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**MONTANA FIRST JUDICIAL DISTRICT COURT  
LEWIS AND CLARK COUNTY**

WILLARD RANDALL, KIAH  
ABBEY, MONTANA CHAPTER OF  
THE NATIONAL ORGANIZATION  
FOR WOMEN, AMERICAN  
ASSOCIATION OF UNIVERSITY  
WOMEN OF MONTANA, JESSICA  
PLANCE,

Plaintiffs,

v.

STATE OF MONTANA, SARAH  
SWANSON, in her official capacity as  
COMMISSIONER OF THE  
MONTANA DEPARTMENT OF  
LABOR AND INDUSTRY, and  
JAMES BROWN, in his official  
capacity as COMMISSIONER OF  
SECURITIES AND INSURANCE,  
MONTANA STATE AUDITOR,

Defendants.

Cause No. ADV-2022-925

**ORDER – MOTIONS FOR  
SUMMARY JUDGMENT**

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1                   Before the Court are three motions for summary judgment. On  
2 May 9, 2025, Defendants State of Montana and Sarah Swanson, in her official  
3 capacity as Commissioner of the Montana Department of Labor and Industry  
4 (collectively “State”) filed their motion for summary judgment [Dkt. 74].  
5 Plaintiffs Willard Randall, Kiah Abbey, Montana Chapter of the National  
6 Organization for Women, American Association of University Women of  
7 Montana and Jessica Plance (collectively “Plaintiffs”) oppose the motion.  
8 Defendant James Brown, Commissioner of Securities and Insurance, Montana  
9 State Auditor (Brown) has not taken a position on the State’s motion. On  
10 August 13, 2025, Plaintiffs filed their motion for summary judgment [Dkt. 90].  
11 Both the State and Brown oppose Plaintiffs’ motion. On October 8, 2025, Brown  
12 filed his motion for summary judgment [Dkt. 96]. Plaintiffs oppose Brown’s  
13 motion. The State has not taken a position on it.

14                   Montana Attorney General Austin Knudsen, Michael Russell,  
15 Thane Johnson and Alwyn Lansing represent the State. Rylee Sommers-  
16 Flanagan, Molly E. Danahy, Andres Haladay and Niki Zupanic represent the  
17 Plaintiffs. Dale Schowengerdt represents Brown.

18                   The parties appeared before the Court on February 5, 2026, for oral  
19 argument. The motions are fully briefed and ready for the Court’s decision.

#### 20                   **STATEMENT OF FACTS**

21                   The 67th Montana Legislature passed and Governor Gianforte  
22 signed into law House Bill 379 (HB 379), entitled “An Act Declaring the Use of  
23 Actuarial Tables Based on Sex or Marital Status to Be a Nondiscriminatory  
24 Approach to Setting Insurance Premium Rates, Except as Prohibited by Federal  
25 Law; Amending Section 49-2-309, MCA; and Providing an Effective Date.”

1 HB 379, in pertinent part, amended Montana Code Annotated § 49-2-309 by  
2 adding a new subsection 4 which provides:

3 **49-2-309. Discrimination in insurance and retirement plans.**

4 (1) A financial institution or person to may not discriminate solely  
5 on the basis of sex or marital status in the issuance or operation of  
6 any type of insurance policy, plan, or coverage or in any pension or  
7 retirement plan, program, or coverage, including discrimination in  
8 regard to rates or premiums and payments or benefits.

9 . . . .

10 (4) Except as prohibited under 45 CFR, part 147, implementing the  
11 Patient Protection and Affordable Care Act as of October 1, 2021, it  
12 is not a violation of the prohibition against sex or marital status  
13 discrimination in this section for a person to use accepted ratemaking  
14 methodologies based on sex or marital status in establishing  
15 insurance premium rates.

