ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 8072

3369 HJUD HB 522

245

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7/25/89
Date

02-519 (REV 8/78)

HB

5222

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

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May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS date base CM 14. In order to save space copies of minutes have not been left in the files.

Jeanie Henry

House Judiciary	4/23/86	1:30 pm
" "	4/25/86	8 AM
" "	4/28/86	8 AM

CORRECTION

Discard HB 522

and retain this corrected version.

Introduced: 1/29/86
Referred: Labor & Commerce
and Judiciary

IN THE HOUSE

BY SUND, KOPONEN AND GRUENBERG

HOUSE BILL NO. 522

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to unfair insurance claims settlement practices; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 21.36.125 is amended to read:

Sec. 21.36.125. UNFAIR CLAIM SETTLEMENT PRACTICES. A person may not commit or engage in with such frequency as to indicate a practice any of the following acts or practices:

(1) misrepresent a fact [FACTS] or policy provision [PROVISIONS] relating to coverage of an insurance policy;

(2) fail to acknowledge and act promptly on a communication [UPON COMMUNICATIONS] regarding a claim arising under an insurance policy;

(3) fail to adopt and implement reasonable standards for prompt investigation of claims;

(4) refuse to pay a claim without a reasonable investigation of all of the available information and an explanation of the basis for denial of the claim or for an offer of compromise settlement;

(5) fail to affirm or deny coverage of a claim [CLAIMS] within a reasonable time of the completion of a proof-of-loss statement [STATEMENTS];

(6) fail to attempt in good faith to make prompt and equitable settlement of a claim [CLAIMS] in which liability is reasonably clear;

(7) compel an insured or claimant [INSUREDS] to litigate for recovery of an amount [AMOUNTS] due under an insurance policy [POLICIES] by offering substantially less than the amount [AMOUNTS] ultimately recovered in an action [ACTIONS] brought by the insured or claimant [THOSE INSUREDS];

(8) attempt to make an unreasonably low settlement by reference to printed advertising matter accompanying or included in an application;

(9) attempt to settle a claim on the basis of an application that [WHICH] has been altered without the consent of the insured;

(10) make a claims payment without including a statement of the coverage under which the payment is made;

(11) make known to an insured or claimant [INSUREDS OR CLAIMANTS] a policy of appealing from an arbitration or court award [AWARDS] in favor of an insured or claimant [INSUREDS OR CLAIMANTS] for the purpose of compelling the insured or claimant [THEM] to accept a settlement or compromise [SETTLEMENTS OR COMPROMISES] less than the amount awarded [IN ARBITRATION];

(12) delay investigation or payment of a claim [CLAIMS] by requiring submission of unnecessary or substantially repetitive claims reports and proof-of-loss forms;

(13) fail to promptly settle a claim [CLAIMS] under one portion of a policy for the purpose of influencing a settlement [SETTLEMENTS] under another portion [OTHER PORTIONS] of the policy;

(14) fail to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement; or

(15) offer a form of settlement or pay a judgment in a [ANY]

manner prohibited by AS 21.89.030.

* Sec. 2. AS 21.36.125 is amended by adding new subsections to read:

(b) A claimant or insured who is injured by an act or practice listed in (a) of this section may bring an action in court to recover damages for the injury against the person who commits or engages in the act or practice; in this subsection one occurrence of an act or practice listed in (a) of this section is sufficient to give the claimant or insured the right to bring the action.

(c) In this section, "claimant" means a person who has been injured by an insured.

* Sec. 3. This Act takes effect immediately in accordance with AS 01.-10.070(c).

HOUSE

COMMITTEE REPORT

(7)

Date referred: 4/15/86

FURTHER REFERRALS:

DATE: _____

The JUDICIARY Committee has considered HB 522

"An Act relating to unfair insurance claims settlement practices; and providing for an effective date."

and recommends:

[ ] do pass

[ ] do not pass

[ ] do pass with attached amendment(s)

[ ] no recommendation

[ ] replace with CSHB 522 (JUD) [ ] same title

[ ] new title

and recommends _____

[ ] further referral to the _____ Committee

and attaches: [ ] letter of intent
[ ] first fiscal note
[ ] new fiscal note
[ ] zero fiscal note

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

no rec

Chairman

Department of Commerce & Economic Development / POSITION PAPER

CSHB 522(L&C): "An Act relating to payment of insurance premiums, cancellation of insurance policies, and the provision of medical malpractice insurance for nurse midwives; and providing for an effective date."

The Department favors passage of this proposed legislation.

Sections 1 & 2 of this bill would provide that, for purposes of receiving payment of an insurance premium, a broker is legally considered an agent of the insurance company. This legislation does not give the broker the ability to bind coverage with an insurance company that has not given him that authority. The insurance agent has a direct contractual relationship with the insurance company in which it places business. The effect of this is that when an agent receives premium from an insured, it is the same as though the insurance company had received the funds, even if the insurance company never receives the money.

The situation with a broker is not as clear. The broker by definition represents the insured, not the insurance company. While it is possible that a legal argument could be made to attempt to treat the broker as an agent of the insurer, this must be done in court on a case by case basis.

During the past two years, it has become clear that a similar law is needed for brokers. Two large broker insolvencies have occurred where insureds have paid the broker who in turn has failed to remit those funds to the insurer resulting in cancellation of coverage for nonpayment of premium. The insured then suffers a loss of coverage and monies. In most cases, the insured person did not know in which capacity the producer was acting, let alone understand and appreciate the distinction.

Sections 3 - 10 and 14 address cancellation of commercial insurance policies. Under existing law, there is a limitation on cancellation of personal lines policies such as automobile insurance policies and homeowners insurance policies. A part of this law also establishes minimum amounts of time when a cancellation is issued and requires a reason for any cancellation or nonrenewal of coverage. These minimums and reasons do not currently apply to business or commercial policies.

This proposal will provide for a 60 day notice time that a company must give when it cancels an insurance policy, other than personal lines of insurance. It also requires that any unearned premium shall be returned prior to the effective date of cancellation unless cancellation is for nonpayment of premium.

The need for this request arises from the tightening insurance markets. As companies are reducing the amount of insurance they are writing, they are eliminating entire classes of insurance from their book of business and they are often cancelling policies of those insureds who have suffered losses. The Alaskan consumer needs adequate notice in order to be able to find an alternate insurer in the event that his policy is cancelled.

To accomplish this, it is necessary to substantially rearrange AS 21.36.210 - AS 21.36.310. The changes do not revise the impact of those sections of law on personal lines. It does make some of those provisions applicable to business or commercial insurance.

We recommend that the notice period for a nonpayment cancellation remain unchanged. This means removing the change made on page 3, line 24. and changing the 20 days on page 4, line 4 to read 10 days. The logic for this is that a person about to receive notice for nonpayment generally knows that payment has not been made. 10 days is adequate.

Sections 11 - 13 provide that nurse midwives can purchase medical malpractice insurance from the Medical Indemnity Corporation of Alaska (MICA). This will provide an additional market that the nurse midwife would have available if required. We would recommend that Section 11 on page 7, lines 9 - 29 be omitted. There are 1200 physicians licensed by the state who are conceivably eligible for coverage from MICA while there are only 21 licensed nurse midwives who might be eligible for coverage from MICA with passage of this bill. That is not a reasonable basis for changing the makeup of the governing board of MICA. This feature should remain unchanged.

Loren H. Lounsbury, Commissioner
Department of Commerce & Economic Development

Date: 4/14/86

John L. George, Director of Insurance

Date: 4/14/86

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: CSHB 522 (L&C)
Title: Relating to payment of premiums, cancellation of policies, and medical malpractice insurance for nurse midwives
Sponsor: Labor & Commerce
Requester: _____
Date of Request: _____

FISCAL DETAIL

Agency Affected: Commerce & Economic Development
BRU: Insurance
Components: Public Protection

EXPENDITURES / REVENUES: (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-

ANALYSIS: Attach a separate page if necessary.

Prepared by: John L. George, Director
Division: Division of Insurance
Phone: 465-2515
Date: April 14, 1986

Approved by Commissioner: Lorin K. Townsend
Agency: Commerce and Economic Development
Date: April 14, 1986

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

10/25/85

AMENDMENT No. 1

Page 5, line 4

Add the following language at the end of Sec. 21.36.240

"If the notice is mailed less than 30 days before the expiration, coverage shall remain in effect until 30 days after notice is received. Earned premium for any period of coverage that extends beyond the expiration date shall be continued on the same premium basis as the previous year's rate."

AMENDMENT NO. 2

Add a new paragraph to A.S. 21.36.240 as follows:

"(b) For the purposes of this section, the transfer of a policy between companies within the same insurance group is not a refusal to renew."

AMENDMENT NO. 3

Page 5, line 19

Amend the definition of "business or commercial insurance" to include "workers compensation insurance" and "fidelity and surety insurance" before "title insurance".

(b) On application prior to issuance of notice of cancellation, an insurer may request the director to determine whether a reason for cancellation not specified in (a) of this section is a valid reason for cancellation on a case by case basis. The director may allow the insurer to exercise its right to cancel if the director finds that the cancellation is justified.

CS HB 522 (Judiciary)
April 25, 1986 version

OVERVIEW

Prepared by Rep. John Sund's office.
April 27, 1986

OBJECTIVE OF THE BILL

The purpose of House Bill 522 is to approach the effects of the insurance crisis through tightening various insurance regulations and expanding the Medical Indemnity Corporation of Alaska.

WHAT THIS BILL DOES

1. Regards premium payments to insurance brokers as payments directly to the insurance company. This will prevent alleged nonpayment of premium cancellations because a broker walked off with the payment.

2. Prohibits premium rating on the basis of sex.

3. Clarifies accepted reasons for canceling a personal line (auto and homeowner's) insurance policy and increases the time requirement for notification of cancellation from 20 days to 60 days with certain exceptions. It also requires a stated reason for the cancellation.

4. Establishes criteria for canceling a business or commercial insurance policy and requires 60 days notice of cancellation with certain exceptions. It also requires a stated reason for the cancellation.

5. Establishes a 45 day notice of nonrenewal for business and commercial policies.

6. Expands the Medical Indemnity Corporation of Alaska (MICA) to offer insurance to nurses and nurse midwives and adds a nurse or nurse midwife to the MICA board of directors.

WHY THIS BILL IS NEEDED

While we have been attacking the insurance crisis primarily from the tort reform angle and the pooling concept, we can also help the situation through insurance regulation reform.

Not only is it traumatic to have your insurance canceled, it is worse to have it canceled without adequate notice so that other coverage can be sought. We now have no law that requires advance notice of cancellation of business or commercial insurance. This bill would give the insured 60 days to find alternate coverage.

This bill also helps those nurses who are working in high-risk fields, such as childbirth, and cannot find insurance coverage. MICA would now be available to them.

The bill carries a zero fiscal note and is supported by the Division of Insurance.

CS HB 522 (Judiciary)

SECTIONAL ANALYSIS
April 25, 1986 version
Prepared by Rep. John Sund's office.

Title of bill has been tightened to include all intents of the bill and the reference to discrimination in terms of insurance prices has been deleted.

Section 1; Page 1, line 13: amends AS 21.27.200 (a) by stating that a broker is not an agent for the insurer, except as provided in (c) (see Section 2 below). Nothing in this section is intended to change common law on agency.

Section 2; Page 1, line 22: adds the new subsection (c) referred to above. This makes the broker the agent of the insurer for the purpose of collecting premiums.

This is important to the Division of Insurance and gives the insured more latitude in premium payments. When the broker receives a premium payment, it is treated as if the insurance company has received it. This protects the insured and prevents policy cancellation due to nonpayment of premiums because an unscrupulous broker walked off with the cash. According to the division, this section could save many thousands of dollars per year for the consumer.

Section 3; Page 1, line 28: prevents discrimination in premium rates based on the insured's sex.

Section 4; Page 2, line 4: amends present statute on limits on cancellation by clarifying that insurers cannot cancel a personal automobile insurance policy unless premiums aren't paid or the insured's license is revoked or suspended.

Section 5; Page 2, line 16: amends the reasons for which limits on cancellation in this section don't apply:

1) failure to renew a policy unless it was in force for less than 12 months. (This is already in statute.)
2) a policy that is less than 60 days old, unless it is a renewal.
3) an automobile assigned risk or automobile insurance plan.
4) a policy insuring more than four vehicles.
5) a policy covering a business related to automobiles.

Section 6; Page 3, line 4: amends present statute on limits on cancellation by specifying that the following limits apply only to personal insurance other than personal auto insurance:

1) nonpayment of premiums.
2) conviction of a crime that increases insured's risk.
3) discovery of fraud or misrepresentation by insured.
4) discovery of negligent act or omission that increases insured's risk.
5) physical change in insured's property making it uninsurable.

Section 7; Page 3, line 23: places limits on cancellation of a business or commercial policy. No provisions now exist in law to limit commercial insurance cancellation. The limits are the same as in Section 6 (personal insurance), but additional reasons specific to commercial insurance are added.

