

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 1214

05-0009-0119

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 10-22
DATE FOR REVIEW 10-31
DATE DUE 11-5

Adopted w/a hearing _____
Adopted w/o hearing _____
Temporary rule _____

Approved 11-5 JMM Disapproved _____ Returned to Agency _____

Resubmitted _____ Due _____
Approved _____ Disapproved _____ Returned to Agency _____

Date filed w/Secretary of State _____ Revisor approved 10/23/85
disapproved _____

✓ Rule as Adopted

_____ Rule as Proposed

✓ Order Adopting 9.25.85 Date

✓ Notice of Intent to Solicit Outside Opinion SR. 6.18.84 + Comments

✓ Order for rulemaking
N/A date of Hearing

N/A Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
✓ Sufficiency includes small biz statement

✓ Affidavit of Mailing Notice or rulemaking
3.28.85 At least 30 days prior to ~~hearing~~/adoption

✓ Mailing list Certificate

✓ Publication in State Register
4.1.85 At least 30/~~20~~ days prior to ~~hearing~~/adoption

N/A Hearing Examiner's Report

_____ Chief Hearing Examiner's Report(s)
_____ Approving H.E.'s Report
_____ Approving agency action

_____ Agency's Findings of Fact

_____ LCRAR Report or agency Affidavit

_____ Certificate of Board's Resolution Adopting Rules

_____ Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness includes small biz statement

N/A Petition for Adoption of a Rule

✓ Record (includes transcript or tape, exhibits, comments received by agency, requests for a hearing, and other relevant materials)

✓ Certificate of Compliance w/Rulemaking Procedures

✓ Affidavit of ~~Mailing~~ Notice of Submission to Attorney General

N/A Notice of Submission to the Attorney General

SF-00006-03

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO: MICHAEL A. HATCH
Commissioner of Commerce

DATE: 11/12/85

ATTN: RICHARD G. GOMSRUD
Department Counsel

FROM: J. MICHAEL MILES JMM
Assistant Attorney General

PHONE: 296-6555

SUBJECT: In the Matter of the Proposed Adoption of Rules Relating to Sex Discrimination in Insurance Contracts

The above-referenced rule has been approved as to its legality by the Attorney General on November 5, 1985.

Enclosed is the agency's copy of the approved rule. This office has already filed two copies of the approved rule with the Secretary of State, who will forward one copy to the Revisor of Statutes. The fourth copy is being retained by this division of the Attorney General's Office for its records.

Also enclosed are any petitions, requests, submission or comments received by the agency and any extra copies of documents which the agency submitted to the Attorney General.

In order for a permanent rule without a hearing to become effective, your agency must publish a notice of adoption in the State Register in accordance with Minn. Stat. § 14.27. An emergency rule becomes effective five working days after approval by the Attorney General; however, the agency must publish a notice in the State Register in accordance with Minn. Stat. § 14.34.

If you have any questions in this regard, please contact me.

JMM:pmf

Enclosures

cc: Maryanne Hruby
Executive Director
Legislative Commission to Review
Administrative Rules

Duane Harves
Chief Administrative Law Judge
Office of Administrative Hearings

SF-00006-04

DEPARTMENT : of Commerce

PHONE : 296-5689

DATE : 10/21/85

TO : Judith Wehrwein

STATE OF MINNESOTA

Office Memorandum

FROM : Richard G. Gomsrud
Department Counsel

SUBJECT : Sex Discrimination Rules

Enclosed are copies of the following materials regarding the above captioned rules (only those items with a circled number are enclosed):

1. Notice of Intent to Solicit Outside Opinion (2000.0400 subpart 1 B)
2. Written material received as a result of Notice to Solicit Outside Opinion (2000.0400 subpart 1 B)
3. Mailing List Certificate (2000.0400 subpart 1 E)
4. Statement of Need & Reasonableness (2000.0400 subpart 1 G)
5. Order for Notice of Intent to Adopt Rule Without Public Hearing (2000.0400 subpart 1 C)
6. Notice of Intent to Adopt Rule Without Public Hearing (2000.0400 subpart 2)
7. Affidavit of Mailing Notice of Intent to Adopt Rule Without Public Hearing (2000.0400 subpart 3)
8. Copy of Notice of Intent to Adopt Rule Without Public Hearing and rules as published in the State Register (2000.0400 subpart 4)
9. Written Comments on Rule (2000.0400 subpart 1 I)

~~10.~~ Findings of Fact (if applicable) (2000.0400 subpart 1 F)

~~11.~~ Affidavit of Mailing Notice of Submission to Attorney General (2000.0400 subpart 1 K); or

12. Affidavit that no request for Notice of Submission to Attorney General were received

13. Original and three copies of Rule as adopted (2000.0400 subpart 5)

14. Two copies of the Order Adopting Rule (2000.0400 subpart 6)

15. Certificate of Compliance With Rulemaking Procedure (2000.0400 subpart 1 J).

AG copy

Department of Commerce

Adopted Rules Prohibiting Sex Discrimination in Insurance Contracts

Rules as Adopted

2735.0100 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of parts 2735.0100 to 2735.0500, the terms defined in this part have the meanings given them.

Subp. 2. **Contracts.** "Contracts" means any insurance policy, plan, group contract certificate, or binder, including any rider or endorsement offered by an insurer.

Subp. 3. **Insurer.** "Insurer" means any insurance company, association, reciprocal or interinsurance exchange, nonprofit hospital plan, nonprofit professional health service plan, health maintenance organization, fraternal benefit society, or beneficial association.

2735.0200 PURPOSE.

The purpose of parts 2735.0100 to 2735.0500 is to eliminate the act of denying benefits or coverage on the basis of sex or marital status in the terms and conditions of insurance contracts and in the underwriting criteria of insurance carriers.

2735.0300 AUTHORITY.

Parts 2735.0100 to 2735.0500 are adopted pursuant to Minnesota Statutes, sections 45.023; 72A.20, subdivision 16; and 72A.19, subdivision 2.

2735.0400 APPLICABILITY AND SCOPE.

Parts 2735.0100 to 2735.0500 apply to all contracts delivered or issued for delivery in this state by an insurer on or after the effective date of these parts, to all existing group contracts which are amended on or after these parts, and to all group insurance policies or group subscriber contracts that provide coverage for Minnesota residents enrolled

thereunder.

