

THE GENERAL COURT OF MASSACHUSETTS
STATE HOUSE, BOSTON 02133-1053

Representative Aaron Michlewitz, Chair
Joint Committee on Financial Services
Room 254, State House
Boston, MA 02133

cc: Robert A. DeLeo, Speaker

April 25, 2018

Dear Chairman Michlewitz,

We write in support of H.482, *An Act providing for equitable coverage in disability policies*, which would end the practice of charging women more than men for the same disability coverage. We urge you to act in accord with Massachusetts' tradition of ensuring the equal treatment of all people, and move this bill out of committee and work with us to see it signed into law this year.

Two years ago, the legislature included in the budget the establishment of a Working Group on Gender Equity in Disability Policies, and required that the Working Group "study the costs and benefits of prohibiting insurance companies in the commonwealth from making any distinctions in disability policy payments, premiums or rate charges, or any other terms or conditions of any group or individual disability, accident or sickness insurance contract based on a person's race, color, religion, sex, marital status, or national origin." (Section 173 of Chapter 133 of the Acts of 2016)

The Working Group has recently released its report, and the findings support enactment of the legislation:

The Working Group Report points out that "Currently, individual disability income products cost substantially more when purchased by women than by similarly situated men....this creates availability problems for those women looking to buy individual products who may find the product unaffordable and who forgo coverage." (Page 4)

The Working Group Report states that as of December 31, 2016 a total of 1,719,384 Massachusetts persons held Disability Insurance (DI) plans and that: 188,964 (11%) were covered by individual DI policies, and 1,530,420 (89%) were covered by group DI policies. (Page 8)

The Working Group Report explains that Title VII of the Civil Rights Act of 1964 makes it unlawful for an employer "to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such

individual's race, color, religion, sex, or national origin." It goes on to explain that Title VII requires equal treatment of men and women in employer-sponsored insurance plans due to two U.S. Supreme Court cases. "For this reason, employer group disability income products are rated/priced with a single rate for employees (the rate does not differ by gender)." (Page 13) **The legislation under consideration would bring state-regulated individually purchased policies in line with group policies.**

The Working Group Report points out that Massachusetts has prohibited gender rating / pricing for health, automobile, and annuity products, and adds that homeowners insurance, while not prohibited by statute, also does not use gender rating. The Report states, "In all three of these lines of coverage (health, private passenger automobile, and annuity), the Division noted that it was unaware that a move to gender-neutral rating caused any lack in the availability of coverage. Especially with the most recently enacted change for annuity coverage, the Division noted that it continues to receive product filings from insurance companies for offer in the Commonwealth all of which were compliant with the appropriate gender-neutral rules." (Page 14)

We agree with the Report's Findings and Recommendations. They are: (pp. 25-26)

FINDINGS:

1. The Equal Rights Amendment to the Massachusetts Constitution prohibits discrimination based on sex.
2. Federal Law and Regulations prohibit discrimination based on sex in employer-based group disability insurance policies issued in Massachusetts.
3. Most other types of insurance products in Massachusetts are already issued on a gender-neutral basis, and in these products the move to gender-neutral rating has not caused any lack in the availability of coverage.
4. Women purchasing individual disability insurance coverage are currently charged 23-61 percent more than men are charged, which is a significant barrier to obtaining coverage and discriminatory based on the equal rights law.
5. 46 percent of women are the sole breadwinners in their family, and another 20 percent of women contributed between one-quarter to one-half of their family's earnings, while women on average make 84 percent of the salary of their male counterparts.
6. Disability insurance is a safety net for many individuals, allowing them to replace income when they are disabled.
7. Massachusetts recently updated its Equal Pay Act, evidencing intent of the General Court to move toward full gender equality in the workplace.
8. There is enough evidence of harm to women in gender-based pricing of individual disability insurance to conclude that the benefits of ending gender-based pricing outweigh the cost.

Therefore, it is our recommendation that the Massachusetts General Court enact legislation prohibiting gender rating in individual disability policies, with such legislation taking effect one year after its passage.

We agree with the Findings and the Recommendations of the Working Group.

It is worth noting that the 2 members of the Working Group who represented the insurance industry were the only 2 members to vote against the recommendation. The Report includes their "minority report" in which they write, "Gender is an actuarially justified risk classification criterion which is an intrinsic part of the disability insurance underwriting and pricing process." **The argument offered by the insurers in their minority report is precisely the point that the US Supreme Court rejected in 1983:**

From the New York Times on July 7, 1983: "Writing for the Court, Associate Justice Thurgood Marshall said that Title VII of the Civil Rights Act of 1964, which outlaws employment discrimination on the basis of both race and sex, requires employees to be treated as individuals rather than as members of a group.

"Even a true generalization about a class cannot justify class based treatment under the law," Justice Marshall said, adding, 'An individual woman may not be paid lower monthly benefits simply because women as a class live longer than men.'"