This section also provides in (b), Page 4, line 23, for the director of the Division of Insurance to determine on a case by case basis whether a reason for cancellation not listed in this section is justified.

Section 8; Page 5, line 1: increases the notice of cancellation of a personal insurance policy from 20 days to 60 days before the cancellation date. If nonpayment of premium is the reason for cancellation, however, notice must be served within 10 days, which is present law.

This section also requires that the notice include a statement of the reason for cancellation.

Section 9; Page 5, line 14: requires the same time frame for cancellation of business or commercial insurance as that for personal lines as cited above.

Unearned premium must be returned or credited before the cancellation effective date unless the cancellation is for nonpayment. In that case, the unearned premium must be returned or credited within 45 days after the cancellation date.

Policy premiums subject to audit are also exempt from the above refund requirement. The audit must be done within 30 days of the cancellation date and the unearned premium must be returned or credited within 30 days of the audit completion.

Section 10; Page 6, line 7: clarifies that the present law

requiring renewal of policies that are in force less than 12 months pertains only to personal lines.

This section also adds business and commercial lines to the requirements for notice of nonrenewal with a 45 day notice period. Personal lines require only 20 days notice of nonrenewal.

This section doesn't apply if the insurer in good faith was willing to renew, if premiums weren't paid on the expiring policy, or if premiums weren't paid as required for renewal.

Section 11; Page 6, line 24: is housekeeping on the requirement to notify those denied auto liability insurance of the auto assigned risk plan.

Section 12; Page 7, line 5: Definitions.

Section 13; Page 8, line 29: amends the makeup of the Medical Indemnity Insurance Corporation (MICA) board of directors by reducing the number of physicians from four to three and adding a licensed nurse or nurse midwife to the board. The reason for the change is that under this bill, nurses would be eligible for coverage through MICA (see section 14).

Section 14; Page 9, line 20: amends MICA statute by allowing nurses and nurse midwives to be a separate entity for coverage.

Section 15; Page 12, line 15: Definitions.

Section 16; Page 12, line 21: repeals statutes the intent of which are covered elsewhere in this bill.

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch V, State Capitol
Juneau, Alaska 99811
(907) 465-3991

May 22, 1984

MEMORANDUM

TO: Representative Don Clocksin

FROM: Heidi Borson Paine HBP
Legislative Analyst

RE: Discrimination Against Women
Research Request 84-087

You requested that we review Alaska's statutes on insurance, retirement benefits, and divorce in order to compare how women in Alaska are treated with how they are treated in other states.

To respond to your request, we contacted several groups within Alaska, including the Governor's Mini-Cabinet on Women's Issues, Alaska Women's Commission, Alaska Women's Lobby, and the Human Rights Commission. We also contacted national organizations such as the National Organization For Women (NOW), NOW's Legal Defense and Education Fund, the National Conference of State Legislatures (NCSL), and insurance departments and women's commissions in numerous states. Two law journal articles were also very helpful.[1]

To our knowledge, no complete review of Alaska's statutes for potential areas of discrimination against women has been completed to date. Given our time constraints and the lack of available information, we focused our efforts on providing you with an initial overview of statutes in Alaska and other states concerning women and insurance, retirement benefits, divorce and property settlements. Please contact us if you would like copies of other states' statutes or additional information on any of the discussed areas.

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[1]Freed and Foster, "Family Law in the Fifty States: An Overview", Family Law Quarterly, Volume 17, Number 4, Winter 1984, pp. 365-447.

Freed and Foster, "Divorce in the Fifty States: An Overview," Family Law Quarterly, Volume 14, Number 4, Winter 1981, pp. 229-283.

Insurance-Related Issues

Alaska statutes (AS 21.39.010) prohibit "unfairly discriminatory" insurance ratings; however, unfair discrimination is not defined in the statutes or regulations. Ken Moore, Director of the Division of Insurance, interprets the statutes as prohibiting insurance companies from discriminating in the selection of program participants, but allowing them to set different rates for like policies if the differences are based on statistical evidence. According to Mr. Moore, the division operationally defines unfair discrimination as discrimination which lacks empirical data to support it. The division investigates complaints of insurance discrimination in the private sector, but does not conduct active searches or reviews for the purpose of uncovering or preventing discrimination.

Mr. Moore notes that, as an employer, the State complies with the federal Norris decision which became effective in August 1983. In Arizona vs. Norris, the U.S. Supreme Court banned sex discrimination in all employer-sponsored pension plans, including those of state and local governments.[2] In addition to retirement programs, all insurance programs of the State of Alaska are based on unisex actuarial tables.

Janet Bradley, Executive Director of the Human Rights Commission, states that private insurance companies in Alaska do discriminate against women, but contends that mechanisms exist in the human rights statutes (AS 18.80) for preventing discrimination. Specifically, Ms. Bradley notes that AS 18.80.220 prohibits employers from discriminating against persons in compensation or in a term, condition, or privilege of employment because of sex, marital status, changes in marital status, pregnancy or parenthood. She reasons that because retirement benefits and health and life insurance are often privileges of employment, it is currently against the law to discriminate against women in those areas of insurance.

With respect to individual insurance plans, Ms. Bradley asserts that AS 18.80.230 also forbids discrimination against women by prohibiting public accommodations from denying a person any of its services, goods, facilities, advantages or privileges because of sex, marital status, pregnancy or parenthood. Furthermore, Article I, Section 3 of the Alaska Constitution (the State Equal Rights Amendment) prohibits denying any person the enjoyment of any civil or political right because of sex.

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[2]However, the Supreme Court held that retirement annuities purchased from private companies could continue to be sex discriminatory.

According to Ms. Bradley, any insurance discrimination problem in Alaska results from a lack of enforcement of existing statutues, and the lack of a statutory definition of unfair discrimination. She suggests that the Division of Insurance work with the Human Rights Commission to determine what constitutes unfair discrimination.

Currently, however, other states are considering legislation expressly forbidding discrimination in insurance ratings in both public and private sector's. Montana is the first and only state to enact a statute which prohibits sex discrimination in rates and benefits for any type of insurance coverage. The Montana statute provides 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 or benefits." The bill passed in April 1983 and becomes effective in October 1985. However, according to Norma Seifert, Montana Chief Deputy Insurance Commissioner, the legislation is still very controversial and may be amended before it becomes effective.

Several other states--West Virginia, Washington, Vermont, Florida, New Jersey, New Mexico, and Maryland--are also considering legislation banning sex discrimination in insurance and calling for unisex ratings.[3] In addition, Hawaii, Massachusetts, Michigan, North Carolina, and Pennsylvania have passed legislation specifically prohibiting sex discrimination in rates or premiums for auto insurance.

Furthermore, some states have enacted legislation requiring accident and health insurance policies which terminate upon divorce to include a conversion privilege for divorced spouses without proof of insurability. To date, 18 states have amended their statutes to provide for conversion upon divorce.[4] Alaska is not one of them. According to Don Koch, Property Casualty Field Analyst for the Alaska Division of Insurance, conversion privileges for divorced and widowed spouses could be written into the Alaska statutes.

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[3]"Victory in Montana! State Outlaws Insurance Discrimination" National NOW Times, May 1983, p. 1.

[4]Arkansas, California, Colorado, Deleware, Florida, Georgia, Illinois, Minnesota, New Jersey, New Mexico, New York, Ohio, Oregon, Pennsylvania, South Carolina, South Dakota, Vermont, and Wisconsin.

According to Frances Dispasquanittio, attorney for the North Carolina Insurance Division, conversion privileges do not always benefit divorced and widowed women because insurance companies often charge higher rates for converted policies. He maintains that statutes which provide for the continuation of insurance are more advantageous for these women because the client maintains the same contract, rate, and benefits. The woman may actually pay more because the ex-spouse's employer no longer pays a share, but the rate for the policy must remain the same. Conversion, on the other hand, involves changing to an alternate and often more expensive policy. In North Carolina, the law provides for a three-month continuation of insurance coverage and then switches over to conversion privileges.

On the national level, "The Nondiscrimination in Insurance Act" (H.R. 100) is before the House of Representatives. If passed in its original form, the bill would prohibit all insurance companies from using sex as a factor in setting rates, underwriting, or determining benefits. However, in March 1984, the House Energy and Commerce Committee made several changes to the bill including amendments which excluded private lines of insurance from the bill's coverage, excused private insurance companies from providing abortion or pregnancy coverage, and provided that only benefits derived from contributions made two years after the legislation's enactment date must be equal. A companion bill, S 372, is currently before the Senate Commerce, Science and Transportation Committee.

Distribution of Property Upon Divorce

In divorce property settlements, the distribution of property is generally guided by one of three systems: community property, common-law "title", and common-law "equitable distribution". The differences between the three systems or philosophies center around the property rights of married persons.

In community property states, property is viewed as being owned in common by husband and wife, each having an undivided one-half interest in the property by reason of marital status. Furthermore, according to Black's Law Dictionary, one-half of each spouse's earnings is considered by the other spouse.[5] Property is divided according to what is equal in value or what is equitable. There are currently eight community property states: Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas and Washington.

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[5]Black's Law Dictionary states that in common-law states each spouse owns whatever he/she earns, whereas in community property states, one-half of the earnings of each spouse is considered by the other spouse.

Mississippi, South Carolina, and West Virginia are common-law "title" states. In these states, the courts have no general or equitable power to distribute property in divorce settlements, except for jointly held property. Instead, the title to the property controls the distribution of the property, subject to constructive trusts, tracing of equitable title, and gift laws.

The forty remaining states employ common-law "equitable distribution" systems of property distribution. In these states, the courts have equitable power to order property settlements in the form of property distribution or alimony. Alaska is classified as an "equitable distribution" state. The equitable distribution doctrine allows a spouse who has made a material economic contribution toward the acquisition of property titled in the other spouse's name, to claim an equitable interest in the property. At the time of divorce, the economic contributions of each party during the marriage are measured against the net assets available upon divorce.[6]

Equitable distribution states are further divided into those which consider only property acquired during the marriage for purposes of distribution and those which include all property (separate and marital) in the property settlement. Alaska's statutes (AS 25.24.160) provide for the distribution of property acquired during the marriage only. However, the courts may include the property either spouse acquired before marriage if deemed necessary to balance the equities between the two parties.

Statutory Guidelines for Property Distribution

Statutes in many states list specific criteria for the courts' consideration in property settlements. The Alaska statutes contain no specific criteria for property settlements or alimony awards other than the requirement that they be "just and necessary" [AS 25.24.160(3)]. Instead, courts employ previous court decisions as guidelines. For example, in Vanover vs. Vanover (1972), the Alaska Supreme Court lists the principal factors which should be considered by the trial court in dividing property and awarding alimony. These criteria are: the respective ages of the parties; their earning ability; the duration and conduct of each during the marriage; their station in life; the circumstances and necessities of each; their health and physical condition; their financial circumstances, including the time and manner of

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[6]Freed and Foster, "Family Law in the Fifty States: An Overview", Family Law Quarterly, Volume 17, Number 4, Winter 1984, p.380.

acquisition of the property in question, its value at the time and its income producing capacity if any.[7]

Furthermore, according to the Messina vs. Messina (Alaska 1978) decision, the courts may provide for alimony only if the spouse seeking maintenance: 1) lacks sufficient property to provide for his (her) reasonable needs; and 2) is unable to support himself (herself) through appropriate employment or is the custodian of a child whose condition or circumstances make it appropriate that the custodian may not be required to seek employment outside the home.[8] The court's decision follows Section 308 of the Uniform Marriage and Divorce Act. The intent of the provisions concerning alimony in the Uniform Marriage and Divorce Act is to urge the court to provide for the financial needs of spouses through property distribution instead of alimony.

Maryland's statutes, on the other hand, enumerate ten specific factors the courts must consider when determining whether alimony is necessary and in determining the amount, duration, and manner of payment of alimony. These factors include the respective rights of the parties to receive retirement benefits, the ability of the party seeking alimony to be wholly or partially self-supporting, the time necessary for the spouse seeking alimony to gain sufficient education or training to enable the party to find suitable employment, and the monetary and nonmonetary contributions of each party to the well-being of the family.

Career Potential as Property

The determination of what is property and what property is divisible is particularly important to fulltime homemakers whose property share comprise their sole source of support. One of the more controversial issues in defining property involves the recognition of a spouse's contributions to the career or career potential of the other party. In recent years, court decisions have held that a professional degree or professional license is and is not property subject to distribution. While some court decisions hold that such contributions should only be reflected in the amount and duration of alimony. others call for a lump sum payment for damages incurred by the supporting spouse.

Ten states' statutes clearly require the court's consideration of a spouse's contributions to the education, training, or increased earning

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[7]Vanover vs. Vanover, 496 Pacific Reporter, 2d Series, p. 644.

[8]Messina vs. Messina, 583 Pacific Reporter, 2d Series, p. 804.

power of the other party in property and/or maintenance determinations: Florida and Georgia in maintenance decisions, North Carolina, Vermont, and Wisconsin in property distribution, and Indiana, Iowa, Nebraska, New York and Pennsylvania in maintenance and property determinations.