2735.0500 AVAILABILITY REQUIREMENTS.

Availability of any insurance contract shall not be denied to an insured or prospective insured on the basis of sex or marital status of the insured or prospective insured. The amount of benefits payable, or any term, condition, or type of coverage shall not be restricted, modified, excluded, or reduced on the basis of the sex or marital status of the insured or prospective insured except to the extent the amount of benefits, term, condition, or type of coverage vary as a result of the application of rate differentials permitted under Minnesota law. However, nothing in this part prohibits an insurer from taking marital status into account for the purpose of defining persons eligible for dependent benefits. Practices prohibited by this part include but are not limited to the following:

A. denying coverage to females gainfully employed at home, employed part time, or employed by relatives when coverage is offered to males similarly employed;

B. denying policy riders to females when the riders are available to males;

C. denying maternity benefits to insureds or prospective insureds purchasing an individual contract when comparable family coverage contracts offer maternity benefits;

D. denying, under group contracts, dependent coverage to husbands of female employees, when dependent coverage is available to wives of male employees;

E. denying disability income contracts to employed women when coverage is offered to men similarly employed;

F. treating complications of pregnancy differently from any other illness or sickness under the contract;

G. restricting, reducing, modifying, or excluding benefits relating to coverage involving the genital organs of only one sex;

H. offering lower maximum monthly benefits to women than to men who are in the same classification under a disability income contract;

I. offering more restrictive benefit periods and more restrictive definitions of disability to women than to men in the same classifications under a disability income contract;

J. establishing different conditions by sex under which the policyholder may exercise benefit options contained in the contract; and

K. limiting the amount of coverage an insured or prospective insured may purchase based upon the insured's or prospective insured's marital status unless the limitation is for the purpose of defining persons eligible for dependent benefits.

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
NOV 12 1985
Joan Anderson Growe
Secretary of State
8:55AM

APPROVED AS TO FORM AND LEGALITY

11/5 1985

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY _____
ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

In the Matter of the Proposed Adoption of Rules Relating to Sex Discrimination in Insurance Contracts

ORDER ADOPTING RULES

Notice of the Commissioner's intent to adopt the above-entitled rules without a public hearing was published in the State Register on April 1, 1985 and was sent by the United States mail to all persons on the list maintained by the Department of Commerce pursuant to Minnesota Statutes Section 14.14, subd. 1a, on March 28, 1985.

After affording interested and affected persons an opportunity to submit comments for 30 days after Notice, receiving fewer than twenty-five (25) written requests for a public hearing within the 30-day comment period, reviewing and considering the comments, and determining the need for and reasonableness of the above-captioned rules.

NOW, THEREFORE, IT IS ORDERED that these rules identified as the Rules Relating to Sex Discrimination in Insurance Contracts are adopted this 25th day of September 1985 pursuant to authority vested in me by Minnesota Statutes Section 72A.19, subd. 2.

MICHAEL A. HATCH
Commissioner of Commerce

State of Minnesota
Department of Commerce

Notice of Intent to Solicit Outside Opinion Regarding Proposed Rules Relating to Discrimination Based on Sex or Marital Status including the Impact of the Rules on Small Businesses

Notice is hereby given that the Department of Commerce is seeking information or opinions from persons outside the agency in preparing to promulgate new rules governing discrimination based on sex or marital status. Promulgation of these rules is authorized by Minnesota Statutes, section 72A.19, subd. 2.

Outside opinion is also being solicited as to how these rules will affect small businesses as defined by Minnesota Laws 1983, ch. 188, codified as Minnesota Statutes § 14.115, subd. 1.

The Department of Commerce requests information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit statements of information or comment orally or in writing to: Richard Gomsrud, Department of Commerce, 500 Metro Square Building, St. Paul, MN 55101, (612) 296-5689.

All statements of information and comment shall be accepted until July 18, 1984. Any written material received by the Department of Commerce shall become part of the record in the event that the rules are promulgated.

Michael A. Hatch
Commissioner of Commerce

with 400 feet of frontage on Old Golf Course Road and is improved with a two story office building (44×80) a shed and two fuel tanks. Appraised value and minimum bid is $129,600.

The property will be made available for inspection by appointment only. Arrangements for show may be made by contacting:

John Chell, Regional Admin.
1201 East Highway 2
Grand Rapids, MN 55744
Tele. (218) 327-1702

The bids will be opened and read aloud publicly at Room G-22 Administration Bldg., 50 Sherburne Avenue, St. Paul, MN on July 3, 1984 at 2:30 p.m.

Bidders shall be required to submit a cashier's check with their bids in an amount not less than 10% of the bid. The checks of unsuccessful bidders will be returned.

The successful bidder will have the choice of making payment of the balance remaining after the down payment by one of the following two methods:

1. Payment in full of the balance no later than October 3, 1984, or

2. Payment of the remaining balance in not less than equal annual installments for not to exceed 5 years, with principal and interest payable annually in advance at the rate of 9% per annum on the unpaid balance, by certified check or cashier's check payable to the State of Minnesota on or before June 1 of each year.

For details and bid forms contact:

Real Estate Management Division
Department of Administration G-22
50 Sherburne Avenue
St. Paul, MN 55155
Tele: (612) 296-6674

Department of Commerce

Outside Opinion Sought Regarding Proposed Rules Relating to Discrimination Based on Sex or Marital Status Including the Impact of the Rules on Small Businesses

Notice is hereby given that the Department of Commerce is seeking information or opinions from persons outside the agency in preparing to promulgate new rules governing discrimination based on sex or marital status. Promulgation of these rules is authorized by Minnesota Statutes, section 72A.19, subd. 2.

Outside opinion is also being solicited as to how these rules will affect small businesses as defined by Minnesota Laws 1983, ch. 188, codified as Minnesota Statutes § 14.115, subd. 1.

The Department of Commerce requests information and comments concerning the subject matter of these rules. Interested or affected persons or gobups may submit statements of information or comment orally or in writing to: Richard Gomsrud, Department of Commerce, 500 Metro Square Building, St. Paul, MN 55101, (612) 296-5689.

All statements of information and comment shall be accepted until July 18, 1984. Any written material received by the Department of Commerce shall become part of the record in the event that the rules are promulgated.

Michael A. Hatch
Commissioner of Commerce

Department of Commerce

Outside Opinion Sought Regarding Proposed Rules Relating to Continuing Education for Insurance Agents Including the Impact of the Rules on Small Businesses

Notice is hereby given that the Department of Commerce is seeking information or opinions from persons outside the agency in preparing to promulgate new rules governing continuing education for insurance agents. Promulgation of these rules is authorized by Minnesota Statutes, section 60A.1701, subd. 6(c).

Outside opinion is also being solicited as to how these rules will affect small businesses as defined by Minnesota Laws 1983, ch. 188, codified as Minnesota Statutes § 14.115, subd. 1.

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

In the Matter of the Proposed Rules Relating to Prohibiting Sex discrimination in Insurance Contracts

ORDER FOR NOTICE

OF INTENT TO ADOPT
RULES WITHOUT PUBLIC HEARING

IT IS ORDERED this 18th day of March, 1984 that Notice of Intent to Adopt Rules Without Public Hearing in the above-entitled matter be given to all persons who have registered their names with the Department of Commerce for that purpose and be published in the State Register.

