



LIFE INSURANCE ASSOCIATION  
OF MASSACHUSETTS

**Joint Statement of the Life Insurance Association of Massachusetts  
and the American Council of Life Insurers in opposition to**

***H. 482/S. 545 -- An Act Providing for Equitable Coverage in Disability  
Policies***

**Before The Joint Committee on Financial Services  
January 16, 2018**

These comments are submitted on behalf of the Life Insurance Association of Massachusetts and the American Council of Life Insurers. The Life Insurance Association of Massachusetts is a trade association representing 14 leading life, disability income and long term care insurers licensed to do business in the Commonwealth. The American Council of Life Insurers (ACLI) is a national trade association representing life, disability income, and long-term care insurers with 219 member companies licensed to do business in Massachusetts. ACLI member companies provide the majority of disability income insurance coverage both in the United States and in Massachusetts.

H. 482/S. 545 would prohibit insurers from making any distinction or otherwise recognizing any difference based on race, color, religion, sex, marital status, or national origin, in premiums, benefits or any other terms or conditions of any group or individual disability, accident or sickness insurance contract issued or delivered within or without the commonwealth which covers one or more residents of the commonwealth. It would also prohibit insurers from considering conditions unique to one sex in underwriting.

Should this bill pass, Massachusetts would join Montana as the only two states which have taken the drastic step of ignoring the weight of statistical evidence by outlawing the use of gender in the underwriting of disability insurance. We urge the Committee not to take this action.

Insurers obviously cannot predict with accuracy if or when a particular individual will become disabled, so they utilize actuarially proven information on group averages in order to price their products. There is overwhelming actuarial evidence to demonstrate that gender is a significant predictor of disability insurance claims cost. The global consulting firm Milliman, Inc. documented that women overall face a greater risk of disability than men across most age groups and that women between the ages of 35 and 65 are over 50% more likely than men to become disabled. More importantly, Milliman found that women's claims costs are higher than

men's. Female claims costs are generally more than double male costs between ages 30-40, and over 50% higher for ages after that.

Gender is an actuarially justified risk classification criterion which is an intrinsic part of the disability insurance underwriting and pricing process. If insurers are not allowed to take into consideration the undisputed actuarial evidence on gender and disability costs, the result will be that men will be overcharged for their individual disability income insurance as compared to similarly situated women. Likewise, women will be undercharged. Rather than paying premiums closely tied to the risk they present, male premiums will subsidize female premiums. This isn't fair for anyone. Moreover, if individual disability insurance pricing switched to a gender-neutral basis, premiums overall will go up. Because disability insurance is a very price sensitive product, this increase may result in fewer Massachusetts residents buying coverage in the future.

Montana is the only state which has taken the drastic step of ignoring the weight of statistical evidence by outlawing the use of gender in the underwriting of disability insurance (in fact, underwriting for all insurance products). Experience in Montana is not necessarily relevant, however, as the population of Montana is very small – only 15% of that of Massachusetts – and the resulting pool of insurance applicants may not be statistically significant. In addition, Montana enacted their law in 1985. Since then, many states have debated following a similar path, but all have decided against it.

We also note the negative impact that H. 482/S. 545 would have on long-term care insurance where gender is also a statistically significant rating factor. Gender distinct pricing has become the industry pricing standard in nearly every state. Milliman, Inc. has indicated that, industrywide, women represent 60% of long-term care insurance policyholders, but account for 70% to 80% of claims. Historically, 69% of long term care insurance benefits were paid to women. According to the U.S. Department of Health and Human Services - Centers for Disease Control and Prevention - National Center for Health Statistics, "older women have higher average expenditures for home health care services and long term care than men because they make up a higher proportion of the older and frailer population, need more help with both personal care needs and routine needs, and are less likely to have spouse available to help them."

With a goal of keeping premiums stable over time, long-term care insurance carriers are required to use the best and most current information available to them in order to accurately price their products. A prohibition against gender based rates would work against the objective of rate stabilization as it would add gender mix as another risk element that could cause inforce premiums to need to be increased over time.

Classifying risk in the underwriting process has long been recognized and endorsed by the Commonwealth, and is embodied in both Court opinion and in the General Laws. The need for insurance companies to classify risks, and price according to risk classification, has been specifically recognized by our Supreme Judicial Court in the cases of *LIAM v. Commissioner of Insurance*, 403 Mass 410 (1988) and *Telles v. Commissioner of Insurance*, 410 Mass 460 (1991). The Court in *LIAM v. Commissioner* stated that "the intended result of the (underwriting) process is that persons of substantially the same risk will be grouped together, paying the same

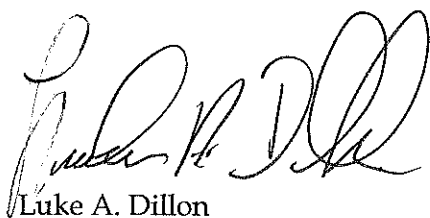
premiums, and will not be subsidizing insureds who present a significantly greater hazard." The Court went further in *Telles v. Commissioner*, stating that "Chapter 175, Section 120, and M.G.L. c. 176D, Section 3(7), illustrate the principle that insureds must be treated in accordance with their risk classification." In addition, M.G.L.A. Ch. 176D, Section 3(7) deems it to be "unfair discrimination" and an unfair method of competition to treat individuals of the same class and of essentially the same hazard differently.

H. 482/S. 545 would also prohibit insurers from taking into consideration conditions unique to one sex in underwriting. This means that an insurer could not take into account applicants for disability insurance who are already disabled due to a condition unique to their sex, like prostate cancer. Requiring an insurer to finance a risk that has already happened is contrary to the fundamental purpose of insurance to protect against the probability, rather than certainty that an event will occur. Prohibiting insurers from considering important underwriting factors merely because they are unique to one sex is unfair to the company and its other policyholders whose rates will increase because of it.

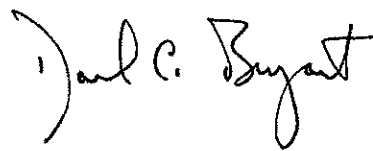
In addition, H. 482/S. 545 creates the potential for unnecessary conflicts of law and administrative confusion by applying its prohibitions extraterritorially to contracts issued in other states which cover Massachusetts residents. There is no reason to extend Massachusetts law to transactions which take place in other states. This will create conflicts of law between Massachusetts and that of the state where the contract is issued, as no other state besides Montana has prohibited gender-based pricing.

We urge you to give H. 482/S. 545 an unfavorable report.

We would be pleased to provide you with any further information that you may find helpful as the Committee deliberates on this issue.



Luke A. Dillon  
President and CEO  
Life Insurance Association of Massachusetts



Dan Bryant  
Regional Vice President  
American Council of Life Insurers