The Alaska statutes make no reference to a spouse's contributions t the career or career potential of the other spouse. We did not find any references to this subject in case laws either.

Retirement Benefits as Property

The issue of which retirement benefits and pensions should be considered property for purposes of divorce settlements is the subject of many court cases throughout the nation. In Alaska, the statutes are unclear as to whether or not retirement benefits may be considered property in property settlements. Alaska Statute 39.35.500 forbids the direct attachment or assignment of an employee's pension funds to another person. However, Assistant Attorney General Jim Baldwin contends that courts may still consider the amount of money in the pension fund when apportioning the couple's estate. It appears that nothing in the statutes specifically forbids a court from considering the value of a pension benefit in dividing other property. The statutes do include case law discussions on whether or not retirement benefits are divisible properties.

For example, in Malone vs. Malone (1978), the Alaska Supreme Court held that even though a husband was not retired or receiving retirement benefits, an award of $350 per month to his wife as her share of his vested federal civil service retirement benefits was proper.[9] However, in Cose vs. Cose (1979), the Alaska Supreme Court held that military retirement pay is not divisible because the "federal supremacy clause prohibits application of state divorce property settlement standards to military retired pay."[10]

Almost all community property states and a growing number of common-law equitable distribution states recognize spousal claims to an interest in retirement and pension benefits upon divorce. A few states have enacted legislation specifically providing for spousal interest in pensions. For example, Minnesota statutes include vested benefits as "divisible property", and Maryland's 1983 Legislature amended the state's Courts and Judicial Proceedings Article to include "certain pension and retirement benefits and certain military pension and retirement benefits and retainer pay" in the definition of "marital property".

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[9]Malone vs. Malone, 587 Pacific Reporter, 2d Series, p.1167.

[10]Cose vs. Cose, 592 Pacific Reporter, 2d Series, p. 1230.

Consideration of Nonmonetary Contributions

Thirty-four states' statutes recognize a spouse's contributions to the well-being of the family as homemaker and parent in making property distribution and maintenance assignments.[11] For example, Pennsylvania's divorce law, which mandates equitable distribution of property, establishes specific criteria which must be considered in distributing the couple's property including "the contribution or dissipation of each party in the acquisition, preservation, depreciation or appreciation of the marital property, including the contribution of a party as homemaker." In determining whether, or how much, alimony is necessary, Pennsylvania statutes direct the court to consider fourteen factors including "the contribution of a spouse as a homemaker."

Alaska's statutes do not require the consideration of a homemaker's contributions in determining property and maintenance settlements. However, the courts may consider the nonmonetary as well as monetary contributions of a homemaker spouse. For example, in Vanover vs. Vanover (1972), the Alaska Supreme Court held that courts making property divisions should consider each spouse's contributions to the marriage, whether of a pecuniary or more intangible nature.

Recent laws in Colorado and California also require courts to consider the extent to which a supported spouse's present and future earning ability has been impaired during the marriage by periods of unemployment related to homemaker services. Another nonmonetary factor considered in many states is the period of time and training necessary for the supported spouse to become self-sufficent. Alaska's statutes do not clearly require courts to consider that factor; however, previous court decisions which cite criteria for court consideration in apportioning property include the spouses' earning abilities, stations in life, and the circumstances and necessities of each.

Retirement v. Survivor Benefits

Finally, you also asked if employees have the option of giving up their survivor benefits in favor of greater retirement benefits, and if so, if the beneficiary's permission is required. Ken Humphries, Director of the Division of Retirement and Benefits, notes that a

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[11] Arkansas, California, Colorado, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, West Virginia, Wisconsin, Wyoming and Washington, D.C.

State employee may give up survivor benefits without the consent of the beneficiary to receive greater retirement benefits. He explains that the transfer application requests the beneficiary's signature; however, the division has no statutory authority to require the beneficiary's signature. In fact, AS 39.35.490 provides that the beneficiary designation "may be changed or revoked by the employee without notice to the beneficiary or beneficiaries at any time."

Divorced spouses may also be adversely affected if the employed ex-spouse opts for greater survivor benefits and less retirement benefits. For example, if the working spouse was employed by the federal civil service and changed his benefit package to include greater survivor benefits, his ex-spouse could not receive any of those benefits because current federal law prohibits a divorced spouse from receiving survivor benefits even if a court awards them. In the 1983 session of the U.S. Congress, Representative Patricia Schroeder introduced H.R. 2300, the "Civil Service Spouse Retirement Equity Act", which would allow courts to divide survivor benefits as well as retirement benefits. The legislation is still pending before the Subcommittee on Compensation and Employee Benefits.

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We hope this information is helpful. If you would like more in-depth research on the discussed or any other topics, please contact us.

HBP

HB 522

REVISIONS MADE TO 4/25/86 VERSION FROM 4/24/86 VERSION

Prepared by Rep. John Sund's office.

(Please note: The final work draft of the bill was not done in time to offer a sectional analysis with page and line citings. The following explains the changes made in the bill.)

1. TITLE OF BILL: The word "discrimination" is deleted.

2. LIMITS ON THE CANCELLATION OF BUSINESS OR COMMERCIAL INSURANCE POLICIES:
   Section 7, page 4, line 21 adds a tenth reason for canceling a policy -- an excessive number of claims by the insured.

   Section 7, page 4, line 21 (b) is rewritten to read: "On application prior to issuance of notice of cancellation, an insurer may request the director to determine whether a reason for cancellation not specified in (a) (the laundrey list) of this section is a valid reason for cancellation on a case by case basis. The director may allow the insurer to exercise its right to cancel if the director finds that the cancellation is justified. The cancellation may not be made prior to the approval of the director."

3. NOTICE OF CANCELLATION:
   Section 9, page 5, line 20 (c) is amended to read: "shall return or credit any unearned premium to the agent or broker."

   Page 5, line 24 (c) is amended to read: "returned or credited within 45 days . . ."

   Page 5, line 24,
   The following is added to (c):
   However, if the policy premium is subject to audit the insurer shall perform an audit within 30 days after the effective date of cancellation or credit the unearned premium, if any, within 30 days of the completion of the audit.

4. DEFINITIONS:
   Section 12, page 6, line 27 (1) is amended to read "fidelity and surety insurance, title insurance, or an annuity contract."

5. A new section is added preceding section 13, page 8, line 17 which will alter the makeup of the Medical Indemnity Corporation of Alaska. The number of physicians on the board will be reduced from four to three and one licensed nurse will be added to the board.

6. The effective date is deleted.

Unisex Insurance Bills Pending; Here's How To Respond To Often-Asked Questions

Nearly a year ago, State Farm went on record as opposing federal legislation that would require unisex treatment of insurance premiums and benefits.

Although the legislation failed to gain approval in Congress last year, it remains alive in 1984.

H.R. 100 is pending before the Energy and Commerce Committee of the House, and S. 372 is before the Senate Commerce, Science and Transportation Committee. Action is expected to resume following the issuance of a final report by the General Accounting Office, the congressional watchdog, on a study it did for the Senate committee. Similar legislation also is being considered in a number of state legislatures. One such measure failed recently in New Mexico.

The following are questions commonly asked about the legislation and insurance pricing and benefits by concerned individuals, legislators and the news media. The answers, prepared by an informal coalition of insurers, including State Farm, may help employees and agents better understand the issues and, thus, be prepared to answer questions.

Q—1. Would women benefit economically if unisex treatment of individual contracts of insurance—such as automobile, life, and health insurance—resulted from the passage of this legislation?

No. In some insurance areas, women pay more than men, while in others, they pay less. However, women will not reap a net economic benefit if individual contracts of insurance are priced on a gender-neutral basis.

Almost 100 percent of pensions and annuities, as well as 85 percent of health and 70 percent of disability insurance policies, are provided by employers. These are the areas where eliminating gender will help women; however, the Norris case already guarantees that gender will be eliminated in benefit and premium determinations in these areas.

More important however, is that **virtually all auto and over half of all life insurance is bought by individuals. Life and auto insurance are the areas where eliminating gender will cost these women hundreds of millions of dollars—$360 million annually in life insurance and $700 million annually in auto insurance.**

Many of the women who buy these policies are those in vulnerable financial circumstances: young women not yet in the workforce, or self-employed or recently unemployed women who do not have employer-provided life insurance; or single, divorced, or widowed women, who must own their own cars and provide their own auto insurance. If Congress wishes to remedy the "feminization of poverty" and the economic inequities caused by the male-female wage gap, a unisex requirement for individual insurance contracts is *not* the way to do it.

Q—2. Is it the case, as shown in a chart circulated by the National Organization for Women (N.O.W.) that the typical woman pays more for all insurance over the course of a lifetime than the typical man?

No. The chart is based on erroneous assumptions, which are set forth below in comparison with more accurate figures. The typical woman can pay as much as $8,455 less than a man for insurance over her lifetime.

N.O.W. CHART

Coverage	Cost Differential For Women	Errors
Auto Insurance	—$ 1,640	Understates impact of premium increases due to unisex; also ignores discount for women aged 30-64 offered by many insurance companies.
Medical Insurance	+$ 6,662	Ignores the fact that about 85 percent of medical insurance is provided by employers.
Disability Insurance	+$ 4,854	Ignores the fact that the majority of disability coverage is provided by employers.
Life Insurance and Pensions	+$ 5,856	Based on a Minnesota Mutual retirement income (not life insurance) policy, which is bought by employers and is atypical: only 3 of these were sold in 1982. The typical individual life policy is the whole life policy (about 75 percent of all individual policies are whole life), which costs less for women. Pension contributions are equal for men and women.)
Total	+$15,732	

ACCURATE COST DIFFERENTIAL ANALYSIS

Coverage	Cost Differential for Women
Medical *(group coverage)*	0
Disability *(group coverage)*	0
Life Insurance	
Individual	—$3,210
Group	0
Pensions *(group coverage)*	0
Automobile	—$5,245
Total	—$8,455

Q—3. Have any surveys been done to determine how women actually feel about the fairness of a unisex insurance system?

Yes. In a recent national sample survey of adults aged 18 or older conducted by Yankelovich, Skelly, and White, **81 percent of the women thought it unfair to increase premiums of young women** by even as much as $100 a year in order to achieve unisex auto insurance rates.

Q—4. Will the proposed federal unisex insurance legislation, H.R. 100 and S. 372, place any additional financial burden on employers and insurers now that the Supreme Court (in "Arizona Governing Committee v. Norris") has required gender-neutral benefits for all employer benefit plans?

Yes. In their present form H.R. 100 and S. 372 would apply *retroactively*. Thus, the legislation would require gender-neutral insurance benefits even though premiums already paid for those benefits were calculated for gender-differentiated benefits.

In Norris, the Supreme Court overturned the District Court's award of such retroactive relief, calling it "both unprecedented and manifestly unjust." The Court concluded from a Department of Labor cost study that "holding employers liable retroactively would have devastating results"—$817 million to nearly $1.3 billion in unanticipated and unfunded increased benefits annually.

Q—5. How does auto accident and driving record experience data for males compare with that for females?

Historical data show that young male drivers have twice as many accidents—and nearly 6 times as many fatal accidents—as young female drivers. Overall, male drivers have 6 times as many major convictions as female drivers, twice as many moving and 3 times as many speeding violations as female drivers, and 4 times as many suspensions and revocations as female drivers. This difference in driving records and accident propensities is the basis for women's lower cost for auto insurance.

Q—6. Do insurers take individual accident experience into account in determining auto insurance premium rates?

Yes. Currently, almost all auto insurers have merit rating programs under which accident-free drivers pay lower rates than drivers with accidents and/or convictions. Drivers are reviewed each year and their rates adjusted to reflect their accident experience. Each additional accident or conviction results in *additional* surcharges.

Q—7. How would a unisex system affect auto insurance premiums for women?

A unisex system would require that current rate classes, which are determined separately for men and women, be merged. This would mean that the new unisex premium would fall somewhere between the present female premium and the present male premium.

The new premium would be higher for women in most cases, and particularly so for women under age 25 who would experience significant increases, as much as 65 percent per year, to cover the cost of young men's higher accident rates. A state-by-state comparison compiled by the Insurance Services Office shows auto insurance premiums for women aged 19-23 would increase approximately $100-400 per year. In some individual cases, however, premium increases could be much greater. Nationally, women's auto insurance premiums would increase by $700 million annually if a unisex requirement were imposed.

Q—8. Have insurers made any efforts to reduce the higher cost of auto accident claims, which contributes substantially to young men's higher premium costs?

Yes. The insurance industry has long advocated measures aimed at reducing the frequency and severity of auto accidents. Many companies reward youthful drivers by lowering premiums for participation in driver training programs. In addition, the insurance industry is in the forefront of efforts to combat drunken driving. This year, through the efforts of the insurance industry, the National Transportation Safety Administration's effort to rescind its passive restraint (automatic crash protection) standard was overturned by the Supreme Court.

Q--9. Is a person's sex just a substitute for other relevant factors in the determination of auto insurance rates?

No. Sex is only one of numerous factors used by most auto insurers in determining rates. These other factors include the age, marital status, accident and conviction record of the drivers; the location, make and model of the automobile; the use of the car, whether for business or pleasure; whether the car is used for commuting, short or long distances; the general location where the car is garaged; and the annual mileage.

