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Insurance and the Price of Sex

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INSURANCE AND THE PRICE OF SEX

■ One of the strangest issues you will have to make up your mind about this year is an entry that's usually labeled sex discrimination in insurance. At the moment, the moral high ground seems to be controlled by those who believe there's a big, big problem out there and that government must provide a solution. However, a case can be made for viewing the issue as a big, big nonproblem.

This is definitely not the view of Republican Senator Bob Packwood of Oregon, who is pushing a bill to end what he proclaims to be unconscionable discrimination by the insurance industry against women. His bill would also prevent the industry from discriminating on the basis of race, color, religion, or national origin, but since hardly anybody contends there is discrimination in these areas, virtually all the testimony in the Senate Commerce Committee has concerned sex. Packwood's bill was reported out of committee last fall but Congress never got to it in the hectic lame duck session, and so the Senator is starting over again this year. A similar bill has been introduced in the House by John Dingell of Michigan.

Also upset about sex discrimination in insurance is Solicitor General Rex E. Lee, who recently filed a brief attacking "sex-based actuarial tables," thereby lining up the Reagan Administration with the women's movement and numerous members of the judiciary who also don't like the tables. The tables, though, are innocent. They just reflect the reality that in certain matters highly relevant to insurance, men and women are, statistically speaking, very different. The tables show, for example, that on average women live longer than men; at age 60 a woman's life expectancy in the U.S. is 22.1 years, a man's only 17.1 years. Accordingly, insurers price insurance differently for men and women.

These differences in prices have been at issue in several major court cases in recent years. In 1978 the U.S. Supreme Court held that the Department of Water and Power in

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Los Angeles violated the 1964 Civil Rights Act by requiring women to make larger contributions to a pension plan to get the same monthly benefits men got. A related case out of Arizona will be coming before the Supreme Court this year. The issue in that one is whether women must settle for smaller monthly benefit checks from a deferred-compensation plan though women and men had made equal contributions to it over the years.

IT IS PERHAPS not surprising that the American Association of University Women, the National Women's Political Caucus, the Coalition of Labor Union Women, and other "movement" organizations are backing such lawsuits, but there are some anomalies in the movement's support of the Packwood bill. One anomaly is discernible in that chart on the facing page, which makes it clear that the insurance industry's present systems of sex classification favor women much of the time.

Indeed they may favor women on balance. Testifying before Packwood last summer, Mavis A. Waltera, a member of the Committee on Risk Classification of the American Academy of Actuaries, stated that the Senator's bill would have these effects: "Women would pay more for life insurance; men would pay less. Women would pay less for annuities; men would pay more. Women would pay more for auto insurance; men would pay less. Women would pay less for disability insurance and men would pay more." Taking one thing with another, she added, "our study has found that women

as a group will pay more for insurance if this bill is passed." George K. Bernstein, a witness representing the American Insurance Association at the hearings, put women's additional cost for automobile insurance alone at \$700 million a year. Asking himself why the movement was nevertheless supporting the bill, Bernstein said the only explanation he could think of was "ideology."

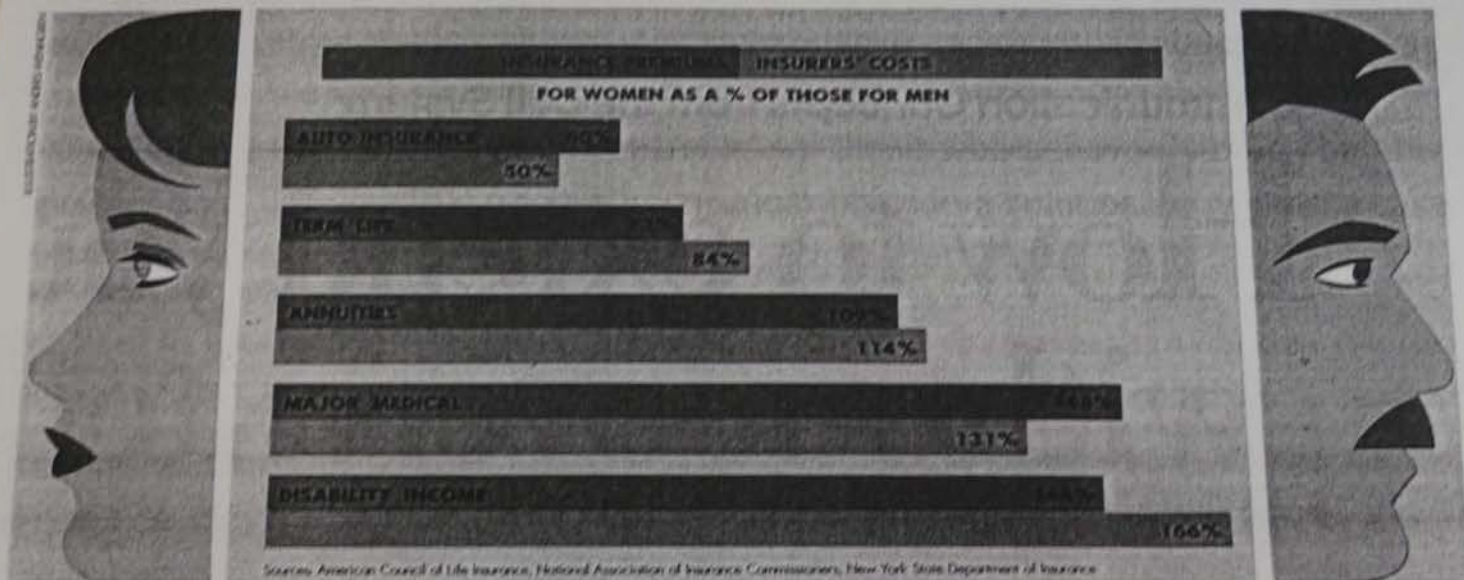
It's hard to see why anybody without an ideological slant should view the insurance industry's sex-based distinctions as discriminatory. If young women have fewer automobile accidents than young men—which they do—why shouldn't the women get a better rate? If the industry's experience shows—as it does—that women spend more time in the hospital than men, why shouldn't women pay more for health policies? If female mortality rates are lower than those for males—which they are, at every age from day one to year 100—why shouldn't females pay less for life insurance? And more for pensions and annuities? There is broad agreement that the industry's pricing reflects not bigotry but actual experience. So why should anybody view it as discriminatory?

