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PROTECTION & COMMERCE

TWENTY-FOURTH LEGISLATURE
Regular Session of 2008

Monday, February 4, 2008
2 p.m.

TESTIMONY ON HOUSE BILL NO. 94 H.D. 1 – RELATING TO INSURANCE.

TO THE HONORABLE ROBERT HERKES, CHAIR, AND MEMBERS OF THE
COMMITTEE:

My name is J. P. Schmidt, State Insurance Commissioner (“Commissioner”), testifying on behalf of the Department of Commerce and Consumer Affairs (“Department”). The Department supports the intent of this bill, but prefers the Administration’s version in House Bill No. 3099 which adopts the National Association of Insurance Commissioner’s (“NAIC”) Viatical Settlements Model Act.

The purpose of this bill is to regulate the life settlement industry by adopting the National Conference of Insurance Legislators’ (“NCOIL”) Life Settlements Model Act. Specifically, this bill allows the Commissioner to license: (1) brokers who negotiate life settlement contracts on behalf of the life insurance policy’s owner; and (2) providers who effectuate life settlement contracts with the owner. It also allows the Commissioner to conduct investigations and examinations of brokers and providers.

There are differences between the NCOIL model in this bill and NAIC model in House Bill No. 3099. For example, section 3 of this bill does not require brokers and providers to obtain a bond or show any evidence of financial responsibility, whereas House Bill No. 3099 requires evidence of financial responsibility in the amount of

\$250,000. Evidence of financial responsibility is necessary to ensure that brokers and providers are able to compensate victims for their wrongful acts.

House Bill No. 3099 allows for licensing of business entities as a broker or producer similar to the process used in Hawaii Revised Statutes § 431:9A-106(b), which ensures that the designated broker or producer is responsible for compliance with insurance laws.

Where any policy is settled within five years of policy issuance, section 6 of this bill requires the provider to file an annual statement containing information prescribed by the Commissioner by rule, whereas House Bill No. 3099 requires the provider to report information as prescribed by form.

At any time prior to or during the first five years after policy issuance, House Bill No. 3099 requires the broker or provider to fully disclose to the insurer the plan or transactions to which the broker or provider is a party. There is no similar requirement in this bill.

House Bill No. 3099 also ensures that the jurisdiction of the Department's Securities Enforcement Branch ("SEB") is not affected by this legislation. This bill is silent and is unclear as to whether it infringes upon SEB's jurisdiction.

For the foregoing reasons, the Department prefers House Bill No. 3099, rather than this bill.

We thank this Committee for the opportunity to present testimony on this matter and respectfully request that the contents of House Bill No. 3099 be substituted into this bill.

AMERICAN COUNCIL OF LIFE INSURANCE
TESTIMONY IN SUPPORT OF HB 94, RELATING TO INSURANCE

February 4, 2008

Via E Mail: cpctestimony@capitol.hawaii.gov
Representative Robert N. Herkes, Chair
Committee on Consumer Protection and Commerce
State House of Representatives
Hawaii State Capital, Conference Room 325
415 S. Beretania Street
Honolulu, HI 96813

Dear Chair Herkes and Committee Members:

Thank you for the opportunity to testify in support of HB 94, relating to Insurance.

Our firm represents the American Council of Life Insurers ("ACLI"), a national trade association whose three hundred fifty-three (353) member company's account for 93% of the life insurance premiums and 94% of the annuity considerations in the United States among legal reserve life insurance companies. ACLI member company assets account for 93% of legal reserve company total assets. Two hundred sixty-one (261) ACLI member companies currently do business in the State of Hawaii.

HB 94 enacts the National Conference of Insurance Legislators ("NCOIL") Life Settlement Model Act. The NAIC Viatical Settlement Model Act, as recently amended, has been introduced this session as HB 3099 and SB 3021.

While the NCOIL Life Settlement Act and the NAIC Viatical Settlement Model Act each approach the regulation of stranger-originated life insurance or "STOLI" differently, both provide needed and effective regulation of this growing predatory practice.

ACLI strongly supports legislation which protects consumers, particularly elderly consumers, from "STOLI".

What Is Stranger Originated Life Insurance?

An investor, usually a hedge fund or other institutional investor, arranges for the purchase of a policy insuring the life of a person over 70 years of age, who is insurable for at least \$5M. The investor funds the policy with the expectation that policy benefits will ultimately flow to the investor. This is usually done by the insured individual's transferring the ownership of the policy to the investor within 2 years but it can also be effected by the insured's irrevocably assigning a large percentage of the policy benefits with this 2 year period to the investor.