Q—10. Can mileage be substituted for sex to maintain lower auto insurance premiums for women if unisex legislation is passed?

No. Mileage simply does not account for the difference in accident experience between men and women.

Even when driving experience is broken into narrow mileage categories, accident rates are higher for young men than young women who drive the same number of miles, according to a Department of Transportation study. Data compiled in 1983 by the Insurance Institute for Highway Safety on motor vehicle death rates per person mile of travel show a large male excess of all ages after age 15.

Nor can mileage coupled with other performance-related factors be used as a substitute for sex. Extensive data show a strong independent correlation between sex and accident rates, even when all other rating factors are taken into consideration.

Q—11. Would there be other problems in using mileage exclusively to determine auto insurance premiums?

Yes. To base insurance policy premiums solely on miles driven would require accurate predictions of miles to be driven in the coming year. The source for this mileage information would be, of course, the insured person. Due to the simple inability of people to predict precisely how many miles they will drive, and the temptation to underestimate, mileage alone is not a reliable predictor.

Q—12. Is it true that only unmarried women under the age of 25 pay lower auto rates than men?

No. Many companies differentiate beyond the age of 25. In fact, most companies rate single males aged 25-29 higher than other adults. The Insurance Services Offices companies, as well as others, have reduced rates for females aged 30-64 who are sole operators of their cars, but these differentials are smaller than for drivers under age 25 because the statistical gap in accident rates between similarly situated males and females narrows substantially after age 25.

Q—13. Is it not the case that significant market disruptions have occurred, for example, in Massachusetts and Michigan, following the enactment of unisex auto insurance laws in those states?

Yes. In Michigan, women experience significant auto insurance premium increases following the adoption of a unisex requirement. In Massachusetts, although other factors along with the elimination of gender contributed to this result, after sex-based rating was eliminated, 90 percent of all youthful male drivers and 70 percent of all youthful female drivers were relegated to the residual insurance market (assigned risk and similar plans for hard-to-insure drivers).

Q—14. Is there any insurance company experience to suggest a unisex auto insurance system could be feasible?

No. Only one company, Commercial Union, has implemented a modified unisex system. However, Commercial Union's limited automobile insurance experience provides no basis for drawing conclusions about the impact of universal unisex rates.

Commercial Union's unisex policy reaches a very small segment of the United States population. The company sells, by its own estimate, only about 1 percent of all automobile insurance sold in the United States. The unisex policy makes up only 40 percent of Commercial Union's auto business—or less than .5 percent of the United States market.

Q—15. Are lifestyle factors used in addition to sex and age in life insurance underwriting?

Yes. Life insurance underwriting uses lifestyle criteria such as smoking habits, weight, physical condition, recreational activities, occupation, and family health history.

Q—16. Have any studies been done to consider whether the entire observed sex differential in life expectancy at a given time could be traced to differences in other lifestyle factors, such as smoking?

Yes. A 1979 study by the State Mutual Life Assurance Company of America, showed a 4-year male/female longevity difference among smokers and a 6-year difference among non-smokers at age 32. The results are based on 100,000 cases from 1964-1978.

Similar results were reached in a 1980 study by a doctoral candidate at the Universty of California. Deborah Wingard was studying problems of public health so her work had no connection with insurance, yet her analysis of 4,700 men and women observed over nine years showed that when 16 different lifestyle factors such as smoking were taken into account, the male-female mortality gap became wider, not narrower. Contrary to her expectations, the lifestyle factors failed to provide an alternative explanation for the male-female mortality gap.

A 1983 study of smoker/non-smoker mortality differences by the Department of Health and Human Services does suggest smoking habits may relate to the observed male-female mortality gap. However, this study is invalid for insurance actuarial purposes because its sample data are severely limited by: a small number of people, the exclusion of corresponding information on smokers and non-smokers, the exclusion of medical and other lifestyle factors and the exclusion of all persons whose deaths were caused by accident, suicide, or homicide.

Q—17. Is there a statistical reason why the insurance industry does not consider the life expectancy differences between white and non-white persons, and between various religious groups, in determining premiums and annuity benefits?

None of the factors mentioned is a significant independent predictor of life insurance losses; gender is. The male-female mortality difference in the U.S. population is dramatically larger than the racial difference, and the racial difference reflects disparities in economic status. Those minorities with more favorable economic status, who can afford to buy the most life insurance, have mortality experience significantly more favorable than that of minorities as a whole. Further, the racial mortality difference has been steadily narrowing throughout this century, while the male-female difference has been increasing, notwithstanding women's increased participation in the work force.

With regard to religious preference, the favorable mortality experience of those few religious groups for whom this experience is statistically significant is attributable to lifestyle factors, such as smoking and drinking, which are reflected in life insurance premium rates.

Q—18. How do the costs of providing health insurance differ between men and women?

For persons between the ages of 20 and 55, insurance companies pay out substantially more (overall, about one and one half times as much) in health care benefits for women as for men, even after all costs relating to maternity are excluded.

For this reason, women in the 20-55 age bracket now pay slightly higher health insurance premiums than men. However, in the 55-65 age bracket, the cost of providing health care benefits is lower for women than for men. Thus, women in that age group pay slightly lower health insurance premiums than men.

The following charts from the **Reports of the Transactions of the Society of Actuaries (1962-1980)** show the ratios of health care claim costs (the amount insurance companies pay out in health care benefits) for women to men in specific age categories during 1971-1976.

DAILY HOSPITAL BENEFIT
RATIO OF FEMALE TO MALE GRADUATED CLAIM COSTS*
(MATERNITY COSTS EXCLUDED)

Age	1971-1972	1973-1974	1975-1976
20-25	119 percent	135 percent	151 percent
25-30	154	181	167
30-35	167	179	171
35-40	164	183	161
40-45	153	171	152
45-50	132	144	130
50-55	111	119	108
55-60	93	92	90
60-65	84	81	77

Deductible, Maximum Benefit Period of 90 days.
*Per $1 of Daily Benefit.

SURGICAL BENEFITS
RATIO OF FEMALE TO MALE GRADUATED CLAIM COSTS*
(MATERNITY COSTS EXCLUDED)

Age	1971-1972	1973-1974
20-24	127 percent	139 percent
25-29	175	221
30-34	213	271
35-39	222	260
40-44	202	217
45-49	170	171
50-54	136	132
55-59	107	103
60-64	86	84

Standard Schedule, No Deductible.
*Per $100 of Maximum Benefit.

Q—19. Overall, about what percent of health insurance is provided by employer group policies in which men and women are treated identically?

About 85 percent of medical insurance is provided through employer group policies. In such policies, premiums are the same for men and women. Only about 15 percent of all health insurance is purchased in the form of individual policies, where premium costs are different between men and women to reflect the difference in costs of providing benefits to the two groups. However, people who do buy individual health policies typically do so only for short periods of time while they are out of the work force and thus not eligible for group coverage.

Q—20. What would happen if unisex rates were required to be used in determining premiums for individual health insurance policies?

For persons between the ages of 20 and 55, insurance companies pay out about 1½ times as much in health care benefits for women as for men, after all costs relating to maternity are excluded. However, about 60-65 percent of individual health insurance policies are purchased by women.

Because of the disproportionate number of women within the health insurance pool, under a unisex system in which premium costs were equalized, women's costs would be reduced somewhat, but men's costs would increase proportionately more. For example, if before unisex the women's premium was $1,000 and the men's $800, under a unisex system the new policy premium would drop somewhat, by $70, but the men's would increase by almost double that, by $130.

Q—21. Would additional market disruptions in health insurance occur under a unisex system?

Yes. Because men's premiums would increase disproportionately with respect to the utilization cost risk they represent, men would become much more profitable insureds than women. Therefore, insurers might be forced to focus their marketing on men, and women might find it more difficult to obtain individual health insurance, which for some individuals is the only source of protection against the cost of accidents and major illnesses.

Drawbacks for women

'Unisex' insurance measures misguided

Jim X. is 19, graduated from high school last year and pays a rather high auto insurance premium because young male drivers are considered poor risks. Jane Y., also 19, pays less for auto insurance because young women have fewer accidents. Is this sexual discrimination or a sound business practice?

A man and a woman working for the same amount of time in similar jobs pay equal amounts into their pension funds. However, when they retire the woman gets a smaller monthly pension because women generally live longer. Is this sexual discrimination?

The insurance industry says no, that it is following proven actuarial tables and sound business practices by calculating the risks in certain groups of individuals.

FEMINIST GROUPS call these methods discrimination and are pushing bills in Congress to change the proven ways by which the insurance industry figures its pricing and benefit structure.

Supporters of these so-called unisex insurance bills claim that they would end discrimination against women by the insurance industry.

"Insurance can be and should be based on factors that can be modified; smoking and drinking habits; weight; driving practices; life style," says Judy Goldsmith, president of the National Organization for Women. However, Goldsmith and other unisex insurance supporters are probably misguided.

BY EQUALIZING auto insurance premiums, unisex reforms would be subsidizing the lower rates that young men would pay because the young males have the worst driving records. According to the independent American Academy of Actuaries, the extra cost to women for this alone would be $700 million annually.

Additional payments of $360 million a year more for life insurance would also subsidize lower premiums for higher risk males.

The advocates of unisex insurance reforms would require an increase in women's monthly pension and annuity benefits equal to men's benefits.

The impact of such reforms could cripple the insurance industry, costing it $14.5 billion. The industry's biggest objection is the retroactive provisions in the proposals. That is, higher benefits would have to be paid to those persons who have stopped paying premiums but are now collecting benefits.

"BY DOING THIS you have to provide insurance you didn't collect premiums to provide," said Stephen Kellison, executive director of the AAA.

Morever, the impact on public retirement systems would be so great that the extra billions of dollars such reforms would cost would have to be borne by the taxpayers.

The end result of unisex reforms, we fear, is that everyone would be paying higher premiums.

Since the insurance industry is so competitive, we would rather leave insurance premiums and benefits to the give and take of the marketplace rather than subject them to so-called social

ACCIDENT INVOLVED DRIVERS, BY AGE GROUP
REPORTING PERIOD 01/01/78 THRU 12/31/78

	TYPE			
	NONINJURY	ALL INJURY	FATAL INJURY	ALL
	ACCIDENT	ACCIDENT	ACCIDENT	ACCIDENT
	TOTALS	TOTALS	TOTALS	TOTALS
AGE				
0-16	493	272	10	765
17-20	2752	1049	36	3801
21-25	3201	1208	38	4409
26-30	2515	946	19	3461
31-35	1755	581	17	2336
36-40	1147	410	11	1557
41-45	850	265	6	1115
46-50	706	247	10	953
51-55	542	199	4	741
56-60	375	129	4	504
61-70	338	114	3	452
OVER 70	59	17	2	76
UNKNOWN	2494	615	26	3109
ALL	17227	6052	186	23279

ACCIDENT INVOLVED DRIVERS, BY SEX
REPORTING PERIOD 01/01/78 THRU 12/31/78

	TYPE			
	NONINJURY	ALL INJURY	FATAL INJURY	ALL
	ACCIDENT	ACCIDENT	ACCIDENT	ACCIDENT
	TOTALS	TOTALS	TOTALS	TOTALS
SEX				
FEMALE	4534	1650	28	6184
MALE	10199	3787	132	13986
UNKNOWN	2494	615	26	3109
ALL	17227	6052	186	23279

ACCIDENT INVOLVED DRIVERS, BY AGE GROUP
REPORTING PERIOD 01/01/79 THRU 12/31/79

	TYPE			
	NONINJURY ACCIDENT TOTALS	ALL INJURY ACCIDENT TOTALS	FATAL INJURY ACCIDENT TOTALS	ALL ACCIDENT TOTALS
AGE				
0-16	547	217	4	764
17-20	2646	935	29	3581
21-25	3210	1138	20	4348
26-30	2670	884	20	3554
31-35	1952	617	10	2569
36-40	1293	372	10	1665
41-45	900	283	4	1183
46-50	716	230	4	946
51-55	616	188	4	804
56-60	391	123	3	514
61-70	315	104	1	419
OVER 70	55	23	2	78
UNKNOWN	3065	665	23	3730
ALL	18376	5779	134	24155

ACCIDENT INVOLVED DRIVERS, BY SEX
REPORTING PERIOD 01/01/79 THRU 12/31/79

	TYPE			
	NONINJURY ACCIDENT TOTALS	ALL INJURY ACCIDENT TOTALS	FATAL INJURY ACCIDENT TOTALS	ALL ACCIDENT TOTALS
[illegible]				
MALE	4798	1586	11	6384
[illegible]E	10513	3528	100	14041
UNKNOWN	3065	665	23	3730
[illegible]	18376	5779	134	24155

