELEPHONE:  
(406) 449-3691

February 3, 1989

Hon. Gene Thayer, Chairman  
Senate Committee on Business & Industry  
State Capitol Building  
Helena, MT 59620

Re: S.B. 205 - To Revise Laws Relating to Discrimination in  
Insurance and Retirement Plans

Dear Mr. Chairman;

Our firm represents the American Council of Life Insurance which is an organization made up of life insurance companies which do business all over the United States. The American Council of Life Insurance, which represents several hundred member insurers doing business in Montana, supports Senate Bill 205 and opposes Montana's present so-called Unisex Law.

Opponents of Senate Bill 205 have suggested there is a successful nationwide movement to adopt laws similar to Montana's present Unisex Law. The Council suggests that the facts do not support that assertion.

If any movement exists, it is decidedly against adoption of Unisex Laws.

Unisex insurance legislation was considered in 11 states in 1988 but no bill received serious attention and none of those proposals carry over to the 1989 sessions. Thus far Montana is the only state to have legislatively enacted an all lines Unisex Insurance Law.

Ex. #5  
2/6/89

In prior years the movement toward Unisex was also decidedly unimpressive.

1987 12 States Considered; not one adopted Unisex (several of these bills carried over to 1988 before rejection).

1986 14 States Considered Unisex; not one adopted it.

1985 15 States Considered Unisex; not one adopted it.

It was also suggested that Unisex is in effect in Massachusetts and Pennsylvania. That suggestion bears closer scrutiny since the issue in both states is the subject of ongoing litigation. In Massachusetts a life and health Unisex administrative regulation, effective September 1, 1988, is in litigation.

A Pennsylvania trial court decision which held a portion of that State's auto ratemaking act unconstitutional due to gender distinctions is now on appeal to the Pennsylvania state supreme court. The issue is still in litigation in Pennsylvania.

We will leave it up to the committee to decide where this movement appears to be headed.

The American Council of Life Insurance will be available for questions from the committee at the executive session planned for Monday, February 6, 1989.

Very Truly Yours,

CHRONISTER, DRISCOLL & MOREEN

By: 

Patrick M. Driscoll

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FMS SENATOR GENE THAYER RPT DLY MCM  
PRLENA MT 59601  
DEAR SENATOR-

DUE TO A HEATH I AM UNABLE TO SPEAK IN PERSON. I AM IN SUPPORT OF SENATE BILL 205. REASONS WHY ARE: 1) MANY EXCELLENT PRODUCTS ARE NOT BEING OFFERED IN MONTANA BECAUSE OF THE UNISEY LAW. I WOULD EXPOND ON THIS IF NEEDED. 2) PREMIUM TAX TO MONTANA IS BEING LOST AS IN EXAMPLE OF ONE CASE I WAS IN COMPETITION FOR A PREMIUM OF \$50,000 PER YEAR THAT WENT TO THE STATE OF ARIZONA BECAUSE INSURANCE WAS LOWER PREMIUM THERE.

UNTIL MOST OF THE STATES ARE UNISEY THE PEOPLE OF MONTANA CANNOT AFFORD TO BE OUT OF STEP.

JOE J SHORMAKER, CLU-CHFC  
3129 FLOREAL BLVD  
BUTTE MT 59701

1912 EST

NNNN  
1937 EST

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SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 6

DATE 2/6/89

BILL NO. SB 205

western union



December 4, 1987

Kathy M. Irigoin, Staff Attorney  
Staate Insurance Commission  
P O Box 4009  
Helena, MT. 59604

Dear Ms. Irigoin:

Thank you for your response of November 25, 1987 to my inquiry concerning the conflicting and confusing issues involved in maternity coverage in the state of Montana.

However, I do not feel you have fully addressed the issue since two factors remain totally ignored. One is that you advise that I contact my legislators in the matter because your agency simply enforces the statutes. I do indeed intend to contact the legislators, but shouldn't your office do the same? While my voice and the voice of other agents in the state will no doubt attract some attention to the issue, your agency would of course attract far more, and would be listened to with a more finely attuned ear.