The investor funds the cost of the insurance by making a non-recourse loan to the insured; that is, the insured is not personally liable on the loan – instead, the investor’s only recourse is against the policy which secures the loan. The interest rate on the loan is comparable to a credit card. If the insured dies during the two year period, the policy benefits must first be used to pay off the loan and fees owed to the investor, but the remainder is paid to the insured’s designated beneficiary. If the insured survives the 2 year period, the insured can either repay the loan and keep the policy or transfer the policy to the lender in full satisfaction of the debt. Due to the high interest rate and fees, the insured will almost invariably choose to transfer the policy to satisfy the debt.

If the offer of free insurance is not enough, the insured may be paid some sort of signing bonus in exchange for his participation in the deal.

ACLI is strongly opposed to STOLI.

1. STOLI is morally wrong and wrong for the life insurance industry and consumers.

Wagering on the lives of people is wrong.

- STOLI violates the intended purpose of life insurance. Life insurance is designed to protect an individual’s family and estate in the case of a death – not to financially benefit a group of strangers gambling on a person’s life.
- STOLI benefits investment groups and hedge funds, not families. It circumvents insurable interest laws and does not protect consumers.

2. STOLI invites wrong-doing.

- STOLI investors are betting on the early deaths of consumers, not on their continuing good health. This gaming scheme simply invites wrong-doing that targets elderly seniors.
- With STOLI, consumers do not have control over their own life insurance policies. Their life insurance is owned by or sold to strangers who do not have their health and welfare at heart.
- Under STOLI transactions, consumers do not know who owns their life insurance policy and what that person or persons intend to do with it.

3. Preying on the elderly is wrong.

- STOLI takes advantage of the elderly – inducing them to buy something they would not normally buy and do not need.
- There may be hidden tax consequences for elderly consumers that investors do not warn them about.

- If people enter into a STOLI arrangement, they may not be able to obtain more life insurance at a time they really need it.
- STOLI is an unregulated business that preys on the elderly.

4. STOLI is unfair to consumers.

While the cost of life insurance continues to fall, enabling more Americans to obtain good coverage, STOLI could reverse this positive trend at the expense of all consumers.

5. STOLI is detrimental to the life insurance industry.

STOLI will likely alter the way life insurance companies do business. Insurance companies have been consistently able to raise the age at which they are able to provide affordable life insurance. STOLI may eventually result in fewer choices for insurance consumers.

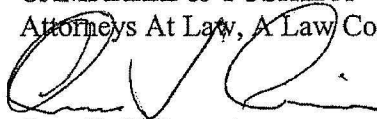
HB 94 prohibits STOLI transactions by prohibiting "life settlement contracts" at any time prior to policy issuance or within a 2 year period thereafter, unless otherwise exempted.

HB 94 makes engaging in STOLI schemes a fraudulent life settlement act subject to regulatory and civil penalties. Further, any person damaged by the STOLI scheme may bring a civil suit for damages against the person committing the violation.

As ACLI supports legislation which effectively deters STOLI transactions ACLI respectfully requests that this Committee pass HB 94.

Again, thank you for giving us the opportunity to testify in support of HB 94.

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February 2, 2008

TO: Representative Robert N. Herkes
Chair, Committee on Consumer Protection & Commerce
Hawaii State Capitol, Room 320
Via Email: CPCtestimony@Capitol.hawaii.gov

FROM: Gary M. Slovin

RE: H.B. 94, HD1 – Relating to Insurance
Hearing Date: Monday, February 4, 2008 at 2:00 pm

Dear Chair Herkes and Members of the Committee on Consumer Protection & Commerce

I am Gary Slovin, submitting testimony on behalf of the Life Settlements Institute (“LSI”). LSI membership consists of the world’s leading institutional investors and intermediaries in the mortality and longevity marketplace.

We have just been retained by LSI and have begun a review of the bill. We do have some concerns with certain provisions. In particular we would suggest that the definition “stranger-originated life insurance” be replaced with the following definition:

Stranger-originated life insurance" or "STOLI" means the procurement of new life insurance by persons or entities that lack insurable interest on the insured and, at policy inception, such person or entity owns or controls the policy or the majority of the death benefit in the policy and the insured or insured's beneficiaries receive little or none of the proceeds of the death benefits of the policy. Trusts that are created to give the appearance of insurable interest and are used to initiate policies for investors violate insurable interest laws and the prohibition against wagering on life. STOLI arrangements do not include those practices set forth in subsection (b) of the definition of “life settlement contract”.

LSI feels this is a more accurate definition.

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LSI does have certain other concerns which we will identify to the committee as soon as possible.

Thank you very much for this opportunity to submit testimony.