ACCIDENT INVOLVED DRIVERS, BY AGE GROUP
REPORTING PERIOD 01/01/80 THRU 12/31/80

	TYPE			
	NONINJURY	ALL INJURY	FATAL INJURY	ALL
	ACCIDENT	ACCIDENT	ACCIDENT	ACCIDENT
	TOTALS	TOTALS	TOTALS	TOTALS
AGE				
0-16	462	210	4	672
17-20	2528	974	15	3502
21-25	2766	1091	34	3857
26-30	2515	942	19	3457
31-35	1829	690	20	2519
36-40	1278	500	2	1778
41-45	840	289	5	1129
46-50	688	253	4	941
51-55	556	179	3	735
56-60	359	148	1	507
61-70	312	113	0	425
OVER 70	80	25	0	105
UNKNOWN	2998	637	12	3635
ALL	17211	6051	119	23262

ACCIDENT INVOLVED DRIVERS, BY SEX
REPORTING PERIOD 01/01/80 THRU 12/31/80

	TYPE			
	NONINJURY	ALL INJURY	FATAL INJURY	ALL
	ACCIDENT	ACCIDENT	ACCIDENT	ACCIDENT
	TOTALS	TOTALS	TOTALS	TOTALS
SEX				
FEMALE	4385	1743	21	6123
MALE	9828	3671	36	13499
UNKNOWN	2998	637	12	3635
ALL	17211	6051	119	23262

ACCIDENT INVOLVED DRIVERS, BY AGE GROUP
REPORTING PERIOD 01/01/81 THRU 12/31/81

	TYPE			
	NONINJURY ACCIDENT TOTALS	ALL INJURY ACCIDENT TOTALS	FATAL INJURY ACCIDENT TOTALS	ALL ACCIDENT TOTALS
AGE				
0-16	462	242	0	704
17-20	2615	1128	20	3743
21-25	2930	1327	29	4257
26-30	2591	1085	25	3676
31-35	1936	798	19	2734
36-40	1318	540	7	1858
41-45	878	395	5	1273
46-50	697	265	5	962
51-55	493	196	3	689
56-60	392	151	3	543
61-70	329	149	1	478
OVER 70	87	40	0	127
UNKNOWN	2958	628	22	3586
ALL	17686	6944	139	24630

ACCIDENT INVOLVED DRIVERS, BY SEX
REPORTING PERIOD 01/01/81 THRU 12/31/81

	TYPE			
	NONINJURY ACCIDENT TOTALS	ALL INJURY ACCIDENT TOTALS	FATAL INJURY ACCIDENT TOTALS	ALL ACCIDENT TOTALS
SEX				
FEMALE	4540	2069	26	6609
MALE	10188	4247	91	14435
UNKNOWN	2958	628	22	3586
ALL	17686	6944	139	24630

ACCIDENT INVOLVED DRIVERS, BY AGE GROUP
REPORTING PERIOD 01/01/82 THRU 12/31/82

	TYPE			
	NONINJURY ACCIDENT	ALL INJURY ACCIDENT	FATAL INJURY ACCIDENT	ALL ACCIDENT
AGE	TOTALS	TOTALS	TOTALS	TOTALS
0-16	530	337	5	867
17-20	3105	1227	23	4332
21-25	3654	1440	32	5094
26-30	3331	1254	28	4585
31-35	2646	1010	21	3656
36-40	1649	644	13	2293
41-45	1185	392	7	1577
46-50	816	317	7	1133
51-55	672	230	5	902
56-60	443	163	5	606
61-70	458	153	5	611
OVER 70	117	42	3	159
UNKNOWN	4064	549	10	4613
ALL	22720	7758	164	30478

ACCIDENT INVOLVED DRIVERS, BY SEX
REPORTING PERIOD 01/01/82 THRU 12/31/82

	TYPE			
	NONINJURY ACCIDENT	ALL INJURY ACCIDENT	FATAL INJURY ACCIDENT	ALL ACCIDENT
SEX	TOTALS	TOTALS	TOTALS	TOTALS
FEMALE	5805	2359	28	8164
MALE	12851	4850	126	17701
UNKNOWN	4064	549	10	4613
ALL	22720	7758	164	30478

ACCIDENT INVOLVED DRIVERS
BY AGE GROUP
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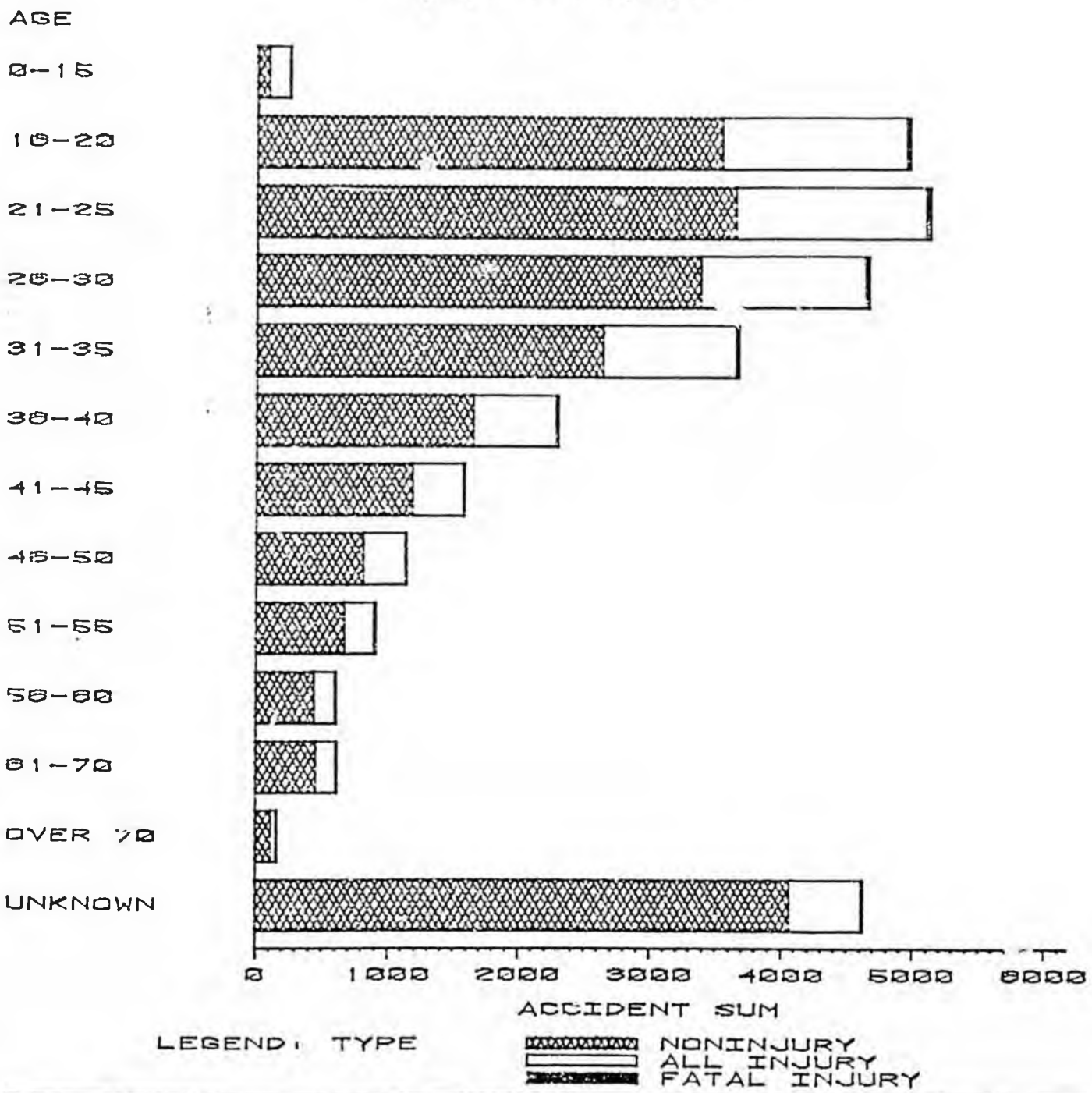

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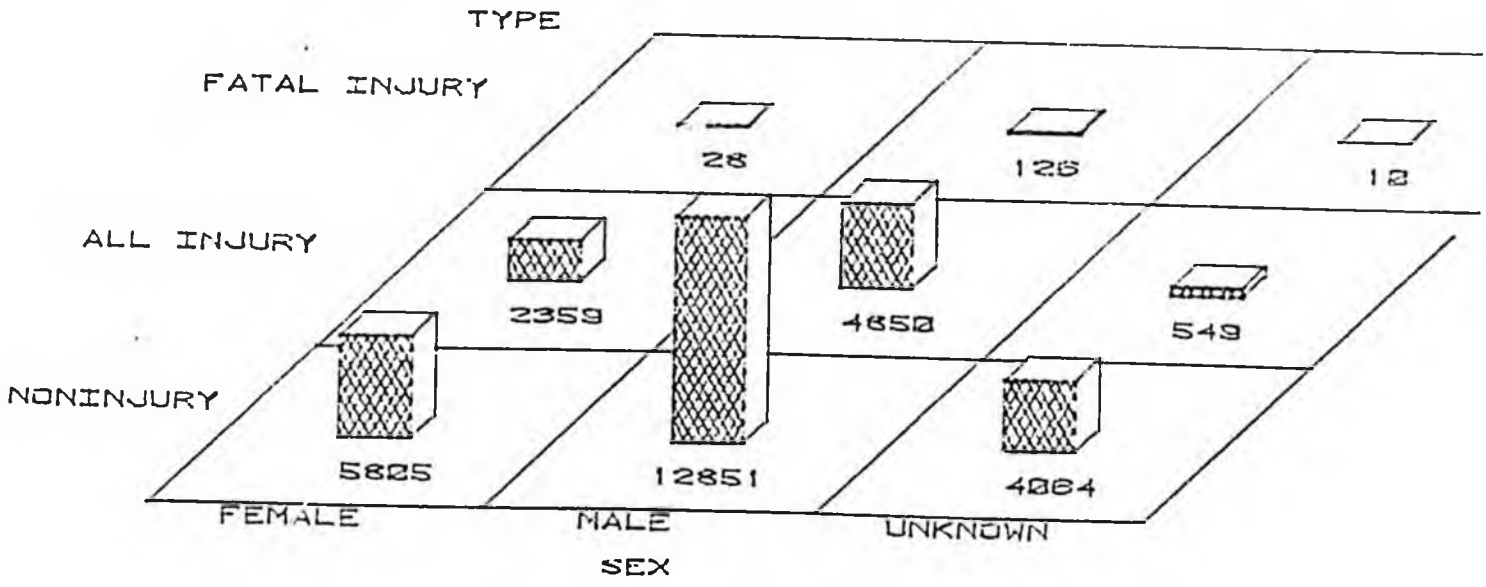

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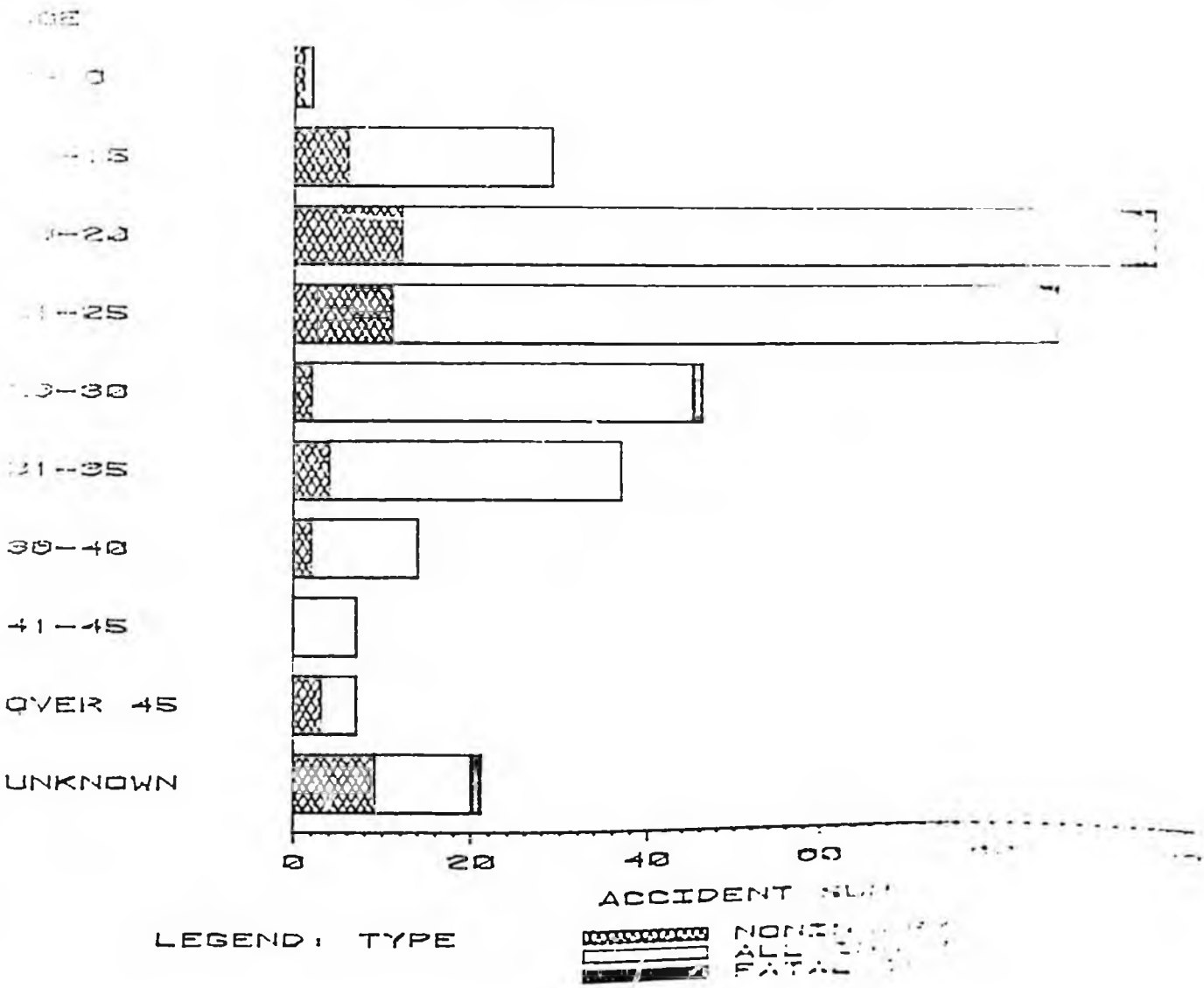