Then, the second issue unaddressed by you is the matter of your agency being unwilling to take a stand in the issue as of this day, this point in time, and that leaves a tremendous and unfair liability on the shoulders of all insurance agents in Montana. Consider, please, that your agency may penalize, chastise, or ostracize any agent who errs in this issue, yet you will not define or clarify which way the error lies. You are allowing a state of confusion and liability to continue and I believe it is your responsibility to make a determination in the matter that we agents can use as a guide, until more permanent statutes have been achieved.

Please look again at S-49-2-309. The human rights interpretation is that no insurance policy can be sold in Montana if there is discrimination on the basis of sex or gender. Yet we are selling individual and group health policies that do exactly that. These policies are approved for sale by the Montana Insurance Commission. How can this be? The law plainly states any insurance policy with sex or gender discrimination is illegal; and it follows that if we follow the dictates and guides provided by your agency we are then breaking the law.

Your agency has us all in a very difficult position. According to my attorney, if a client should bring suit, my insurer and I could be and probably would be found liable. Would your agency be willing to protect me and absolve me from liability because the confusion and conflict I have brought to your attention for resolution has not been resolved at the time?

EX. #7

2/6/87

page 2

I am asking you for guidance AND specific commitment in this issue. Are you telling me it is all right to sell the insurance policies approved by the Montana Insurance commission regardless of what S-49-2--309 and S-49-2-310(3) say, or are you telling me it is not all right to sell them?

Please respond specifically, as soon as possible, in order that we insurance agents may continue to make our living without being under the cloud of this dilemma.

I appreciate your time and attention to this matter, and I am doing everything I can to bring a resolution to it from my end. If there is any input I can give you that I have not already given, please don't hesitate to contact me.

Sincerely,

  
Ronald P. Kunik

cc: James W. Zion, Attorney at Law  
Montana Human Rights Commission  
P O Box 1728  
Helena, MT. 59624

cc: Governor Ted Schwinden

*Note - This is answer to same letter  
sent to Ins comm & Human Rights comm dated Nov-5-87.*

STATE AUDITOR  
STATE OF MONTANA

Ex. #7

2/6/89

Andrea "Andy" Bennett  
STATE AUDITOR



COMMISSIONER OF INSURANCE  
COMMISSIONER OF SECURITIES

November 25, 1987

Mr. Ronald P. Kunik  
2505 MT. 35  
Kalispell, MT 59901

Re: Maternity coverage and nongender insurance law

Dear Mr. Kunik:

Commissioner Andrea Bennett has referred your November 5, 1987, letter to me for acknowledgement. With your letter, you enclosed a copy of a letter you sent to James W. Zion, Staff Attorney for the Montana Human Rights Commission, regarding the maternity coverage guest editorial by Anne MacIntyre contained in our recent newsletter.

Because neither this office or the Montana Human Rights Commission passes the statutes you find conflicting, you might consider contacting your legislators about the conflict. If the Legislature determines that the statutes conflict, it will be in a better position to correct the problem than a state agency, which is simply charged with enforcing the statutes passed by the Legislature.

Thank you for providing us a copy of your letter to Mr. Zion. We would appreciate receiving a copy of his response so we know what corrective action, if any, we need to take. If you have any additional questions in the meantime about the manner in which this office is handling the maternity coverage issue, please contact me.

Sincerely,

*Kathy M. Irigoin*

Kathy M. Irigoin  
Staff Attorney

KMI/vf/971

Sept 87

Ex. #7  
2/6/89

### GUEST EDITORIAL

by Anne MacIntyre Administrator - Montana Human Rights Division

Insurance agents may be inadvertently advising small employers to violate Montana's law prohibiting employment discrimination. Montana law prohibits employers from discriminating against employees on the basis of sex in the "terms or conditions" of their employment. Employers are obligated to follow state law regardless of the number of employees. Since pregnancy is a gender-related condition, an employer who provides insurance for all male-related temporary disabilities must include all female-related temporary disabilities including pregnancy and related medical conditions in its plan. If the plan provides for coverage of spouses, it must also cover maternity costs for the wives of male employees. Federal law has a similar provision that applies only to employers with 15 or more employees.

Some insurance agents advise employers with fewer than 15 employees that they are not required to provide insurance coverage for pregnancy. Agents are advised to discontinue this practice.

Agents with questions may contact Janice Frankino Doggett of the Montana Human Rights Commission at 406-444-2884.