Michael A. Hatch
Commissioner of Commerce

State of Minnesota
Department of Commerce

In the Matter of the Proposed Adoption of
Rules Relating to Prohibiting Sex Discrimination
in Insurance Contracts

Notice of Intent to Adopt Rules Without a Public Hearing

Notice is hereby given that the Department of Commerce proposes to adopt the above-entitled rules without a public hearing. The Commissioner of Commerce has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, § 14.21.

Persons interested in these rules shall have 30 days to submit comments in support of or in opposition to the rules. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change.

No public hearing will be held unless twenty-five (25) or more persons make a written request for a hearing within the 30-day comment period. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes, §14.14, subd. 1.

Persons who wish to submit comments or a written request for a public hearing should submit them to Richard G. Gomsrud, General Counsel, Department of Commerce, 500 Metro Square Building, St. Paul, MN 55101. Any person requesting a public hearing should state her/his name and address, identify the portion of the proposed rule addressed, the reason for the request and any change proposed and send this information to the above address.

Authority for the adoption of these rules is contained in Minnesota Statutes, § 72A.19, subd. 2 . Additionally, a Statement of Need and Reasonableness describing the need for and reasonableness of each provision and identifying the data and information relied upon to support the proposed rules has been prepared and is available upon request.

Pursuant to Minn. Laws 1983, ch.188 codified as Minn. Stat. § 14.115, subd. 2, the impact on small business has been considered in the promulgation of the rules. Anyone wishing to present evidence or argument as to the rules'effect on small business may do so. The Department's position regarding the impact of the rules on small business is set forth in the Statement of Need and Reasonableness.

Upon adoption of the final rules without a public hearing, the proposed rules, this Notice, the Statement of Need and Reasonableness, all written comments received, and the final Rules as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to Richard Gomsrud, General Counsel, Department of Commerce, 500 Metro Square Bldg., St. Paul, MN 55101.

A copy of the proposed rules is attached to this Notice. Copies of this Notice and the proposed rules are available and may be obtained by contacting Rose Weiner at the above address.

Michael A. Hatch
Commissioner of Commerce

Rules as Proposed (all new material)

2735.0100 DEFINITIONS.

Subpart 1. Scope. For the purposes of parts 2735.0100 to 2735.0500, the terms defined in this part have the meanings given them.

Subp. 2. Contracts. "Contracts" means any insurance policy, plan, group contract certificate, or binder, including any rider or endorsement offered by an insurer.

Subp. 3. Insurer. "Insurer" means any insurance company, association, reciprocal or interinsurance exchange, nonprofit hospital plan, nonprofit professional health service plan, health maintenance organization, fraternal benefit society, or beneficial association.

2735.0200 PURPOSE.

The purpose of parts 2735.0100 to 2735.0500 is to eliminate the act of denying benefits or coverage on the basis of sex or marital status in the terms and conditions of insurance contracts and in the underwriting criteria of insurance carriers.

2735.0300 AUTHORITY.

Parts 2735.0100 to 2735.0500 are adopted pursuant to Minnesota Statutes, sections 45.023; 72A.20, subdivision 16; and 72A.19, subdivision 2.

2735.0400 APPLICABILITY AND SCOPE.

Parts 2735.0100 to 2735.0500 apply to all contracts delivered or issued for delivery in this state by an insurer on or after the effective date of these parts, to all existing group contracts which are amended on or after these parts, and to all group insurance policies or group subscriber contracts that provide coverage for Minnesota residents enrolled thereunder.

2735.0500 AVAILABILITY REQUIREMENTS.

Availability of any insurance contract shall not be denied to an insured or prospective insured on the basis of sex or marital status of the insured or prospective insured.

The APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

amount of benefits payable, or any term, condition, or type of coverage shall not be restricted, modified, excluded, or reduced on the basis of the sex or marital status of the insured or prospective insured except to the extent the amount of benefits, term, condition, or type of coverage vary as a result of the application of rate differentials permitted under Minnesota law. However, nothing in this part prohibits an insurer from taking marital status into account for the purpose of defining persons eligible for dependent benefits. Practices prohibited by this part include but are not limited to the following:

A. denying coverage to females gainfully employed at home, employed part time, or employed by relatives when coverage is offered to males similarly employed;

B. denying policy riders to females when the riders are available to males;

C. denying maternity benefits to insureds or prospective insureds purchasing an individual contract when comparable family coverage contracts offer maternity benefits;

D. denying, under group contracts, dependent coverage to husbands of female employees, when dependent coverage is available to wives of male employees;

E. denying disability income contracts to employed women when coverage is offered to men similarly employed;

F. treating complications of pregnancy differently from any other illness or sickness under the contract;

G. restricting, reducing, modifying, or excluding benefits relating to coverage involving the genital organs of only one sex;

H. offering lower maximum monthly benefits to women than to men who are in the same classification under a disability income contract;

I. offering more restrictive benefit periods and more restrictive definitions of disability to women than to men in the same classifications under a disability income contract;

J. establishing different conditions by sex under which the policyholder may exercise benefit options contained in

contract; and

K. limiting the amount of coverage an insured or prospective insured may purchase based upon the insured's or prospective insured's marital status unless the limitation is for the purpose of defining persons eligible for dependent benefits.

ENROLLED IN THE
REVISION OF STATUTES
OFFICE BY:

In the Matter of the Proposed Adoption of
Rules Relating to Prohibiting Sex Discrimination
in Insurance Contracts

AFFIDAVIT OF
MAILING

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Rose T. Weiner, being first duly sworn, deposes and says:

That on the 28th day of March, 1985, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Intent to Adopt Rules without a public hearing by depositing in the State of Minnesota Central Mail System for United States mailing at said City of St. Paul, a copy properly prepared with first-class postage prepaid, on all persons and associations who have requested that their names be placed on file with the Department of Commerce for the purpose of receiving notice of the proposed adoption of rules.

A copy of the proposed rules is attached.

Rose T. Weiner
Rose T. Weiner

Subscribed and sworn to before me this
3rd day of April, 1985.

Nancy J. Link
Notary Public

NANCY J. LINK
NOTARY PUBLIC-MINNESOTA
HENNEPIN COUNTY
MY COMMISSION EXPIRES DECEMBER 3, 1990

STATE OF MINNESOTA

COUNTY OF RAMSEY

CERTIFICATE

In the Matter of the Proposed Repeal of
Rules Relating to Prohibiting Sex Discrimination
in Insurance Contracts

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minnesota Statutes, Sec. 14.14, subd. 1a, that their names be placed on file with and maintained by the Department of Commerce for the purpose of receiving notice of the proposed adoption of rules is accurate and complete as of 12:00 p.m., this 28th day of March 1985.