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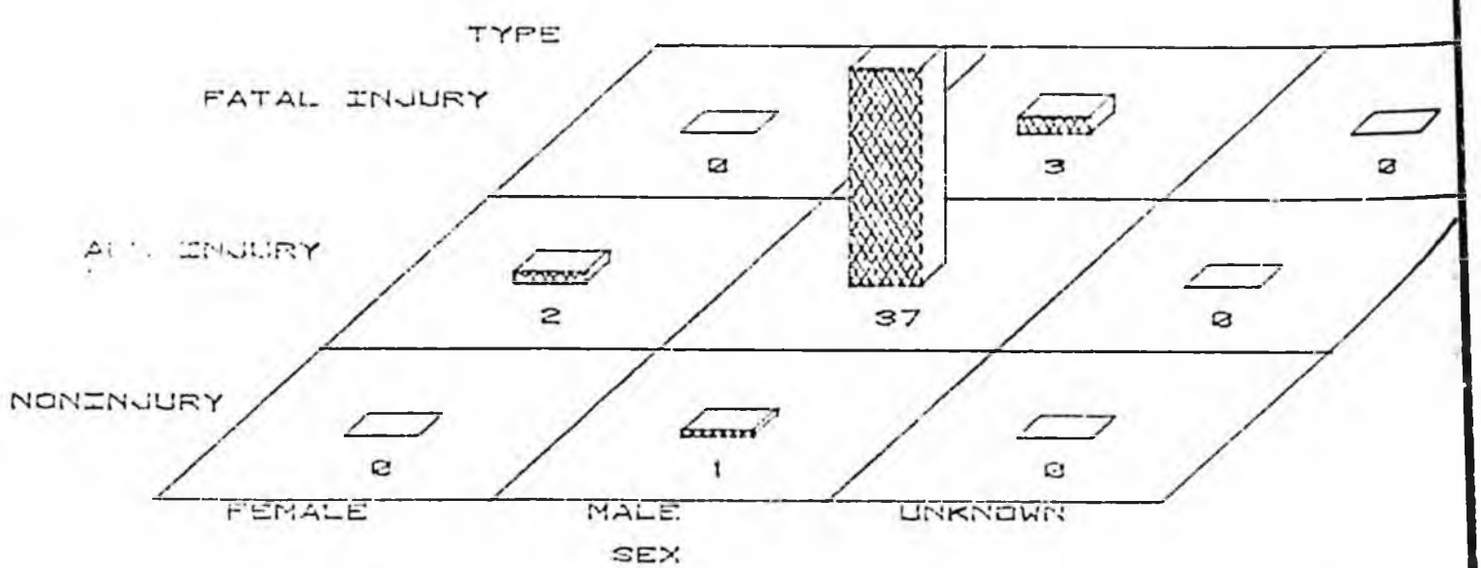

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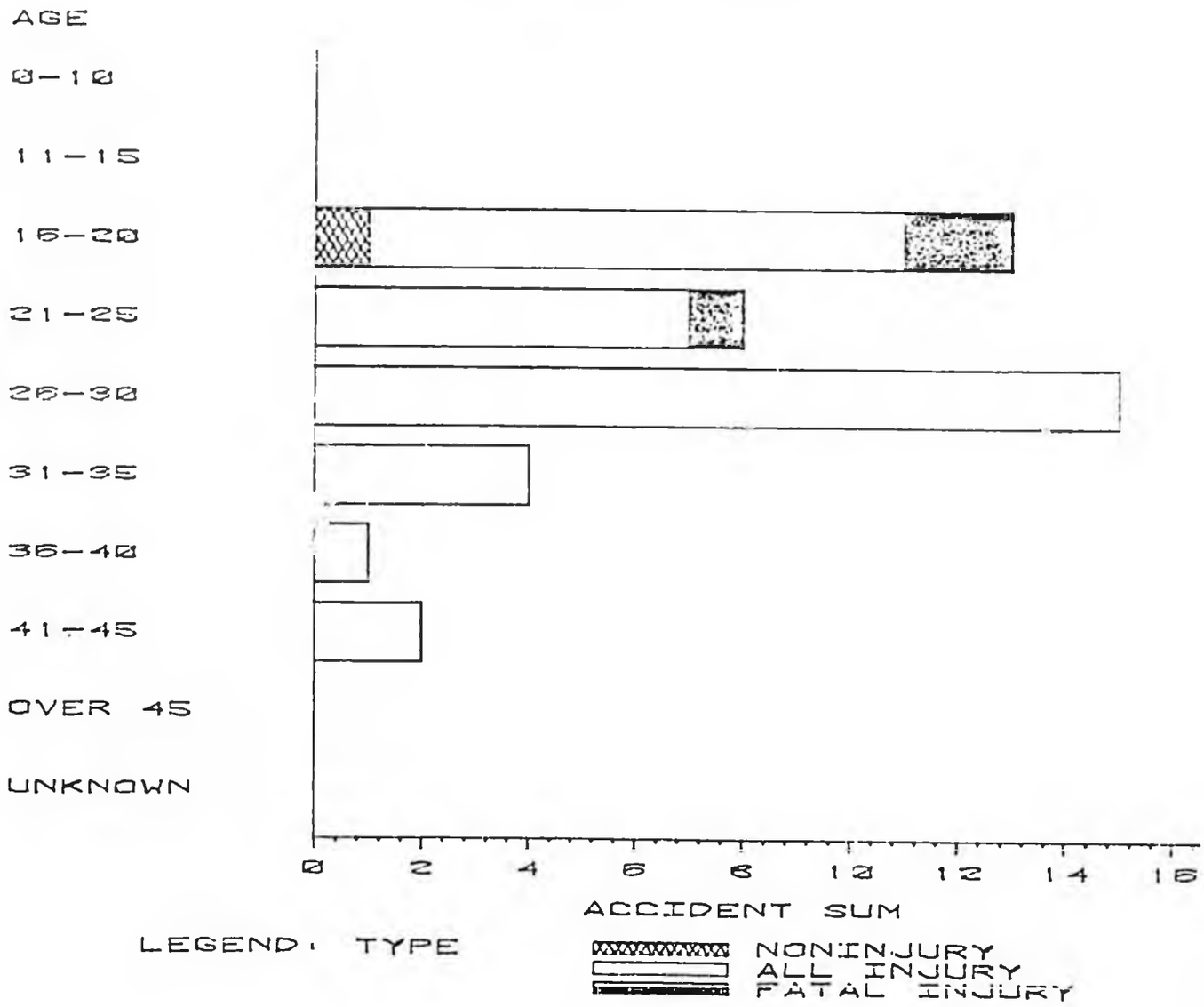

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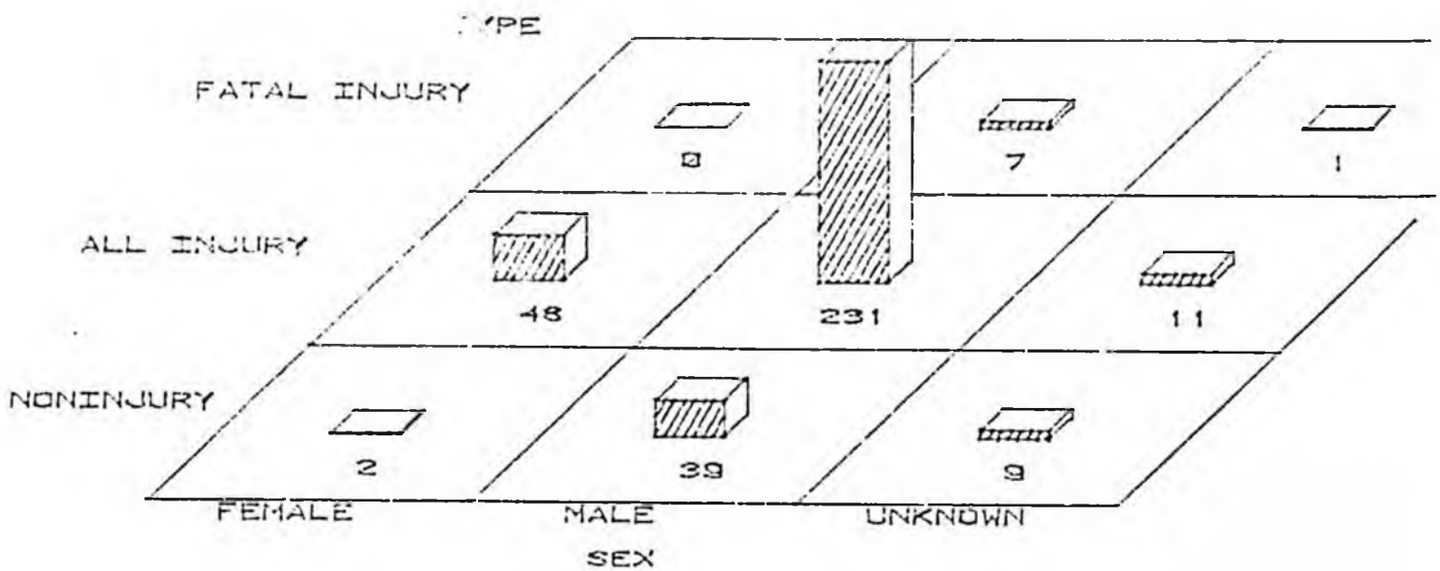

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September 26, 1985

John George, Director
Department of Commerce
Division of Insurance
Pouch D
Juneau, AK 99811

Dear John:

Pursuant to our conversation at the pool the other day, I enclose a copy of the Wall Street Journal article I mentioned to you, discussing a recent case in which the 2nd Circuit Court of Appeals upheld the use of gender-based mortality tables by the I.R.S. to establish tax liability.

Sincerely,

ROBERTSON, MONAGLE, EASTAUGH & BRADLEY

J.P. Tangen

Enclosure
cc: M.T. Thomas
dmh:jpt/c.19

paintings it sold in a lost auction and after Sotheby's sold some rare Hebrew manuscripts whose ownership was in question. Now, the watchdogs say, they are examining Mr. Taubman's bidding on masterpieces at Sotheby sales.

But it seems likely that any forthcoming revision in auction rules won't affect the sweeping change that Mr. Taubman has set in place at Sotheby's.

Paintings and Pop

"Selling art has much in common with selling root beer," says Mr. Taubman, who is also busy upgrading his 600 A & W Root Beer stands into "natural foods" restaurants. "People don't need root beer and they don't need to buy a painting, either," he explains. "We provide them a sense that it will give them a happier experience."

A longtime art collector who reportedly dropped $1 million at the first auction he ever attended, Mr. Taubman was a cherished customer when Sotheby's came looking for a white knight in 1983. The auction and real-estate company, which had just suffered its first-ever annual loss and been passed in volume by archrival Christie's, faced the unwanted takeover advances of New York investors Marshall Cogan and Stephen Swid.

Mr. Taubman quickly put together $130 million with a coterie of industrialist friends like Max Fisher and Henry Ford II and bought Sotheby's, keeping a 60% share for himself. He has had to endure art-world gossip that he did it to climb the New York social ladder with his second wife, Judith, a former Miss Israel who used to work at the front counter of Christie's. But the purchase is a culmination of many things for a driven, self-made man who has spent years building wealth and power.

An Indifferent Student

The son of German immigrants, Mr. Taubman grew up in Detroit during the Depression, an indifferent student saddled with dyslexia and a slight stutter. (He says he ironed out both impairments on his own.) At the age of 25 he started a contracting business with a $5,000 loan, and today he is the largest shareholder of the bank, Manufacturers National Bank of Detroit. He made his millions working hard and shrewdly, some say ruthlessly. After years of building hundreds of cookie-cutter gas stations and K marts and then strip malls, he made his name putting up glitzy regional shopping malls.