16 This case presents a constitutional challenge to HB 379. Plaintiffs  
17 are individual Montana insurance consumers and organizations whose members  
18 are Montana insurance consumers. HB 379 authorized insurance providers to use  
19 ratemaking methodologies based on sex and marital status when establishing  
20 insurance premium rates in Montana. Prior to the bill's passage, Montana  
21 prohibited insurance providers from using ratemaking methodologies which  
22 included either of these factors. Now that the prohibition has been lifted,  
23 Plaintiffs allege HB 379 bars victims of sex and marital status discrimination in  
24 the insurance context from pursuing relief under the Montana Human Rights Act  
25 (MHRA). Additionally, Plaintiffs allege HB 379 eliminated protections against  
sex and marital status discrimination previously provided by the Commissioner  
of Securities and Insurance (Auditor). Plaintiffs allege HB 379 violates the equal

1 protection clause in Article II, section 4 of the Montana Constitution and the  
2 prohibition on special legislation in Article V, section 12. They seek a  
3 declaratory judgment that HB 379 is unconstitutional and an order enjoining  
4 enforcement of HB 379.

### 5 PRINCIPLES OF LAW

6 Summary judgment is warranted when no genuine issues of  
7 material fact exist, and the moving party is entitled to judgment as a matter of  
8 law. Mont. R. Civ. P. 56(c)(3). Summary judgment is appropriate when “the  
9 pleadings, the discovery and disclosure materials on file, and any affidavits show  
10 that there is no genuine issue as to any material fact and that the movant is  
11 entitled to judgment as a matter of law.” Mont. R. Civ. P. 56(c)(3). The party  
12 moving for summary judgment must establish the absence of any genuine issue  
13 of material fact and that the party is entitled to judgment as a matter of law. *Tin*  
14 *Cup County Water &/or Sewer Dist. V. Garden City Plumbing*, 2008 MT 434,  
15 ¶ 22, 347 Mont. 468, 200 P.3d 60.

16 Once the moving party has met its burden, the party opposing  
17 summary judgment must present affidavits or other testimony containing material  
18 facts which raise a genuine issue as to one or more elements of its case. *Id.*, ¶ 54  
19 (citing *Klock v. Town of Cascade*, 284 Mont. 167, 174, 943 P.2d 1262, 1266  
20 (1997)). To avoid summary judgment, the opposing party’s evidence “must be  
21 substantial, ‘not mere denial, speculation, or conclusory statements.’” *Hadford v.*  
22 *Credit Bureau, Inc.*, 1998 MT 179, ¶ 14, 962 P.2d 1198, 1201 (quoting *Klock* at  
23 174).

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1 ANALYSIS

2 In reviewing Plaintiffs’ constitutional challenges to HB 379, the  
3 constitutionality of a statute is presumed. A court must uphold the statute unless  
4 it conflicts with the constitution beyond a reasonable doubt. If any doubt exists,  
5 it must be resolved in favor of upholding the statute. Plaintiffs—as the parties  
6 challenging the constitutionality of the statute—bear the burden of proof. *Mont.*  
7 *Cannabis Indus. Assn. v. State*, 2016 MT 44, ¶ 12, 382 Mont. 256, 368 P.3d 1131.

8 Plaintiffs have raised a facial challenge to HB 379. “Analysis of a  
9 facial challenge to a statute differs from that of an as-applied challenge.” *Id.* at  
10 ¶ 14. Plaintiffs must prove beyond a reasonable doubt that “no set of  
11 circumstances exists under which the [challenged sections] would be valid.” *Id.*  
12 (internal citations and quotations omitted). “The crux of a facial challenge is that  
13 the statute is unconstitutional in all its applications.” *Advocates for Sch. Tr.*  
14 *Lands v. State*, 2022 MT 46, ¶ 29, 408 Mont. 39, 505 P.3d 825. If Defendants  
15 show any constitutional applications, Plaintiffs’ facial challenge fails. *Id.*

16 **I. Equal Protection**

17 The Montana Constitution’s equal protection clause guarantees  
18 freedom from sex discrimination. “Neither the state nor any person, firm,  
19 corporation, or institution shall discriminate against any person in the exercise of  
20 his civil or political rights on account of race, color, sex, culture, social origin or  
21 condition, or political or religious ideas.” Mont. Const. art. II, sec. 4. The clause  
22 does not explicitly prohibit discrimination on the basis of marital status.  
23 According to the State, because marital status is not a protected class listed in  
24 Article II, section 4 of the Montana Constitution, the correct standard for  
25 determining whether the statute is constitutional is the rational basis test.