In supporting this legislation, we do not dispute the numbers offered by the actuaries. We believe, however, that our job as legislators is not only about numbers, but more importantly about values. We are proud of Massachusetts' tradition of leading the way when it comes to equality for all people. We are proud of the steps this legislature has already taken to ensure workplace fairness for women. We urge you to take this next step and join us in supporting this important civil rights and workplace fairness legislation.


Sincerely,



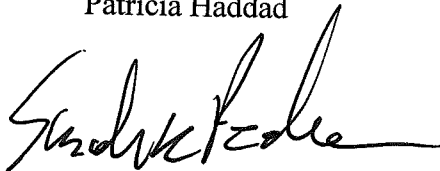
Ruth B. Balser



Patricia Haddad



Byron Rushing



Sarah Peake



Paul Donato



Ann-Margaret Ferrante

Lou Kafka

Alice Peisch

Jennifer Benson

Kay Khan

Jay Kaufman

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Brian Ashe

Cory Atkins

Christine Barber

John Barrett

David Vieira

Keiko Orrall

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Susan Gifford

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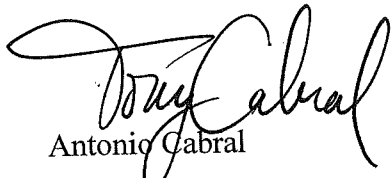
Kimberly Ferguson

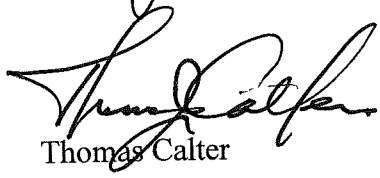
Sheila Harrington

Randy Hunt

James Kelcourse

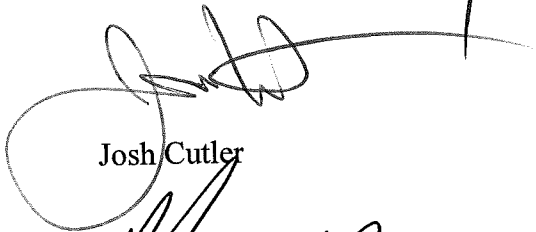
Matthew Muratore

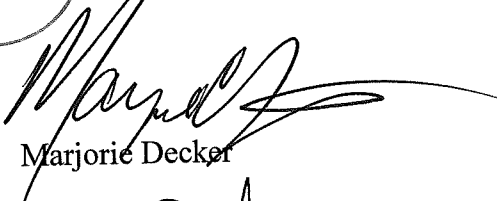

Antonio Cabral

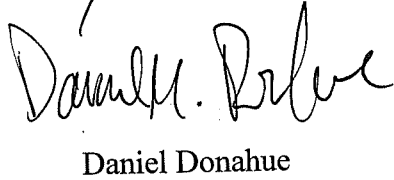

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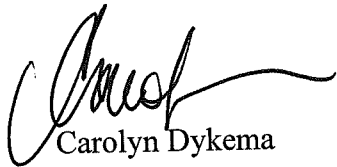

Linda Dean Campbell


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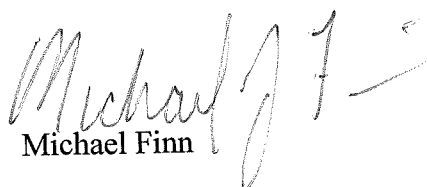

Josh Cutler

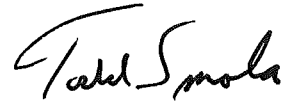

Marjorie Decker


Daniel Donahue

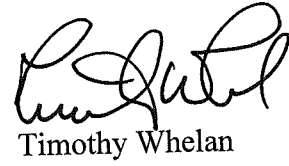

Carolyn Dykema

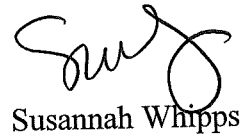

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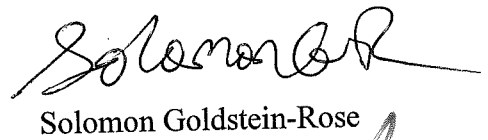

Michael Finn

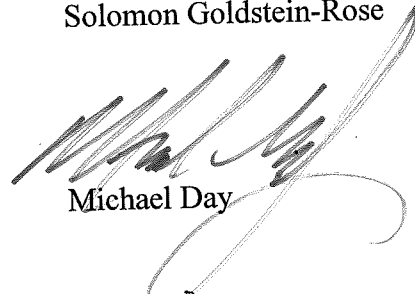


Todd Smola

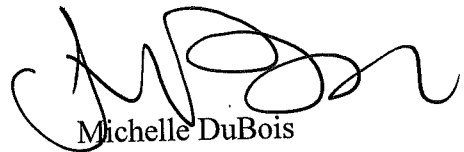

Timothy Whelan


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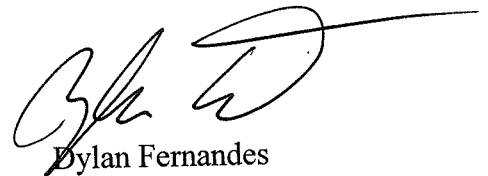