Creative and brash, Mr. Taubman was capable of bullying tenants and even telling Saks Fifth Avenue merchandisers on what floors he thought they should display their goods. He worried about details like how to make sure that women in high-heeled shoes would feel comfortable on tile floors in his malls, and had the tiles made small and cushioned.

As a result of his fanaticism about quality and detail, sales per square foot are twice the national average at the 20 large malls built and still run by Detroit-based Taubman Co. Mr. Taubman is the controlling owner of all the malls. His company

Please Turn to Page 18, Column 1

with airline issues hardest hit. The Dow Jones industrials fell 10.95 points to 1298.16 and the transportation index lost more than 12 points.

(Story on Page 51)

* * *

The Senate Finance Committee voted to raise the debt ceiling to $2.079 trillion. The panel also voted to end the federal revenue-sharing program, raise Medicare premium payments and to freeze the level of Medicare payments to some physicians.

(Story on Page 20)

* * *

Reagan's plan to lower the top individual tax rate to 35% from 50% was opposed by the Democratic Study Group, an influential group of liberal House Democrats.

(Story on Page 52)

* * *

Gender-based mortality tables formerly used by the IRS didn't cause unconstitutional discrimination against women, an appeals court ruled. The decision is significant for the health and insurance industries, which still use such tables.

(Story on Page 6)

* * *

Consumer credit rose $6.25 billion in July, or at a 15% annual rate, reflecting continued heavy borrowing. The increase was the second smallest of the year but still in a range most economists consider healthy.

(Story on Page 12)

* * *

An oil lease sale covering 65 million acres in the St. George Basin of Alaska's Bering Sea was postponed "indefinitely" by a federal agency due to lack of industry interest.

(Story on Page 10)

* * *

Markets—

Stocks: Volume 111,930,000 shares. Dow Jones industrials 1298.16, off 10.95; transportation 645.83, off 13.70; utilities 153.16, off 0.41.

Bonds: Dow Jones 20 bonds 79.66, up 0.06.

Commodities: Dow Jones futures index 114.17, up 0.07; spot index 111.80, off 0.38.

to the PLO. But the British prime minister, who was in Cairo, said prominent members of the PLO should be barred from a joint Jordanian-Palestinian delegation.

* * *

Perez de Cuellar called for a halt to the arms race and for fresh global efforts to bring about "a general peace." The U.N. secretary-general made his remarks at a ceremony to mark the opening of the 40th session of the U.N. General Assembly.

* * *

Afghan rebels shot down a helicopter gunship carrying an Afghan [illegible] general, a Soviet officer believed to have been a general and six other people, a main guerrilla group said. The announcement came as fighting intensified between the rebels and Soviet-backed troops in Kandahar, Afghanistan's second-largest city.

* * *

Thai police arrested four top military officers and charged them with treason for their alleged involvement in the Sept. 9 coup attempt against the government of Prime Minister Prem Tinsulanonda. One of those arrested was former Prime Minister Kriangsak Chomanand, currently the leader of the National Democratic Party.

* * *

Rival militias battled with mortars and rockets in Beirut and the Lebanese port of Tripoli. Six rockets also crashed into President Gemayel's suburban palace at Baabda. Gemayel wasn't hurt. In southern Lebanon, a leftist Lebanese militiaman reportedly blew himself up in a suicide car-bomb attack on Israeli troops.

* * *

Italian police charged a Palestinian from Lebanon with Monday's grenade attack on a crowded sidewalk cafe along Rome's Via Veneto. Officials were unable to offer a motive for the attack in which 39 people were injured, at least five of them seriously.

* * *

A U.S. judge refused to dismiss a pay-discrimination suit filed against California on behalf of women state employees, despite a recent Washington state decision against comparable worth, or equal pay for similar jobs. The California State Employees union estimates the suit affects 100,000 women. (Story on Page 20)

* * *

Died: Laura Ashley, 60, fashion designer, in Coventry, England, following a fall.

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Bank industry's tax holiday would end under Reagan plan, Page 6.

New York City's drought generates interest in water stocks, 51.

Invest makes headway in setting up brokerages for banks, 12.

More executive careers are tracked by personnel computers, 27.

"Kiddie condos" for college students lose investment appeal, 27.

Cycles of Conflict

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Wall Street Journal

September 18, 1985

Boost Banks' Bill

Sheltering Income

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would end that tax
ure banks to pay taxes on accumulated loan-loss reserves over 10 years. But banks argue it would undermine the safety and soundness of the banking system by discouraging additions to reserves. Furthermore, they say the plan is discriminatory. Losses on loans are "a basic expense to us," says Chase's Mr. Lamp. "It's like saying a manufacturer can't take depreciation on his machinery."

Because banks are steadily increasing tax-shelter activities such as leasing, they are able to roll over huge amounts of deferred taxes every year on their books. In theory these taxes must be paid sometime, but they are continually pushed into the future. For example, Morgan had nearly $250 million in deferred taxes at the end of 1984. Such deferred taxes are "an interest-free loan from the (U.S.) government," says Eli Gerver, director of tax operations at Touche Ross & Co.

Paying 'Fair Share'

Still, banks claim they are getting a bum rap on the tax issue. "Banks are, in fact, paying their fair share" of taxes, says Gordon Martin, chairman of the American Bankers Association tax committee. For instance, banks say that they accept lower yields on municipal bonds than on taxable investments; this, they say, amounts to a subsidy of state and local governments.

And the bankers' association says that banks are taxed indirectly when they are required to leave money on deposit with the Federal Reserve System without getting paid interest. The federal government earned $2.2 billion in 1983 on those funds, the bankers' group says.

Because of these subsidies to government, banks paid the equivalent of a 43% tax rate in 1983, one of the highest rates of any industry, according to the Bank Administration Institute, a trade group.

Women Aren't Victims of Illegal Bias Because of Mortality Tables, Court Says

By Michael Sicolfi
Staff Reporter of The Wall Street Journal

NEW YORK—The gender-based mortality tables formerly used by the Internal Revenue Service didn't cause unconstitutional discrimination against women, a federal appeals court ruled.

The tables, based on the different life expectancies of men and women, were used until late 1983 to determine, for tax purposes, the value of trusts used in estate planning.

The ruling isn't any longer meaningful for the IRS, which started using sex-blind tables in December 1983. But lawyers said the decision is significant for the health and insurance industries, which currently use such tables. The decision buttresses the views of insurance companies, which currently are allowed to set different rates for men and women.

In a 2-1 decision, the three-judge appellate panel reversed a lower court's 1983 ruling that the tables were unconstitutional. If the lower court's decision had been upheld, some lawyers said, it could have forced insurance regulators to ban sex differentiation in insurance premiums and benefits. Appellate decisions by the Second Circuit here are considered important because they often are followed by appeals panels in other jurisdictions.

The IRS tables "realistically reflect the fact that men and women have different average life expectancies" and aren't based on "demeaning generalizations" or stereotypes, the appeals panel majority said.

The suit was filed against the IRS by Manufacturers Hanover Trust Co. as executor for the estate of Charlotte C. Wallace, a Manhattan resident who established a trust in 1923 and died in 1976 at age 88.

Mrs. Wallace received income from the trust during her lifetime and named her son to receive the income after her death. She retained a reversionary interest in the trust in case her son died before she did. The son outlived her, however, and the IRS ruled that the reversionary interest became part of his mother's estate after her death. Using the separate-sex tables resulted in a tax liability of $450,000 on the reversionary interest, a liability that Manufacturers Hanover had sought to recover.

Robert E. Crotty, a lawyer for Manufacturers Hanover Trust Co., a unit of Manufacturers Hanover Corp., New York, said he was disappointed at the decision and was considering appealing to the full appellate court.

The appeals panel said that while the tables treated men and women differently, "there is nothing unconstitutional about the challenged practice." There wasn't an evidence, the court added, that the separate-sex tables placed women as a class at a disadvantage—or advantage—compared with men as a class.

But in a dissenting opinion, Judge John O. Newman said the tables "produce a disadvantage to a class identified solely on the basis of gender" and therefore are unconstitutional.

Larry Lorber, a Washington employee benefits lawyer, said the ruling will give "added impetus" to pending congressional legislation that would ban sex discrimination in setting insurance premiums.

Ensource Reports Oil Find

DENVER—Ensource Inc. said it discovered oil in Williams County, N.D. The oil and gas concern said the well flowed at [illegible] barrels of oil a day through a 20/64-inch opening at depths between 9,420 and 9,440 feet in the Mississippian Rival formation. Ensource owns a 21% working interest in the well. Mobil Oil Corp., the operator, owns a 51% interest. Five companies, which Ensource refused to disclose, own the remaining 28%.

AMERICAN COLLEGE OF NURSE-MIDWIVES,
ALASKA CHAPTER

April 20, 1986

Members
House of Representatives
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Representative Miller

For your information, I am forwarding a copy of my written testimony to Mike Miller, Chairman, Judiciary Committee regarding liability insurance for certified nurse-midwives. Feel free to contact me for any questions.

Sincerely,

Marilyn Pierce-Bulger, CNM

Marilyn Pierce-Bulger, CNM
Chairman, Alaska Chapter
American College of Nurse-Midwives
Box 9416 Hiland Road
Eagle River, Alaska 99577
wk 265-9245 hm 694-6076

AMERICAN COLLEGE OF NURSE-MIDWIVES,
ALASKA CHAPTER

April 20, 1986
Representative M. Mike Miller
Chairman, Judiciary Committee
House of Representatives
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Representative Miller:

I am writing to request your support for HB 522, the CS version transferred to you from Labor and Commerce. This bill contains an amendment which would make it possible for certified nurse-midwives (CNM's) to obtain liability insurance from the Medical Indemnity Corporation of Alaska (MICA).

Certified nurse-midwives lost their liability insurance nationwide as of July 1985. (See enclosed congressional testimony entitled "Professional Liability Insurance for Certified Nurse-Midwives - Cost and Availability.") The national organization, the American College of Nurse-Midwives (ACNM) is trying to form its own insurance company but faces many obstacles. It is clearly going to take many months before a new program is in place. The certified nurse-midwives in Alaska do not have 'many months' before current policies expire.

Of the 29 certified nurse-midwives in Alaska, 13 are in clinical practices that include deliveries. Eight percent (1,048) of Alaskan births were attended by CNM's in 1985. Practices vary with one CNM attending 28% of the births at the Alaska Native Medical Center and four CNM's attending 15-18% of the births at Humana Hospital in Anchorage.

Three of the four CNM's with privileges at Humana face an uncertain future as their temporary liability policies will expire by September 30th. Their collaborative physicians do not carry liability insurance so these nurse-midwives do not have the option of being covered under the physician's 'umbrella' policy.

Two CNM's in Homer and a new CNM in Kenai are 'going bare' because they have no other options.

The Juneau CNM plans to close her practice this July unless an alternative liability policy becomes available.

Certified nurse-midwives did not lose their master policy due to high lawsuit rates among the membership. As I am sure you are aware, there is a general crisis in the entire liability insurance industry and we have simply become one of its victims. In the last 10 years only six percent of the national membership has been sued. In contrast, 60% of the nation's obstetricians have had suits brought against them.

Insurance companies view us as a risk because we deliver babies and the long statute of limitations (21 years) makes it impossible for a company to predict its losses. In our favor is the fact that we are the experts of 'normal' childbirth. We have stringent criteria upon which we base our selection of clients and we consult and refer to collaborative physicians as needed. We are held to the highest medical standards or face de-certification if we do not meet them.

I find it ironic that certified nurse-midwives are being 'penalized 'for their expertise in obstetrics and midwifery while the State passes legislation sanctioning lay midwifery that essentially allows lay midwives to practice with little interference or supervision.

Certified nurse-midwives have been providing Alaskan consumers a valuable, safe service for over 10 years. We want to continue to serve Alaskan women and infants but are facing our greatest professional challenge as the lack of liability insurance threatens our very existance. We find it practical and in the best interest of clients to cover ourselves with liability insurance. Please give your support to HB 522 with its attached MICA statute amendment. Our clients will thank you!

Sincerely,

Marilyn Pierce-Bulger, RN CNM

Marilyn Pierce-Bulger, RN, CNM
Chairman, Alaska Chapter, ACNM
Box 9416 Hiland Road
Eagle River, AK 99577
wk 265-9245 hm 694-6076

Enclosures
cc: Members, House Judiciary Committee & House of Representatives

Professional Liability Insurance for Certified Nurse-Midwives: Cost and Availability

United States Senate
Committee on Commerce, Science
and Transportation
March 4, 1986

As a result of the unavailability of insurance from the private sector, the establishment of an insurance company providing professional liability coverage is the only option available to nurse-midwives. Without this company, nurse-midwives will be forced to end their services to mothers and children across the United States. Birth centers will close and private practitioners will seek other livelihoods.

Background on ACNM

The American College of Nurse-Midwives (ACNM) is the professional organization for nationally certified nurse-midwives (CNMs) in the United States. There are approximately 2,500 members of the ACNM, representing close to 85% of the profession. A full 95% of the members carry some type of professional liability insurance coverage.