1                   Plaintiffs argue that although marital status is not explicitly  
2 identified in Article II, section 4, it implicates the right to privacy in Article II,  
3 section 10 and therefore is a fundamental right subject to strict scrutiny, citing  
4 *Armstrong v. State*, 1999 MT 261, ¶¶ 35, 46, 29 Mont. 361, 989 P.2d 364. In their  
5 amended complaint, Plaintiffs do not allege a violation of the right to privacy.  
6 Their claim is limited to an alleged violation of the equal protection clause—  
7 which does not identify marital status as a protected class. The Court agrees with  
8 the State that the appropriate standard of review with respect to marital status  
9 discrimination is the rational basis test. Under the rational basis test, it is the  
10 challenger’s burden to demonstrate the law is not rationally related to a legitimate  
11 governmental interest. *Rohlf’s v. Klemenhagen, LLC*, 2009 MT 440, ¶ 26, 354  
12 Mont. 133, 227 P.3d 42.

13                   A statute will survive rational review if it is rationally related to a  
14 legitimate governmental interest. *Montana Shooting Sports Ass’n. v. State*,  
15 2020 MT 8, ¶ 20, 355 Mont. 49, 224 P.3d 1240. The State argues it has a  
16 legitimate interest in keeping insurance premiums low for Montana citizens and  
17 that married couples provide lower risk for purposes of automobile insurance,  
18 resulting in lower premiums for married couples. In support of its argument, the  
19 State submitted a declaration of Shawn Kraft (Kraft). Kraft is the co-owner of  
20 Leavitt Great West Insurance Company. Leavitt Great West is in the business of  
21 assessing insurance risk. According to Kraft, married people are less likely to  
22 make an insurance claim than single people, and forty-two states and the District  
23 of Columbia offer a discount to people who are married versus people who are  
24 single.

25                   /////

1           Brown submitted a declaration of Ryan Purdy (Purdy), an expert  
2 on actuarial science, property and casualty insurance products, and insurance  
3 ratemaking. Purdy states the nature of marital status on risk in automobile  
4 insurance is complex. He notes that married people tend to drive slightly more  
5 miles than single people, which would tend to increase risk, but also cites a study  
6 that shows that married people engage in less risky driving behaviors than single  
7 people, which would decrease risk. Purdy also cites a study which demonstrates  
8 that for coverage of bodily injury and property damage in automobile insurance,  
9 single drivers are more costly than their married counterparts. Thus, there is a  
10 correlation between marital status and insurance risk in private passenger  
11 automobile insurance.

12           Plaintiffs argue the State and Brown have not provided any data  
13 which demonstrate married people are less risky than their single counterparts.  
14 The declarations of Kraft and Purdy clearly refute this claim. Moreover, it is the  
15 Plaintiffs' burden to prove there is no correlation between marital status and risk.

16           Plaintiffs next argue HB 379 has caused arbitrary and  
17 discriminatory rate setting for unmarried consumers, citing Randall and Plance's  
18 experience. While Randall and Plance's experience would be relevant to an as-  
19 applied challenge, it is not particularly relevant to Plaintiffs' facial challenge.  
20 Moreover, their experience supports the State and Brown's position that married  
21 drivers pose less risk than single drivers.

22           Plaintiffs cite Randall's statement, in which they argue his  
23 automobile premiums increased by 6.17% because he is single. However,  
24 Randall's declaration does not state that his premiums increased, it merely  
25 provides the costs for his insurance for a single year. Further, his declaration

1 does not state that his premium increased because he is single. Rather, Randall  
2 states he is “concerned that my insurance premiums are increasing due to my  
3 insurer setting rates based on either my sex, my marital status, or both.”  
4 Plaintiffs also cite the declaration of Douglas Heller (Heller), their retained  
5 expert, as evidence Randall’s premiums increased by 6.17% because he is single.  
6 However, this figure (6.17%) is not the increase in Randall’s premiums, year over  
7 year, but the difference between what a single person and a married person would  
8 pay based on Safeco’s rating relativities. This difference supports the State’s  
9 position that married people pose a reduced actuarial risk to insurers supporting a  
10 lower premium for married insureds.