Richard G. Gomsrud

RICHARD G. GOMSRUD

Daniel D. Foth
Associated Builders & Contractors
6300 Walker Street, [redacted] 109
Minneapolis, MN 55416

Morris J. Anderson, Exec. Dir.
Association of Minnesota Counties
555 Park Street, Suite 300
St. Paul, MN 55103

Michael C. Black
Michael C. Black Law Office, Ltd.
Suite 201- 265 W 7th St (Fort Road)
St. Paul, MN 55102

R. G. Lanham, Dir. of Research
Carleton Financial Computations
P.O. Box 570
South Bend, IN 46624

John F. Sheski, Counsel
Central Life Assurance Company
P.O. Box 5620
Madison, WI 53705

Glen Tullman
Certified Collateral Corporation
640 N. LaSalle, Suite 640
Chicago, IL 60610

M. D. Monette, V. P. & Counsel
Colonial Penn Group, Inc.
5 Penn Center Plaza
Philadelphia, PA 19181

Timothy L. Tucker
Consumer Credit Insurance Assoc.
307 N. Michigan Ave.
Chicago, IL 60601

Coury, Schwinn, Kodadek & McRoberts
1380 Soo Line Bldg.
Minneapolis, MN 55402

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Crum & Forster Corporation
305 Madison Avenue
Morristown, NJ 07960

Gerard P. Davey
Attorney at Law
One Newport Pl., Suite 900
Newport Beach, CA 92660

Michael Bernardino, Mgr.
Dean Witter Reynolds, Inc.
5 World Trade Center
New York, NY 10048

Workers Comp. Reinsurance Assoc.
900 Minnesota Mutual Life Center
400 No[redacted] Robert Street
St. Paul, MN 55101

Security Life Insurance
Robbins & Rashke, P.A.
5200 Willson Rd., Suite 407
Minneapolis, MN 55424

George M. Boyd
Squire, Sanders & Dempsey
1800 Huntington Building
Cleveland, OH 44115

Robert R. Abrahams
Robert R. Abrahams Agency, Inc.
1112 Plymouth Bldg.
Minneapolis, MN 55402

John B. LaMacchia & Associates
Actuaries Management Consultants
12 North Central Avenue
St. Louis, MO 63105

Sam Ruhle
Office of Administrative Hearings
400 Summit Bank Building
Minneapolis, MN 55415

Joseph T. Justice, Counsel
Alexander Howden Group U.S. Inc.
P.O. Box 19539
Atlanta, GA 30325

Alliance of American Insurers
Attn: Debra G. Wozniak
1501 Woodfield Rd., Suite 400 West
Schaumberg, IL 60195

Willys P. Jones
Allison-Williams Co.
2300 IDS Center
Minneapolis, MN 55402

Mr. Robert J. Demichelis
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Katie McLenighan
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Gene Johannes
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Minn. Consumer Finance Confer.
810 Norwest Center
St. Paul, MN 55101

Jean Dawson
Minn. Government Report
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St. Paul, MN 55155

Minnesota League of Credit Unions
575 University Ave.
St. Paul, MN 55103

Joan M. Archer
Minn. Mfg. Housing Assoc.
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St. Paul, MN 55117

Ms. Lois Wattman DeWitt
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Minneapolis, MN 55414

James N. Denn
Minnesota Motor Transport Assn.
1821 University Ave., Room 134N
St. Paul, MN 55104

Minn. Petroleum Council
1025 Northern Federal Bldg.
St. Paul, MN 55102

John Van Doorn
Minn. Retail Merchants Assoc.
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St. Paul, MN 55101

Minn. School of Real Est. Inc.
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Oxboro Plaza Bldg.
Bloomington, MN 55420

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666 Transfer Rd.
St. Paul, MN 55114

Abe Rosenthal, Exec. Vice Pres.
Minn. Transport Services Assn.
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St. Paul, MN 55104

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Michael J. Ahern
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Minneapolis, MN 55402

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Municipal Securities Rulemaking Board
1818 N. Street N.W. Suite 800
Washington, DC 20036-2491

NIARS Corporation
Three Eighteen West Franklin
Minneapolis, MN 55404

Mark A. Welshons, Secretary
NWNL Reinsurance Company
P.O. Box 20
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John B. Crosby, V.P. & Gen. Couns.
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William R. Anderson, Counsel
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STATE REGISTER

STATE OF MINNESOTA



VOLUME 9, NUMBER 40

April 1, 1985

Pages 2139-2226

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PROPOSED RULES

Pursuant to Minn. Stat. of 1982, §§ 14.22, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. **that they have 30 days in which to submit comment on the proposed rules;**
2. **that no public hearing will be held unless 25 or more persons make a written request for a hearing within the 30-day comment period;**
3. **of the manner in which persons shall request a hearing on the proposed rules; and**
4. **that the rule may be modified if the modifications are supported by the data and views submitted.**

If, during the 30-day comment period, 25 or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of §§ 14.14-14.20, which state that if an agency decides to hold a public hearing, it must publish a notice of intent in the *State Register*.

Pursuant to Minn. Stat. §§ 14.29 and 14.30, agencies may propose emergency rules under certain circumstances. Proposed emergency rules are published in the *State Register* and, for at least 25 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Commerce

Proposed Rules Prohibiting Sex Discrimination in Insurance Contracts

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Department of Commerce proposes to adopt the above-entitled rules without a public hearing. The Commissioner of Commerce has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, § 14.21.

Persons interested in these rules shall have 30 days to submit comments in support of or in opposition to the rules. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change.

No public hearing will be held unless twenty-five (25) or more persons make a written request for a hearing within the 30-day comment period. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes, § 14.14, subd. 1.

Persons who wish to submit comments or a written request for a public hearing should submit them to Richard G. Gomsrud, General Counsel, Department of Commerce, 500 Metro Square Building, St. Paul, MN 55101. Any person requesting a public hearing should state her/his name and address, identify the portion of the proposed rule addressed, the reason for the request and any change proposed and send this information to the above address.

Authority for the adoption of these rules is contained in Minnesota Statutes, § 72A.19, subd. 1. Additionally, a Statement of Need and Reasonableness describing the need for and reasonableness of each provision and identifying the data and information relied upon to support the proposed rules has been prepared and is available upon request.

Pursuant to Minn. Laws 1983, ch. 188 codified as Minn. Stat. § 14.115, subd. 2, the impact on small business has been considered in the promulgation of the rules. Anyone wishing to present evidence or argument as to the rules' effect on small business may do so. The Department's position regarding the impact of the rules on small business is set forth in the Statement of Need and Reasonableness.