Certified nurse-midwives are highly trained health professionals. Educated in both nursing and midwifery, they are specialists in maternal and child health care. They are licensed in all fifty states and provide care to the healthy woman before, during and after childbirth. They are experts in normal gynecologic and family planning care. Each member of the College has been officially certified through a national written examination.

CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

Professional Liability Insurance for Certified Nurse-Midwives. Cost and Availability

United States Senate
Committee on Commerce, Science
and Transportation
March 4, 1986

Good morning. My name is Karen Ehrnman and I represent the American College of Nurse-Midwives (ACNM). I have been invited to share with you the difficulties which certified nurse-midwives have in obtaining professional liability insurance coverage.

This testimony will chronicle the extensive yet unsuccessful steps the College has taken on behalf of its members to obtain professional liability insurance. Additionally, I shall describe the obstacles resulting from the decision made by the College to study our options to assist nurse-midwives in establishing an independent mutual insurance company.

The impact of this situation on America's small business community is twofold: approximately one-third of our members are in private practice; another segment of our membership either owns or provides most of the health care in the nation's 140 birth centers. Until now, accredited birth centers have been a success story in the small business world. During the first three years of their operation, only eight to ten percent of these centers fail. By contrast, twelve centers have closed in 1985 -- largely as a result of an inability to obtain professional liability insurance.

As a result of the unavailability of insurance from the private sector, the establishment of an insurance company providing professional liability coverage is the only option available to nurse-midwives. Without this company, nurse-midwives will be forced to end their services to mothers and children across the United States. Birth centers will close and private practitioners will seek other livelihoods.

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The nurse-midwives work in a variety of settings -- such as private practices, university teaching hospitals, city hospitals, rural outreach centers, group health maintenance organizations, and health departments. Nurse-midwives deliver about three percent of the births in the United States. Approximately 75% of the births attended by certified nurse-midwives occur in hospitals, and another 15% occur in accredited birth centers.

Certified nurse-midwives work in clinical collaboration with physicians. ACNM standards require members to have an alliance agreement and health care protocols with a physician in order to practice. These agreements and protocols establish mechanisms for consultation and referral when complications arise.

ACNM also has reached a formal agreement outlining acceptable guidelines for working relationships with the American College of Obstetricians and Gynecologists.

Details of the Current Insurance Crisis

Since July, 1984, about 1400 CNMs have had professional liability insurance under a blanket ACNM policy written by the Mutual Fire, Marine and Inland Insurance Company. The remaining 1100 members of the College are

insured by their employers -- hospitals, health maintenance organizations, etc.

Mutual Fire notified ACNM in May, 1985 that the policy would not be renewed on July 1, 1985. ACNM's insurance was not renewed because of general conditions in the insurance industry -- the unavailability of reinsurance -- and not because of its members' professional performance. Suits have been filed against only six percent of all nurse-midwives -- a number not considered high among medical professionals. By comparison, 66.9 percent of obstetricians have been sued at least once according to the American College of Obstetricians and Gynecologists. In addition to the non-renewal of the blanket policy, over 300 individual certificates of insurance were cancelled this past July. These cancellations accounted for all of the individual certificates of insurance written after December 31, 1984; the remaining 1100 policies expired by December, 1985.

History of Insurance Coverage

Since the early 1970's, the American College of Nurse-Midwives has been able to obtain for its members a group policy that would pay up to one million dollars per claim. This one million dollar amount of insurance is the

amount which many hospitals require nurse-midwives to purchase in order to qualify for hospital privileges. It is this amount of insurance we want to make available to our members today.

Mutual Fire Marine and Inland Insurance was the third insurance carrier the ACNM has worked with in the past three years. The change in companies has been the result of three separate situations: 1) the inadequacy of the premium rate charged by one company; 2) the second company's withdrawal from the medical malpractice market; and 3) the nonrenewal of the reinsurance treaties for our most recent policy.

Steps Taken to Obtain New Insurance Policy

Early this year when ACNM received word that obtaining the master insurance policy might be difficult, we selected a "seasoned" broker with an excellent history of obtaining professional medical liability insurance. We believed that our broker understood what nurse-midwives are and that he would "market" us appropriately to the insurance industry. In search of a replacement for Mutual Fire we contacted 17 insurance companies in the United States. We were told that this represented most carriers in the U.S. who write professional liability

insurance. We were turned down by all of these companies.

After these 17 formal rejections from major insurance companies, ACNM made personal appeals to several insurance company presidents. We did this for several reasons: to better inform them about the relatively low risk that certified nurse-midwives would place upon their companies; to understand their reason for not insuring nurse-midwives; and to be certain that our request for insurance had been given a full evaluation. The response was still "no".

The American College of Nurse-Midwives again wrote to each of these 17 company presidents asking them to reexamine the decision. Many of these letters went unanswered. The message was clear -- no insurance.

Judging from the response we received from these insurance companies, we learned that many insurance companies had simply stopped writing malpractice policies. We also learned that within the speciality area of obstetrics, a crisis within a crisis was occuring. Insurers claim that the large premium increases which obstetricians and others are experiencing are necessary because of loss of profit resulting from unexpected

large numbers of claims and skyrocketing awards. What was never actually said -- but implied -- was that the premium levels necessary to cover CNMs would be beyond the reach of professionals making an annual salary of $25,000. Therefore, they offered no coverage at all.

But consumer groups, such as the National Insurance Consumer Organization (NICO), have accused the insurance industry of using misleading statistics in claiming a loss in 1985. Instead, NICO suggests the insurers have earned $6.6 billion. The ACNM is not an insurance analyst; we do know that nurse-midwives are not part of the malpractice insurance problem because of our very low rate of suits. We believe that it would have been possible for an insurance company to write a policy for nurse-midwives at a reasonable rate and based upon sound actuarial data. In fact, as I shall discuss later in this testimony, our plan is to do just that -- to establish an independent mutual insurance company which will underwrite CNMs at a reasonable rate.

State Level Initiatives

Our next course of action was to send nurse-midwives to talk with professional liability insurance companies in their states. The response was still "no". Nurse-

midwives talked to governors, state legislators, and state insurance commissioners. To date only one state out of fifty -- New Jersey -- has been able to offer insurance from a private carrier.

Still focusing at the state level, nurse-midwives investigated joint underwriting authority (JUA) and lobbied state legislators to extend joint underwriting authority to include nurse-midwives. We have been successful in implementing this in a number of states. However, for the most part, either the premiums for this coverage have been excessive or the amount of insurance offered has been less than required.

Other Considerations

As we evaluated the situation, nurse-midwives had little hope of obtaining affordable insurance from either the traditional insurers or the state JUAs. While these two options had been under consideration, the College's Board of Directors also commissioned a feasibility study on various options for self-insuring. Although this study indicated that it would be "feasible" for nurse-midwives to form an insurance company, the Board of Directors decided last summer that the insurance business

was beyond the limited resources of nurse-midwives. The Board directed the staff of ACNM to look into working with other groups to self-insure or to join another group's self-insure program. The response to these inquiries was also "no", although ACNM continues to communicate with the American Nurses' Association (ANA) about forming a company for all nurses.

Another option involved asking Congress to consider establishing a nurse-midwife sponsored insurance program. At that time we had interested a primary insurer in writing the first layer of insurance coverage. That company would have written the first $100,000 of coverage and the federal government would have provided the excess coverage from $100,000 tc one million dollars. Even as we discussed this with members of Congress, however, the primary insurer had a change of heart.

The Re-examination of Self-Insure

Consideration of all of the options discussed up to this point utilized an enormous amount of resources. The process also strengthened the resolve of the leaders of the profession that searching for insurance could not become an annual event. Therefore the College's Board of

Directors sought a second opinion on the self-insure options. This second evaluation confirmed the earlier one. In December, 1985, the Board of Directors decided to further study this option.

Forming an Insurance Company

The emotion which accompanied the decision to study helping certified nurse-midwives form an independent mutual insurance company was short-lived. Even after hiring consultants and attorneys, the road blocks before us are enormous.

Disregarding the very difficult financial problems, the following are some of the legal and technical complications which hinder the establishment of a company.

The Claims-Made Policy

One technical problem is the type of policy currently being written -- a claims-made policy. In the past professionals have been able to purchase occurrence policies. There is a very important distinction between these two types of policies -- a distinction which is critical to nurse-midwives as well as physicians.

An occurrence policy insures for all claims arising out of events which occurred during the covered

period regardless of when the claim is filed. A claims-made policy insures only those claims which are filed during the policy year no matter when the event occurred. Does it matter? Yes.

For example, under an occurrence policy issued in February 1986 - February 1987, the nurse-midwife would be covered for any claim related to a delivery during this calendar year, even if the family did not file the claim until the child entered elementary school or even college. A claims-made policy, on the other hand, would only cover those claims filed during the February 86 - February 87 calendar year. To be covered for claims filed after this time period the professional must purchase "tail coverage".
What further complicates all of this is that in this insurance market it is impossible to buy a "tail" for 21 years -- the coverage that nurse-midwives and obstetricians need. In addition, insurance companies will not quote a price on a "tail" until it is needed, but we have been told it is likely to be two to three times the cost of a one year premium -- and can be more. We have been told by the insurance industry that primary insurers are switching to claims-made policies be-

cause reinsurers will not write occurrence policies. Reinsurers argue that it is easier to anticipate costs with a claims-made policy.

Regulatory Roadblocks in Forming an Insurance Company

Simply stated, we have been informed by our legal counsel that under the insurance laws of virtually all of the states, a new insurance company could not write insurance unless it became licensed in each of these states. This is a costly and time-consuming process that takes several years -- time we simply do not have. Also, the capital requirements of a few of the states exceed even our collective resources. Our legal counsel has reviewed the situation to see if exemptions from this licensing process exist, but none is available to us due to the number, size and geographic spread of our membership.

In 1981, Congress realized that this almost identical problem existed for small businessmen affected by the lack of product liability insurance, when it enacted the Risk Retention Act. This Act allowed groups of business to form risk retention groups to collectively insure the product liability risks of the members of the group without first becoming licensed as an insurer in any

jurisdiction other than that of the domicile of the risk retention group itself. In 1985, Congress again realized that a similar problem existed when the House and the Senate passed an almost identical bill (which is part of the Super Fund legislation now before Congress) to provide for risk retention groups for environmental impairment liability insurance.

We ask you to provide us with the same type of legislation to permit formation of a risk retention group for professional liability insurance for nurse-midwives and birthing centers.

Nurse-midwives Current Status: Temporary Insurance Coverage

In considering practicing without insurance, most CNMs, as well as most physicians, feel both a moral and practical obligation to protect their patients and themselves from any unintentional human error. In addition, many CNMs must carry professional liability insurance to retain their employment and/or hospital privileges.

In an attempt to keep practicing, most of our members purchased insurance during this past year from one of two

nursing groups whose policies did not include an exclusion of nurse-midwives. These organizations are the American Nurses' Association (ANA) and the Nurses' Association of the American College of Obstetricians and Gynecologists (NAACOG). The insurers of both of the groups have subsequently written into the policies exclusions of nurse-midwives. An informal survey of our membership indicates that this temporary coverage will begin to run out this spring and by next December no CNMs will have insurance if not provided by their employers or state JUA.

Requested Actions

I am certain you will agree with us that the formation of the insurance company over the next few months is critical. Congress can help. We urge Congress to: amend the 1981 Risk Retention Act; address the problem of the unavailability of reinsurance; and establish the availability of occurrence-type policies.

1) Amend the 1981 Risk Retention Act:

An expansion of this law to allow groups such as ours to establish an insurance company is essential. The idea we seek to implement is after meeting the requirements in a selected state for establishing the company, the company would be able to write insurance in all fifty states. This is the

only way that we will be able to offer insurance to our members in all fifty states.

2) Address the problem of reinsurance unavailability:

Our problem began when Mutual Fire's reinsurance treaties were not renewed. Since then we have heard many insurers state that their capacity to write insurance is limited by the unavailability of reinsurance. A new company also cannot get reinsurance and this substantially increases both short and long term financial risks.

In this regard, the American College of Nurse-Midwives urges you to make reinsurance available. This could be done by legislating the plan for federally-based reinsurance which has been drafted by the National Insurance Consumers Organization, investigating U.S. business practices and legislating changes to encourage the establishment of U.S. owned reinsurance companies.

3) Make occurrence policies available.

Nurse-midwives cannot purchase an occurrence policy. Additionally, in studying the possible formation of a new company, we have been advised that

this company would also have to write a claims-made policy. The reason is that reinsurers will only reinsure the claim-made type policy. This situation must be changed.

Lastly, we need this assistance quickly. Although some private practices and birthing centers have already gone out of business, by spring the vast majority of these small businesses will be vulnerable. Thank you for your support and interest in this problem.

AMERICAN COLLEGE OF NURSE-MIDWIVES

ALASKA CHAPTER, Box 9416 Hiland Road, Eagle River, AK 99577

September 1985

We, the undersigned, support the profession of nurse-midwifery and ask that our elected officials give their support to any legislation intended to help resolve the problem of nurse-midwives' loss of malpractice insurance coverage.

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