11 Plaintiffs also cite Plance’s statement, in which they argue her  
12 premiums increased by \$131.83 because she is single. However, Plance’s  
13 declaration, like Randall’s, does not state her premiums increased. It merely  
14 identifies the costs for a single six-month period. Plance, like Randall, is  
15 “concerned” that her premiums are increasing due to her marital status.

16 It is unsurprising that changing assigned risk based upon an  
17 individual insured’s characteristics (as opposed to an aggregate of insureds)  
18 would result in increased premiums for people who represent a greater risk and  
19 decreased premiums for people who pose less risk. Thus, it is reasonable that  
20 Randall and Plance’s premiums would increase (as opposed to a married insured)  
21 as Randall and Plance are in a category with a higher risk factor, whose  
22 premiums are higher because they are in a category of those who represent a  
23 higher risk.

24 Plaintiffs offer other as-applied arguments to support its position.  
25 First, Plaintiffs cite the ratemaking practices of Enumclaw in which they alleged

1 the company raised premiums for both men and women. Nonetheless, Plaintiffs  
2 do not argue Enumclaw adjusted premiums on the basis of marital status.  
3 Second, Plaintiffs argue National Farmers, following passage of HB 379, raised  
4 the premiums of single people (as compared to Enumclaw’s previously employed  
5 unisex pricing model). However, this change is consistent with the State’s  
6 evidence that single policy holders pose a greater risk than married policy  
7 holders. Plaintiffs next argue HB 379 is irrational because it is facially  
8 discriminatory. Simply because a statute discriminates on the basis of marital  
9 status does not mean the statute is irrational.

10 Heller’s declaration does not support Plaintiffs position or refute  
11 the declarations of Kraft and Purdy. Regarding marital status, Heller states its  
12 use as a pricing factor is “unwarranted and unfair” because it is “not tied to risk-  
13 relate behaviors that policy holders can modify.” Although Heller addresses the  
14 use of rate factors by insurance companies to influence driving behavior, he does  
15 not address whether there is a link between marital status and insurance risk.

16 Plaintiffs only offer evidence regarding automobile insurance.  
17 They have not offered any evidence related to other types of insurance. They  
18 have not addressed whether the use of marital status is or is not rationally related  
19 to setting insurance premiums for life insurance, property insurance or other  
20 categories. Plaintiffs’ facial challenge requires them to prove that marital status  
21 is not rationally related to any type of insurance product.

22 Plaintiffs have the burden to prove the use of marital status is not  
23 rationally related to a legitimate state interest, which they fail to meet. The State  
24 and Brown have demonstrated the consideration of marital status in setting  
25 insurance premiums is rationally related to (1) the state’s legitimate interest in

1 lowering rates for insureds with lower risk factors; and (2) the state’s interest in  
2 tying insurance premiums to individual risk factors.

3 Because Plaintiffs brought a facial challenge to HB 379, they also  
4 have the burden to prove it is unconstitutional in all its applications. Since  
5 Plaintiffs have failed to prove that consideration of marital status is not rationally  
6 related to a legitimate state interest, their facial challenge fails. The Court  
7 therefore need not address Plaintiffs’ arguments that discrimination based on sex  
8 in insurance ratemaking violates the equal protection clause.

## 9 **II. Special Legislation Clause**

10 The State seeks summary judgment on Count II of the amended  
11 complaint, in which Plaintiffs allege HB 379 is special legislation in violation of  
12 Article V, section 12 of the Montana Constitution. Article V, section 12 states  
13 “[t]he legislature shall not pass a special or local act when a general act is, or can  
14 be made, applicable.”

15 Plaintiffs allege HB 379 is special legislation because “it provides  
16 a special benefit for insurance companies that other businesses and individuals do  
17 not enjoy” and, as a result, “insurance companies do not face the same regulatory  
18 regime as similarly situated entities.”