Upon adoption of the final rules without a public hearing, the proposed rules, this notice, the Statement of Need and Reasonableness, all written comments received, and the final Rules as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to Richard Gomsrud, General Counsel, Department of Commerce, 500 Metro Square Bldg., St. Paul, MN 55101.

A copy of the proposed rules is attached to this notice. Copies of this notice and the proposed rules are available and may be obtained by contacting Rose Weiner at the above address.

Michael A. Hatch
Commissioner of Commerce

Rules as Proposed (all new material)

2735.0100 DEFINITIONS.

Subpart 1. Scope. For the purposes of parts 2735.0100 to 2735.0500, the terms defined in this part have the meanings given them.

Subp. 2. Contracts. "Contracts" means any insurance policy, plan, group contract certificate, or binder, including any rider or endorsement offered by an insurer.

Subp. 3. Insurer. "Insurer" means any insurance company, association, reciprocal or interinsurance exchange, nonprofit hospital plan, nonprofit professional health service plan, health maintenance organization, fraternal benefit society, or beneficial association.

2735.0200 PURPOSE.

The purpose of parts 2735.0100 to 2735.0500 is to eliminate the act of denying benefits or coverage on the basis of sex or marital status in the terms and conditions of insurance contracts and in the underwriting criteria of insurance carriers.

2735.0300 AUTHORITY.

Parts 2735.0100 to 2735.0500 are adopted pursuant to Minnesota Statutes, sections 45.023; 72A.20, subdivision 16; and 72A.19, subdivision 2.

2735.0400 APPLICABILITY AND SCOPE.

Parts 2735.0100 to 2735.0500 apply to all contracts delivered or issued for delivery in this state by an insurer on or after the effective date of these parts, to all existing group contracts which are amended on or after these parts, and to all group insurance policies or group subscriber contracts that provide coverage for Minnesota residents enrolled thereunder.

2735.0500 AVAILABILITY REQUIREMENTS.

Availability of any insurance contract shall not be denied to an insured or prospective insured on the basis of sex or marital status of the insured or prospective insured. The amount of benefits payable, or any term, condition, or type of coverage shall not be restricted, modified, excluded, or reduced on the basis of the sex or marital status of the insured or prospective insured except to the extent the amount of benefits, term, condition, or type of coverage vary as a result of the application of rate differentials permitted under Minnesota law. However, nothing in this part prohibits an insurer from taking marital status into account for the purpose of defining persons eligible for dependent benefits. Practices prohibited by this part include but are not limited to the following:

A. denying coverage to females gainfully employed at home, employed part time, or employed by relatives when coverage is offered to males similarly employed;

B. denying policy riders to females when the riders are available to males;

C. denying maternity benefits to insureds or prospective insureds purchasing an individual contract when comparable family coverage contracts offer maternity benefits;

D. denying, under group contracts, dependent coverage to husbands of female employees, when dependent coverage is available to wives of male employees;

E. denying disability income contracts to employed women when coverage is offered to men similarly employed;

F. treating complications of pregnancy differently from any other illness or sickness under the contract;

G. restricting, reducing, modifying, or excluding benefits relating to coverage involving the genital organs of only one sex;

H offering lower maximum monthly benefits to women than to men who are in the same classification under a disability income contract;

I. offering more restrictive benefit periods and more restrictive definitions of disability to women than to men in the same classifications under a disability income contract;

J. establishing different conditions by sex under which the policyholder may exercise benefit options contained in the contract; and

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

K. limiting the amount of coverage an insured or prospective insured may purchase based upon the insured's or prospective insured's marital status unless the limitation is for the purpose of defining persons eligible for dependent benefits.

Department of Commerce

Proposed Rules Relating to the Comprehensive Health Insurance Association

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Department of Commerce proposes to adopt the above-entitled rules without a public hearing. The Commissioner of Commerce has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, § 14.21.

Persons interested in these rules shall have 30 days to submit comments in support of or in opposition to the rules. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change.

No public hearing will be held unless twenty-five (25) or more persons make a written request for a hearing within the 30-day comment period. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes, § 14.14, subd. 1.

Persons who wish to submit comments or a written request for a public hearing should submit them to Richard G. Gomsrud, General Counsel, Department of Commerce, 500 Metro Square Building, St. Paul, MN 55101. Any person requesting a public hearing should state her/his name and address, identify the portion of the proposed rule addressed, the reason for the request and any change proposed and send this information to the above address.

Authority for the adoption of these rules is contained in Minnesota Statutes, § 62E.09(i). Additionally, a Statement of Need and Reasonableness describing the need for and reasonableness of each provision and identifying the data and information relied upon to support the proposed rules has been prepared and is available upon request.

Pursuant to Minn. Laws 1983, ch. 188 codified as Minn. Stat. § 14.115, subd. 2, the impact on small business has been considered in the promulgation of the rules. Anyone wishing to present evidence or argument as to the rules' effect on small business may do so. The Department's position regarding the impact of the rules on small business is set forth in the Statement of Need and Reasonableness.

Upon adoption of the final rules without a public hearing, the proposed rules, this notice, the Statement of Need and Reasonableness, all written comments received, and the final Rules as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to Richard Gomsrud, Department of Commerce, 500 Metro Square Bldg., St. Paul, MN 55101.

A copy of the proposed rules is attached to this notice. Copies of this notice and the proposed rules are available and may be obtained by contacting Rose Weiner at the above address.

Michael A. Hatch
Commissioner of Commerce

Rules as Proposed

2740.0100 DEFINITIONS.

Subpart 1. to 12. [Unchanged.]

Subp. 13. Covered expenses. "Covered expenses" means the usual and customary charges for the services and articles listed in Minnesota Statutes, section 62E.06, or, with respect to qualified plans, the actuarial equivalence thereof, when prescribed for a covered person by a physician and when ~~such~~ the expenses are incurred during a period in which the ~~state plan~~ policy or contract is in effect.

Subp. 14. to 28. [Unchanged.]

Subp. 29. Licensed and tested insurance agent or ~~solicitor~~ insurance agent. "Licensed and tested insurance agent or ~~solicitor~~" "insurance agent" means an insurance agent ~~or solicitor~~ as defined in Minnesota Statutes, section 60A.02, subdivision 7 ~~or 8~~, and licensed as such by the commissioner ~~under Minnesota Statutes, section 60A.17 to act as an agent or solicitor for accident and health insurance as defined in Minnesota Statutes, section 60A.06, subdivision 1, clause (5)(a)~~.