Solomon Goldstein-Rose

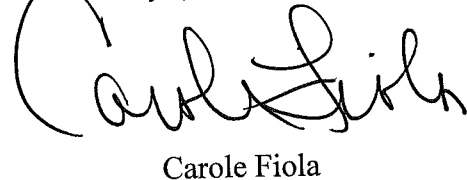

Michael Day


Diana DiZoglio


Michelle DuBois


Lori Ehrlich


Dylan Fernandes


Carole Fiola

Sean Garballey

Carmine Gentile

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Stephan Hay

Natalie Higgins

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Joan Meschino

Denise Garlick

Carlos González

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Mary Keefe

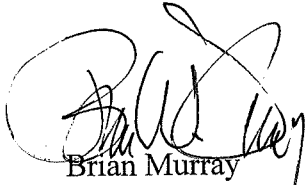
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John Mahoney


Christopher Markey

Paul McMurtry

Rady Mom



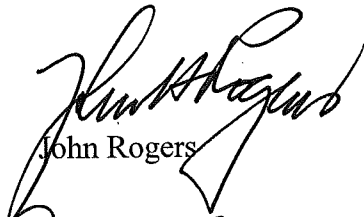
Brian Murray



Jerald Parisella



Denise Provost



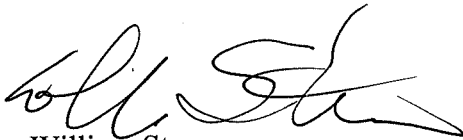
John Rogers



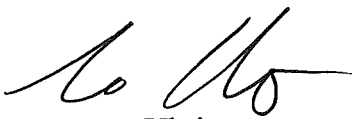
Angelo Scaccia



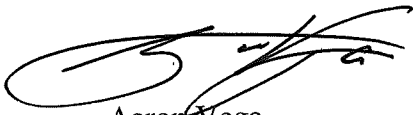
Frank Smizik



William Straus



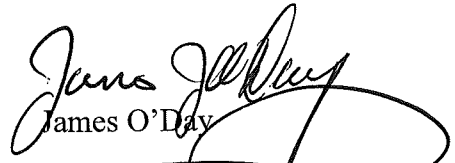
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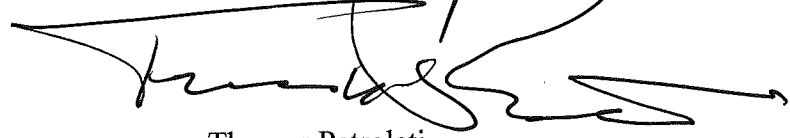
Aaron Vega



Chris Walsh



James O'Day



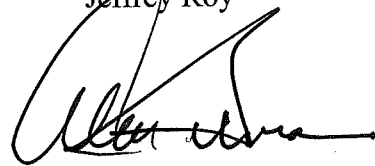
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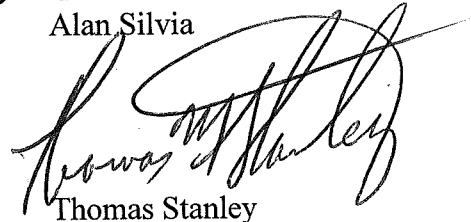
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Jeffrey Roy



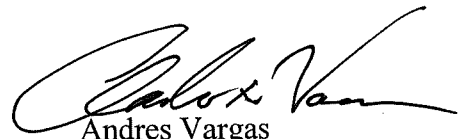
Alan Silvia



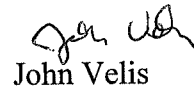
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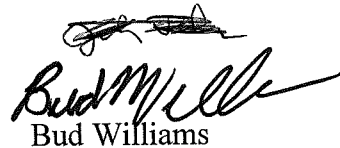
Chynah Tyler



Andres Vargas



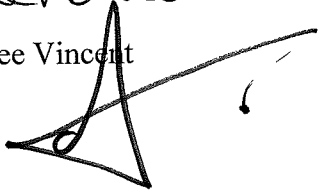
John Velis



Bud Williams

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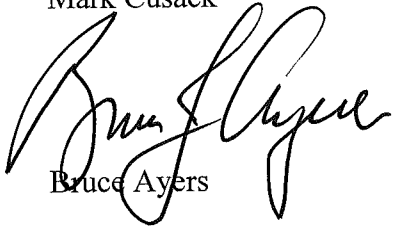
Evandro Carvalho

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Mark Cusack



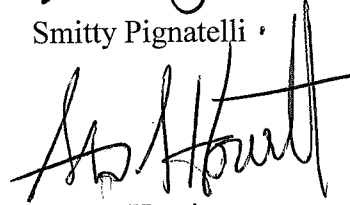
Bruce Ayers

Kate Hogan

Kate Hogan



Smitty Pignatelli



Steven Howitt



John Lawn



James Murphy