Those inclined to the big, big problem view of the case have approached these questions in several ways. Some of them, including Packwood, see antidiscrimination laws in insurance as a natural follow-on to the laws that have successively banned sex discrimination in employment, housing, credit, and other areas. Having long since forgotten that the point of those other laws was to combat inaccurate and prejudicial stereotyping, they have now arrived at a mental way

station where discrimination is defined as any difference at all in the treatment of the sexes. In an effort to sustain this view, witnesses before the Packwood committee kept saying that it's unfair to discriminate on the basis of sex because sex is an immutable human characteristic; like race and color, they said, sex is something nobody can change (a slightly debatable point these days). But none of the witnesses ever explained why immutability should be a factor in actuarial decisions. People also can't control their ge-

action front. In the course of arguing against quotas and other kinds of race-conscious preference, the Administration keeps saying that we have to get away from group rights and concentrate on individual rights. This is certainly a logical and commendable rule to apply to employment cases, but extending the rule to insurance just seems mindless. Insurance requires group classifications. It needs the law of large numbers to work with. Though nobody knows when a particular person will die, the law of large numbers en-

The insurance industry is naturally quite upset about the trend in the courts and the possibility of having to cope with the Packwood standards. The worst case for the industry would be a law, or a court decision, that required existing as well as future policies to conform to unisex standards in pricing. (Packwood apparently wants to cover existing policies, but he sounds as though the issue is negotiable.) By some industry estimates, the worst-case scenario would cost several billion for pensions alone to



netic heritage. If you're born with some life-threatening genetic defect, should you get insurance at the same price as someone who's in normal health?

HOWEVER, THE ULTIMATE confusion about sex-based discrimination resides in an argument that seems to be sweeping the country these days. It's the argument that prevailed in those California and Arizona cases and that has now been embraced by Solicitor General Lee. The argument proceeds as follows. We agree that women as a class live longer than men. However, we do not agree that an individual woman should be treated as a member of the class when it comes to writing insurance; she may, after all, die tomorrow, while a man her age may live for decades. Indeed, treating people as members of a class, rather than as individuals, is precisely what we mean by discrimination—and is precisely what was forbidden by the Civil Rights Act, at least with respect to classes involving race, color, religion, national origin, or sex.

In buying this line of argument, the Reagan Administration has plainly been influenced by its encounters on the affirmative-

Equal They're Not

Sex is here to stay—at least in the facts-of-life statistics that underlie differences in insurance prices for men and women. Ranged against the efforts to require unisex pricing are some stubborn realities. One is that men and women have different life expectancies at all ages, which implies different costs for carriers offering life and annuity policies. Another is that men and women behave differently, which affects the costs of auto, major medical, and disability insurance. (The chart data for auto insurance pertain to drivers under 25. The data for annuities pertain to age 65. For the other categories, the age is 45.)

ables us to predict with considerable accuracy when an average member of a group will die. In agreeing that women as a group live longer, but insisting that it's unfair to apply this fact to individual cases, the courts and the Administration have stepped into a huge intellectual bog. Presumably we are all agreed that the insurance industry is entitled to classify people by age. But the argument that we must view people as individuals, and not as members of a class, could also be applied to age classifications. After all, some young people die early and some old people just get a lot older.

bring benefits for women up to male levels.

Packwood himself thinks the true cost for additional pension benefits would be much lower, probably more like \$500 million, "a relatively minor amount," he says, when measured against the industry's assets. He also likes to speculate that the industry might go unisex without his bill. "If one or two of the major companies were to crack," he said hopefully the other day, "the rest would go like a dam with a hole in it."

■ Insurance executives are divided on the effect unisex pricing would have on the terms and availability of policies offered in the future. Coy Eklund, the chairman of Equitable Life Assurance and a consistent out-front supporter of the women's movement, says he "could accept" a public policy decision to go unisex. Other students of the subject believe that, overall, insurance premiums would rise, and that pension plans for companies with predominantly female employees might be hard to get. Meanwhile, the possibility that most insurance people find most attractive is a different one—the possibility that at some point the courts and Congress might discover there's no problem. ■