In the Matter of the Proposed Rules Relating to Prohibiting Sex Discrimination in Insurance Contracts

STATEMENT OF NEED AND REASONABLENESS

Pursuant to the authority of Minnesota Statute 72A.19, subdivision 12 the department has proposed rules pertaining to prohibiting sex discrimination or discrimination based upon marital status in insurance contracts. Additional authority is found in Minnesota Statute 70A.20, subdivision 16 and Minnesota Statutes 45.023. The rule proposed is based upon the National Association of Insurance Commissioner's Model Regulation. The model regulation and the accompanying report regarding it are attached here to and incorporated by reference as part of this Statement of Need and Reasonableness. The model regulation has been deemed necessary because the insurance industry has allowed the development of unequal treatment of males and females as well as unequal treatment based upon marital status in the sale of insurance. Such discrimination is both an unfair trade practice under Minnesota Statutes and is equivalent to sexual discrimination under other laws.

Rule 2735.0100 Definitions. So as to best define the scope of the proposed rule two terms were deemed to need clarification. Those terms are "contracts" and "the insurer". The purpose of rendering these definitions in the rule was to assure that the rules were specific as to the type of contracts covered and the type of insurers that would be subjected to this particular rule. Both terms are used in many different forms in other rules and regulations and tend to have less than precisely understood definitions.

As the proposed rules are based upon a model act these will be the definitions used in every state which adopts the model regulation.

Rule 2735.0200 Purpose. This rule states the basis and philosophy of the rule.

Rule 2735.0400 Applicability and Scope. The question often arises in regard to the application of insurance rules and statutes as to whether or not they apply because some policies are issued outside the state. It is important to clarify that in this instance the intent is to make the rule applicable to all policies either delivered within the state or issued for delivery in the state so that all Minnesota citizens would have the protection of this rule no matter where the policy that covers them originates.

Rule 2735.0500 Availability Requirements. Restates the basic premise of the rule prohibiting denial of access to an insurance contract on the basis of sex or marital status. The balance of the rule is a reiteration of that premise along with a reiteration of specific practices that are prohibited. The specific practices do not limit the general statement but expand and provide examples of individual instances where such activities are prohibited.

Small Business Consideration

Pursuant to Minnesota Statute §14.115 the Department considered the impact of the rule on small businesses in the promulgation of these rules. This rule has broad impact upon the insurance industry as a whole, only a few members of which are small businesses. The purpose of the rule is to prevent sex discrimination. Lesser standards for small businesses would weaken the protection. Also it might have a negative effect on the competitive position of small businesses if they are preceived to have permission to discriminate.

In regard to subdivision 2 of 14.115 the department reviewed items a - e and decided as follows:

(a) as there are no reporting requirements less stringent requirements would not be applicable. The rule only allows for compliance or non-compliance. A lesser standard might be deemed to allow small business to discriminate a little which is contrary to the intent of the rule;

Items (b), (c), (d) and (e) would all be covered by the rationale set forth regarding (a). The nature of the harm to be prevented is much that there can only be a complete prohibition against the practice.

Sex Discrimination in Insurance – A Continuing Problem

by

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June 6, 1977

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That sex discrimination in insurance has been a serious problem can hardly be debated.[1] Unfortunately, there is little question that many of the discriminatory practices documented in the long series of reports still continue virtually unabated. Reviewed below is the work done by the NAIC to date on sex discrimination in insurance, some of the issues that remain to be addressed to eliminate unfair sex-discriminatory practices, and why it is important that an NAIC task force dealing with sex discrimination be reconstituted to address these issues.

The NAIC Task Force on Unfair Sex Discrimination

A Task Force on Unfair Sex Discrimination was established in 1975 by the (C1) Subcommittee to deal with the issue of sex discrimination in insurance. In 1976, the task force developed and presented a model regulation to eliminate unfair sex discrimination. In its preamble, the task force explained that "studies have disclosed a pattern of activities which can conveniently be divided into two categories. The first relates to the availability of equal coverage and the second is the comparability of the rates charged for that coverage."

Having divided the issues into two major categories, the task force then declared that it "has chosen to propose this model regulation for adoption as the first step in a two stage program. The second stage will involve the review of rating systems which are currently in use in an attempt to determine the validity of assumptions, statistics and actuarial methods which have been routinely accepted in the past." However, despite the fact that by the task force's own analysis it had addressed only half of the issues in its model regulation, the task force was disbanded before it could move to the second step in the process – a review of rating systems.

The Major Remaining Issues to be Reviewed

1. Rating

Certainly, equal availability of coverage is important to secure, and the model regulation is a good step in this direction. But as the task force recognized, it is also clear that unless the rates charged for the coverage are fair, the availability of coverage may be of only theoretical value. And there is great debate about whether current rating practices are equitable, or whether instead they work an unfair disadvantage to women.

---

1. See e.g. Pennsylvania Insurance Department, 1974, Insurance Commissioner's Advisory Task Force on Women's Insurance Problems Final Report and Recommendations, Harrisburg, Pennsylvania; Task Force on Critical Problems, New York State Senate, Insurance and Women, October, 1974, Albany, New York; Michigan Department of Commerce, Insurance Bureau, Women's Task Force Report to the Michigan Commissioner of Insurance on Sex Discrimination in Insurance, June 2, 1975; California Commission on the Status of Women, Women and Insurance, February, 1975; Iowa Commission on the Status of Women, A Study of Insurance Practices that Affect Women, 1975; Lawyers for Colorado's Women, Inc., Insurance Task Force, Sex Discrimination in Health and Disability Insurance, February 7, 1975; Center for Public Representation, Sex Discrimination in Insurance: The Consumer Perspective, Madison, Wisconsin; Women's Equity Action League, Sex Discrimination in Insurance, Washington, D.C., 1977. All of these reports document widespread insurance practices which work to the disadvantage of women.

For example, one issue raised is whether present rating practices charging similarly situated women substantially more than men for disability insurance (even excluding maternity coverage) should be permitted to continue. A New York study dated June, 1976[2] seemed to indicate that in fact women in similar occupation classifications have appreciably higher morbidity rates than men (although even in this study women over 60 had lower morbidity rates than men).

However, the conclusions of this study have been questioned by other statistics and by the design of the study itself. Women Employed, a women's advocacy group based in Chicago, Illinois, testified at some length on this issue at hearings of the Illinois Insurance Department on Proposed Rule 26.05 (a regulation banning sex discriminatory practices) on February 3, 1976. In their testimony, they reviewed the experience of one insurance company which offered equal benefits under disability insurance to men and women at equal rates, Social Security Administration data, a Metropolitan Life Insurance Study, occupation and income as variables in disability, and hospitalization statistics. This information did not support substantially higher rates charged women for disability insurance. That testimony is attached.