19 In the constitutional context, a law is not local or special if it  
20 operates in the same manner upon all persons in like circumstances. If a law  
21 operates uniformly and equally upon all brought within the circumstances for  
22 which it provides, it is not a local or special law. (citing *Lowery v. Garfield*  
23 *County*, 122 Mont. 571, 586, 208 P.2d 478, 486 (1949)). On the other hand, a  
24 law is special legislation if it confers particular privileges or disabilities upon a  
25 class of persons arbitrarily selected from a larger group of persons, all of whom

1 stand in the same relation to the privileges or disabilities. *Rohlfs v. Klemenhausen,*  
2 LLC, 2009 MT 440, ¶12, 354 Mont. 133, 227 P.3d 42.

3 Montana Code Annotated § 49-2-309(1) prohibits discrimination in  
4 insurance and retirement plans. Subsection (4), which HB 379 added to the  
5 statute, confers a special privilege on insurance companies, i.e. “it is not a  
6 violation of the prohibition against sex or marital status discrimination in this  
7 section for a person to use accepted ratemaking methodologies based on sex or  
8 marital status in establishing insurance premium rates.” Consequently, HB 379 is  
9 special legislation.

10 Class legislation may be constitutional if the class established is  
11 germane to the purpose of the law and is characterized by some special qualities  
12 or attributes which reasonably render the legislation necessary. In other words, if  
13 the classification is reasonable and the law operates equally upon every person or  
14 thing within the given class, it is not unconstitutional. *State ex rel., Fisher v.*  
15 *School Dist. No. 1*, 97 Mont. 358, 366-67, 34 P.2d 522, 525-26 (1934).  
16 Reasonable classifications of people will be upheld against a special legislation  
17 challenge. *Linder v. Smith*, 193 Mont. 20, 30, 629 P.2d 1187, 1192 (1981). A  
18 presumption exists in favor of a law being constitutional and the classification  
19 being reasonable. *Great Falls Nat. Bank v. McCormick*, 152 Mont. 319, 323,  
20 448 P.2d 991, 993 (1968).

21 HB 379 confers a special privilege on insurance companies. It permits  
22 them to consider sex or marital status in their ratemaking methodologies to  
23 establish insurance premium rates. Insurance companies, which are the subject  
24 of Montana Code Annotated § 49-2-309, are the only businesses which utilize  
25 ratemaking methodologies and establish insurance premiums based upon risk.

1 Pension plans, on the other hand, do not. Because HB 379 operates equally for  
2 all insurance companies, the classification is reasonable and does not violate  
3 Article V, section 12.

4 Plaintiffs assert HB 379 singles out insurance companies from all  
5 other businesses. Montana Code Annotated § 49-2-309 does not relate to all  
6 businesses, only to insurance and retirement plans. HB 379 carves out an  
7 exception from those two businesses, not all businesses in general. Moreover,  
8 insurance companies and retirement plans are unique among other businesses in  
9 that they are regulated in whole or in part by the Commissioner of Securities and  
10 Insurance.

11 Accordingly,

12 **ORDER**

13 **IT IS HEREBY ORDERED** Plaintiffs Willard Randall, Kiah Abbey,  
14 Montana Chapter for the National Organization for Women, American  
15 Association of University Women of Montana and Jessica Plance’s motion for  
16 summary judgment is **DENIED**.

17 **IT IS HEREBY FURTHER ORDERED** Defendants State of Montana,  
18 Sarah Swanson and James Brown’s motions for summary judgment are  
19 **GRANTED**.

20  
21 /s/ Mike Menahan  
22 MIKE MENAHAN  
23 District Court Judge  
24  
25

1 cc: Rylee Sommers-Flanagan, via email  
2 Molly E. Danahy, via email  
3 Andres Haladay, via email  
4 Niki Zupanic, via email  
5 Austin Knudsen, Attorney General, via email  
6 Michael Russell, via email  
7 Thane Johnson, via email  
8 Alwyn Lansing, via email  
9 Dale Schowengerdt, via email

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