*NOTE - The INS COMM SAYS THAT UNWISEY IS NOT AN INSURANCE LAW SO THEY DO NOT HAVE TO ENFORCE IT.*

### MATERNITY COVERAGE REQUIREMENTS CLARIFIED

Sept 88

### RULES FOR MEDICARE SUPPLEMENTS BEING EXPLORED

The office has received many phone calls concerning the guest editorial by Anne MacIntyre, Administrator, Montana Human Rights Commission, in the last newsletter. It seems the article raised numerous questions involving insurance agents and the issue of maternity coverage.

Policies which do not provide for maternity benefits may be approved for use in state of Montana. This is because all forms filed with the Commissioner's office must not be in violation of the Montana Insurance Code. The law prohibiting discrimination in employment situations falls under The Human Rights Commission, and, as such, is not one on which we can rely to disapprove a form. The Human Rights law is very similar to federal law, but applies to all employers, not just those with 15 or more employees. The agent could place the employer in

violation of this law by selling a group health product which does not provide maternity coverage. However, in doing so the agent has placed the employer in violation of Title 49, the Human Rights section, of the Montana Code Annotated. Employees who are denied maternity benefits may file a discrimination action against the employer and the insurance carrier. It is possible the employer could also bring suit against the agent for failure to advise of the potential violation.

As an agent you are encouraged to make your clients aware of the maternity requirements. Failure to do so could result in a claim against your client and or you and your Errors and Omissions insurance carrier. Agents with questions concerning the Human Rights decision can contact their office at 406-444-2884.

The Insurance Department is exploring the adoption of transitional rules to provide an orderly conversion of Medicare supplement insurance benefits and premiums due to changes in the program recently passed by Congress. Legislation will be introduced next session to revise the Medicare Supplement Minimum Standards Act currently in place, bringing Montana's minimum standards into compliance with the Medicare Catastrophic Coverage Act of 1988. The federal act, however, has an implementation date of January 1, 1989, so it is necessary for us to address the issue through some kind of transitional mechanism

# HUMAN RIGHTS COMMISSION

SENATE BOARDS & INDUST. Y.  
EXHIBIT NO. 8  
DATE 2/2/89  
BILL NO. 4238 SIXTH AVE. SB205



TED SCHWINDEN, GOVERNOR

## STATE OF MONTANA

(406) 444-2884

P.O. BOX 1728  
HELENA, MONTANA 59624

March 14, 1988

Warren Schellhase  
Compliance Specialist  
Policyholder Services  
State Auditor's Office  
P.O. Box 4009  
Helena, MT 59604

APR 15 3 14 PM '88  
STATE AUDITOR'S OFFICE  
HELENA, MONT.

Subject: Maternity and pregnancy insurance coverage

Dear Mr. Schellhase:

I am writing in response to your request for a clarification of the position of the Human Rights Division on pregnancy coverage in individual health insurance plans.

As a general matter, you are correct in your advice that the Human Rights Division interprets §49-2-309, MCA, to mean that maternity may not be excluded as a benefit of a health insurance plan, nor may a distinct premium be charged for that coverage, whether coverage is provided by an individual or employer-provided policy or certificate issued to citizens or residents of Montana.

The position of the Human Rights Division is that pregnancy is a sex based distinction for purposes of §49-2-309, MCA. Therefore discrimination against an individual on account of pregnancy constitutes discrimination which is a violation of the law.

Any health insurance plan (whether a group or an individual plan) issued or delivered in Montana must provide maternity coverage. Such coverage must be an integral part of the insurance policy and must not be in the form of a rider at any additional cost. We also take the position that such coverage must be contained in disability insurance plans as well, since pregnancy is treated as a disability under our law. However, the term "disability" may be defined to exclude all short-term disabilities, including pregnancy, so long as such condition is not unequally treated in comparison to other disabilities.

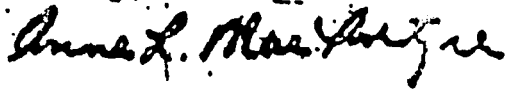
EX. # 8  
2/6/89

FOIA b 7 - INFORMATION

Warren Schellhase  
March 14, 1988  
Page 2

I hope this clarification addresses your concerns.

Sincerely,



Anne L. MacIntyre  
Administrator  
Human Rights Division

cc: Tanya Ask, Deputy Insurance Commissioner  
State Auditor's Office