It is important to note that the Social Security Administration data, for example, was based on insured and uninsured workers. In contrast, the New York Study was limited to those workers who had purchased disability insurance. Given the very high rates and unfavorable terms offered to women for disability insurance, it is reasonable to hypothesize that those women who paid the high price for the insurance did so because they knew that they were going to draw benefits (adverse selection). One can only conclude that more definitive studies need to be done in order to assess the validity of the actuarial statistics upon which disability insurance rates are based.

Similarly, actuarial statistics upon which other types of insurance are based must also be reviewed. It is extremely important to have standards set concerning the proper methodology for conducting the reviews so that valid conclusions could be made. This standard-setting would be a particularly appropriate assignment for a task force on sex discrimination. Similarly, it should develop model regulations which would give guidance to states as to the proper way of setting rates based upon these studies.

2. Treatment of Pregnancy.

In defining equal coverage, the task force made a judgement that it is unfair to exclude coverage of pregnancy-related complications, but did not make a similar judgement with respect to costs involved in a normal pregnancy either for health or disability insurance. The validity of excluding such costs for purposes of a state or an employer's disability insurance plan was upheld by the Supreme Court under the Constitution and Title VII of the 1964 Civil Rights Act. See Geduldig v. Aiello, 417 U.S. 484 (1974); General Electric Co. v. Gilbert, 97 S.Ct. 401 (1976).

However, these decisions do not control state laws which prohibit sex discrimination in employment or insurance. For example, shortly after the Gilbert decision came down, the New York Court of Appeals declared that exclusion of pregnancy-related disabilities from an employer's disability plan violated the state's fair employment practices law.[3] Similar interpretations were issued by administrators of fair employment commissions or courts in at least 14 states and the District of Columbia.[4]

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2. State of New York Insurance Department, Disability Income Insurance Cost Differentials Between Men and Women, June, 1976.

3. The Brooklyn Union Gas Co. v. New York State Human Rights Appeal Board (New York Court of Appeals, No. 495, 1976). See also Anderson v. Upper Bucks County Voc. Technical School (Commonwealth Court of Pennsylvania, May 6, 1977). However the New York decision is now being challenged in a pending action, American Airlines v. State Human Rights Appeal Board (New York Court of Appeals, No. 496, 1976).

4. The states are Alaska, California, Connecticut, District of Columbia, Hawaii, Montana, New Jersey, Rhode Island, Kansas, Massachusetts, Michigan, South Dakota, Iowa and Wisconsin.

Moreover, legislation has been introduced in Congress to overturn the Gilbert decision for purposes of Title VII. Therefore, the issue of proper treatment of pregnancy is still very much an open question. It is important therefore that in addition to reviewing the issue of rating, a sex discrimination task force review the proper treatment of pregnancy in light of the developing law.

3. Other issues to be Addressed.

In addition to rating and pregnancy, there are a series of other issues which should be addressed by a sex discrimination task force. One is an analysis of the status of the model regulation, where it has been adopted and what have been the problems of implementation to date. In a telephone conversation with an employee of the National Insurance Advertising Regulation Service on June 2, 1977, we were advised that a report on those states which had adopted the regulation would not be ready until the end of the year.[5] The information should certainly be collected in a more prompt fashion, together with information on the regulation's strengths and weaknesses.

Second, a task force should look at methods for advising the public of the existence of the model regulation and those states where it is in effect. It is only with such an education campaign that the women will be made aware of their rights, and therefore be in a position to protect their interests.

Third, a task force should review the enforcement mechanisms in place in the states and determine whether new mechanisms are needed to ensure compliance with the anti-sex discrimination provisions. For example, the role of complaints and their proper handling should be addressed.

Fourth, the task force should address the issue of national health insurance and how various proposals would affect women. Not enough serious attention has been given to this most important issue.

Finally, the task force should study the relationship between general employment practices of the insurance industry and the kinds of insurance programs they offer. A determination should be made of the responsibility of insurance commissioners to assure that the industry they are responsible for regulating does not have discriminatory employment practices and policies.

Conclusion

In light of the long list of critical issues affecting women and insurance which remain unresolved, it is extremely unfortunate that the Sex Discrimination Task Force was disbanded. The work that it did in developing the model regulation was a commendable first step. But it was only a beginning. Through a contract with the Federal Insurance Administration, the Women's Rights Project of the Center will be preparing a report by December 1977 addressing many of the issues discussed above. The project stands ready to offer any assistance that would be helpful to the Sex Discrimination Task Force if and when it is reestablished. We would hope that the NAIC does not believe, nor does it wish to indicate, that there are no longer any problems of sex discrimination which merit attention. The task force should begin again to address critical issues which affect more than half of our population.

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FROM: Women Employed
37 South Wabash
Chicago, Illinois 60603

DATE: February 3, 1976

RE: "Women Employed" Testimony at Hearings of the Illinois Insurance Department on Proposed Rule 26.05

Women Employed is shocked at the insurance industry's response to Proposed Rule 26.05. The industry claims to be in support of the regulation which would ban the sale of discriminatory insurance policies. Yet, in their testimony, they

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5. Telephone conversation with employee of research department of National Insurance Advertising Regulation Service, June 2, 1977.

MODEL REGULATION TO ELIMINATE UNFAIR SEX DISCRIMINATION

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Preamble.

This model regulation responds to conditions within the insurance industry and among regulatory authorities which have allowed the development of unequal treatment of males and females and treatment which varies according to marital status in the sale of insurance. Reasonably exhaustive research has been conducted by several states in an effort to identify the nature of such unequal treatment. These studies have disclosed a pattern of activities which can conveniently be divided into two categories. The first relates to the availability of equal coverage and the second is the comparability of the rates charged for that coverage.

The primary area of difficulty arises in the health and disability lines of insurance where the morbidity tables which are currently in use and current company experience reflect a higher utilization of benefits by female insureds. As a result, many companies restrict the types and amounts of coverage which are available to females and charge rates for females which exceed male rates for identical coverage. Life insurance and annuity rates reflect lower mortality rates for females although the adequacy of the rate differentials are subject to question since general population mortality studies produce larger differences in male and female mortality than is generally assumed by either the life insurance industry or regulatory authorities in their development of reserves, cash values and premium rates. Many life insurance companies have also been found to apply restrictions to the availability of coverage to females which do not apply to males.

The automobile insurance business is characterized by a rating system which produces higher rates for males and unmarried individuals. Higher rates for these classes of insureds result from higher claim levels. Availability of automobile insurance with some companies is also affected by marital status. The premium rates charged for homeowner and property insurance do not vary by sex although a single or divorced female may encounter more difficulty in obtaining coverage than a male in similar circumstances.

Although discriminatory practices have been identified in both the premium rates and availability of insurance, an appropriate objective is to determine which of these practices constitute an unfair discrimination and to adopt regulations which prohibit those practices. Since there is apparently no segment of the public or the insurance industry which is prepared to dispute the right of females to have equal access to insurance, it is desirable to adopt a regulation which enforces this standard of equality. This model regulation is designed to accomplish that purpose as it relates to contract language and underwriting practices.

