



THE ATTORNEY GENERAL  
OF TEXAS

AUSTIN, TEXAS 78711

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ATTORNEY GENERAL.

March 30, 1973

20. 52

Honorable Ben Bynum  
Chairman, Insurance Committee  
House of Representatives  
Austin, Texas 78711

Letter Advisory No. 3

Re: Constitutionality of House  
Bills 64, 283 and 309 regarding  
regulation of insurance in view  
of Article 1, Section 3a of the  
Constitution of Texas

Dear Representative Bynum:

You have submitted three House bills dealing with insurance rate making, none of which specifically prohibits discrimination in rates based solely on sex. You ask whether this omission would render the bills invalid.

In both House Bill 64 and House Bill 309, proposed Article 5.80-7 (2) "CLASSIFICATION" contains the following sentence:

"Risks may be classified in any reasonable method for the establishment of rates and minimum premiums, except that classifications may not be based on race, color, creed or national origin." (Emphasis added)

House Bill 283, in proposed Article 5.83, (2) "CLASSIFICATION" has the following language: "Risks may be classified in any reasonable way for the establishment of rates and minimum premiums." (Emphasis added)

On November 7, 1972, Article 1 of the Texas Constitution was amended to add a new Section 3a which reads as follows:

"Equality under the law shall not be denied or abridged because of sex, race, color, creed or national origin. This amendment is self-operative." (Emphasis added)

Nothing in any of the bills violates the constitutional provision. None calls for or condones discrimination, and none could take away any measure of any right to be free of discrimination guaranteed by

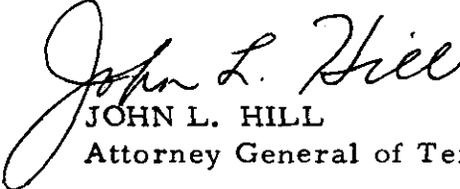
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Section 3a of Article 1 of the Texas Constitution or protected by the Fourteenth Amendment to the Constitution of the United States.

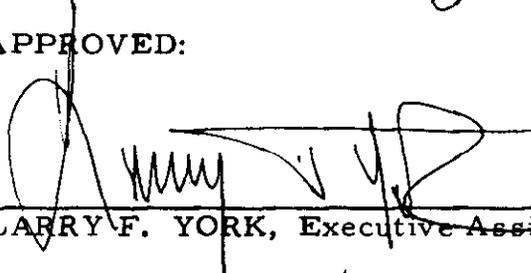
It is our opinion that the failure of a bill to specifically prohibit discriminatory insurance rates will not affect its constitutionality. The constitutional problem will arise only if rates adopted pursuant to these bills or any other statute are "invidiously discriminatory" -are based on classifications that are "wholly arbitrary or capricious". See the concurring opinion of Justice Stewart in San Antonio Independent School District v. Rodriguez, \_\_\_ U. S. \_\_\_ (U. S. Supreme Court, March 21, 1973).

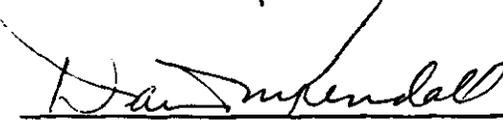
Our answer is limited to the scope of your inquiry and we have not examined the statutes for any other possible questions.

Very truly yours,

  
JOHN L. HILL  
Attorney General of Texas

APPROVED:

  
LARRY F. YORK, Executive Assistant

  
DAVID M. KENDALL, Chairman  
Opinion Committee