On the other hand however, since the business of insurance is built upon the ability of the insurance company to evaluate risk and assign a price tag to that risk, any attempt to tamper with the pricing mechanism of the insurance business must be approached with great care. The subjects of premium rates and availability of coverage have been determined to be separate issues which can be dealth with more effectively if handled separately. As a result, the NAIC Task Force on Unfair Sex Discrimination has chosen to propose this model regulation for adoption as the first step in a two stage program. The second stage will involve the review of rating systems which are currently in use in an attempt to determine the validity of assumptions, statistics and actuarial methods which have been routinely accepted in the past.

Several states, including Pennsylvania, New York, New Jersey and Oregon, have adopted regulations similar to this model with little or no opposition. The major insurance industry trade associations have actually taken a public position of not opposing adoption of such regulations and many insurance companies are presently in the process of voluntarily removing all sex related restrictions in their contract language and underwriting rules. This model regulation, however, is necessary to assure that this standard is adhered to by the entire industry.

One subject which is a recurring topic of interest in the research which has been conducted is that of pregnancy related covering in health insurance contracts. Since normal pregnancy is not a sickness or injury as a result of an accident and can generally be planned or avoided, the NAIC Task Force has not subscribed to the theory that such coverage should be mandated in all health insurance contracts in the name of equal availability of coverage. Such action is beyond the scope of the authority of this regulation and if the subject is to be addressed, it should be included in the NAIC Health Insurance Minimum Standards Regulation. This model regulation does, however, contain language which may either be retained in this regulation or transferred to the Minimum Standards Regulation, whichever is most convenient in a particular jurisdiction. That language relates to mandatory coverage of pregnancy complications and the restriction of coverage for the genital organs of one sex only. Restrictions on these areas of coverage have been deemed to be tantamount to unfair sex discrimination since they apply to sickness or injury which affects only one sex.

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This regulation may appropriately be promulgated pursuant to the authority of the Insurance Trade Practices Act either under the unfair discrimination section or as a regulation identifying a previously undefined unfair trade practice.

Section 1. Purpose.

The purpose of this regulation is to eliminate the act of denying benefits or coverage on the basis of sex or marital status in the terms and conditions of insurance contracts and in the underwriting criteria of insurance carriers.

Section 2. Authority.

This regulation is issued pursuant to (variable authority of each state — promulgation of this regulation under the State's Unfair Trade Practices Act is considered to be the most viable source of authority).

Section 3. Definition.

Contracts — any insurance policy, plan, or binder, including any rider or endorsement thereto offered by an insurer.

Insurer — any insurance company, association, reciprocal or inter-insurance exchange, nonprofit hospital plan, nonprofit professional health service plan, health maintenance organization, fraternal benefit society or beneficial association.

Section 4. Applicability and Scope.

This regulation shall apply to all contracts delivered or issued for delivery in this state by an insurer on or after the effective date of this regulation and to all existing group contracts which are amended on or after the effective date of this regulation.

Section 5. Effective Date.

This regulation shall be effective on (insert the date of adoption or promulgation).

Section 6. Availability Requirements.

Availability of any insurance contract shall not be denied to an insured or prospective insured on the basis of sex or marital status of the insured or prospective insured. The amount of benefits payable, or any term, conditions or type of coverage shall not be restricted, modified, excluded, or reduced on the basis of the sex or marital status of the insured or prospective insured except to the extent the amount of benefits, term, conditions or type of coverage vary as a result of the application of rate differentials permitted under the (insert name of state) Insurance Code. However, nothing in this regulation shall prohibit an insurer from taking marital status into account for the purpose of defining persons eligible for dependents benefits. Specific examples of practices prohibited by this regulation include but are not limited to the following:

a. Denying coverage to females gainfully employed at home, employed part-time or employed by relatives when coverage is offered to males similarly employed.

b. Denying policy riders to females when the riders are available to males.

c. Denying maternity benefits to insureds or prospective insureds purchasing an individual contract when comparable family coverage contracts offer maternity benefits.

d. Denying, under group contracts, dependent coverage to husbands of female employees, when dependent coverage is available to wives of male employees.

e. Denying disability income contracts to employed women when coverage is offered to men similarly employed.

f. Treating complications of pregnancy differently from any other illness or sickness under the contract.

g. Restricting, reducing, modifying, or excluding benefits relating to coverage involving the genital organs of only one sex.

h. Offering lower maximum monthly benefits to women than to men who are in the same classification under a disability income contract.

i. Offering more restrictive benefit periods and more restrictive definitions of disability to women than to men in the same classifications under a disability income contract.

j. Establishing different conditions by sex under which the policyholder may exercise benefit options contained in the contract.

k. Limiting the amount of coverage an insured or prospective insured may purchase based upon the insured's or prospective insured's marital status unless such limitation is for the purpose of defining persons eligible for dependents benefits.

Note: Although the above examples are oriented toward unfairly discriminatory practices in the accident and sickness disability incomes and life insurance lines, this model regulation is appropriate for use in prohibiting the use of sex or marital status as the sole base either to deny coverage or to offer differential coverage in all lines of insurance.

Legislative History (all references are to the Proceedings of the NAIC).

1976 Proc. I 502-504

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In the Matter of the Proposed Adoption of Rules Governing Sex Discrimination in Insurance Contracts

STATEMENT OF COMPLIANCE WITH RULEMAKING PROCEDURES

I, Alan I. Gilbert, do hereby declare that I have examined the rules and all related documents and that, based on my examination and my personal familiarity with the applicable procedures, the Administrative Procedure Act, the rules of the Office of Administrative Hearings, and the rules of the Attorney General have been followed. Any exceptions are noted below.

Alan I. Gilbert

Special Assistant Attorney General

Dated: 10/18/85

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

In the Matter of the Proposed Adoption of Rules Governing Sex Discrimination in Insurance Contracts

NOTICE OF SUBMISSION TO THE ATTORNEY GENERAL

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Richard G. Gomsrud, being first duly sworn, deposes and says:

That he is Department Counsel for the Department of Commerce.

That part of his duties is the promulgation and adoption of departmental rules, including those captioned above.

That to date, no person has requested notice of submission of the rules in the above-entitled matter to the Attorney General.

Richard G. Gomsrud

RICHARD G. GOMSRUD
Department Counsel, Department of Commerce

Subscribed and sworn to before me this 15th day of October, 1985.

Nancy I. Link

NANCY I. LINK
NOTARY PUBLIC-MINNESOTA
HENNEPIN COUNTY
MY COMMISSION EXPIRES DECEMBER 3, 1990