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TO THE SENATE COMMITTEE ON COMMERCE,  
CONSUMER PROTECTION, AND AFFORDABLE HOUSING

TWENTY-FOURTH LEGISLATURE  
Regular Session of 2008

Thursday, February 7, 2008  
9:00 a.m.

**TESTIMONY ON SENATE BILL NO. 3021 – RELATING TO VIATICAL  
SETTLEMENTS.**

TO THE HONORABLE RUSSELL S. KOKUBUN, 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 strongly supports this Administration bill.

The purpose of this bill is to regulate the viatical settlements industry by adopting  
the Viatical Settlements Model Act of the National Association of Insurance  
Commissioners (“NAIC”).

Viatical settlement transactions involve: (1) viators, or individuals who may have  
a terminal or chronic illness, need funds to meet their financial needs, and enter into a  
viatical settlement contract to sell their life insurance policies to a third-party for a lump-  
sum cash payment; (2) viatical settlement brokers, who represent the interests of the  
viator and arrange the sale of the party; (3) viatical settlement purchasers, or investors  
who purchase the policy and collect a share of the death benefit from the viatical  
settlement broker when the viator dies; and (4) viatical settlement providers who  
represent the interests of viatical settlement purchasers.

This measure authorizes the Commissioner to: (1) license viatical settlement brokers and viatical settlement providers; (2) conduct examinations or investigations; (3) mandate disclosure of information to the viator; (4) require the filing of advertising and promotional materials; and (5) require the filing of antifraud plans for detecting, investigating, and reporting possible fraudulent viatical settlement acts.

This measure is intended to protect consumers and policyholders, particularly seniors or the terminally or chronically ill, who may be interested in selling their insurance policies.

We thank this Committee for the opportunity to present testimony on this matter and ask for your favorable consideration.



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Senate Committee on Consumer Protection and Affordable Housing  
Senator Russell Kokubun, Chair  
Senator David Ige, Vice Chair

**Senate Bill 3021: Relating to Viatical Settlements**

**Hearing Date: February 7, 2008                      9:00 am**

Chair Kokubun and members of the Committee, my name is Cynthia Hayakawa, Executive Director of NAIFA ("National Association of Insurance and Financial Advisors") Hawaii, an organization made up of life insurance agents and financial advisors across Hawaii.

Mahalo for allowing us to express our **support for SB 3021**. This bill will add a new section to Chapter 431, HRS, to regulate the viatical settlement industry. This measure was adopted by the National Association of Insurance Commissioners ("NAIC") as the Viatical Settlements Model Act in June 2007, designed to add consumer protection measures while not affecting legitimate life settlement and insurance transactions.

A viatical settlement is the sale of a life insurance policy by the policy owner for an immediate cash benefit. It is a tool that typically can provide the policy owner who sells the policy with more funds than could have been realized if the policy had been surrendered to the insurer. These transactions usually involve terminally or chronically ill individuals (the viator) who want to sell their insurance policy to a third party/secondary market, in return for a portion of the death benefit.

**Insurable interest** is a fundamental concept in a well functioning life insurance marketplace. The concept preserves the social purpose of life insurance and helps to assure that the product will not be abused. Insurable interest statutes demonstrate the widespread belief that society is diminished when life insurance is used as a vehicle for gambling on human life.

Life insurance is unique--it receives special protections under federal and state law because its purpose is to protect the long-term interests that people with some connection to the insured, whether it be families, businesses, employees or charities. State insurable interest laws actually were developed to make sure that life insurance policies were taken out only by individuals, families, or businesses with an interest in the continued life of the insured.

**Stranger originated life insurance ("STOLI") violates the concept of insurable interest.** Changes to state viatical settlement laws, which deal with life and viatical settlement issues, are necessary to prevent STOLI promoters from evading state insurable

interest laws and violating the social purpose of life insurance. The life insurance community recognizes that many circumstances may lead the owner of a life insurance policy to explore a life insurance settlement. We have always supported—and will continue to support—legitimate life settlements.

How does STOLI work? A speculator or a promoter who has no relationship with the insured, basically seeks out and encourages senior citizens with high net worth to initiate insurance coverage on their own lives. Typically the promoter or speculator will arrange premium financing to help the insured cover the premium payments on the policy or an upfront cash payment. The key point is that everyone's intention at the time of the policy purchase, is that the insured is going to transfer the policy to some third party investors at the end of the policy's two year contestability period. The life insurance policy turns into an investment.

We oppose situations where a policy is taken out for the express purpose of a life settlement in two years. In a typical life settlement situation, an individual will purchase a life insurance policy for a legitimate purpose, to address a perceived need that may or may not arise. Life circumstances change and the policy owner no longer needs that policy and seeks a life settlement.

SB 3021 will deter STOLI without harming the interests of policy owners who acquired their coverage legitimately. Moreover, the amendments are self-executing, meaning that they will address STOLI without imposing major new enforcement burdens on state insurance departments.

New tools are needed to reinforce public policies against wagering on human life and implement the public policy expressly supported by all participants in this segment of the industry—life insurance companies, agents, settlement brokers, settlement investors and premium finance companies—to prevent STOLI.

The heart of this legislation is a five-year moratorium on life settlements that applies only to those policies acquired in violation of the spirit and intent of insurable interest statutes that will help eliminate the financial incentive for STOLI transactions and prevent wrongdoers from skirting the law.

Legitimate life settlements, such as when policy owners no longer need coverage due to a change in their economic or family circumstances (divorce, illness, death of the beneficiary), would not be affected by this legislation. The five-year moratorium would remove much of the economic incentive for STOLI transactions by forcing investors to wait for their expected pay-off while having no impact on policy owners who purchased their policies legitimately and then decides to sell it in the secondary market.

A five-year moratorium focused on STOLI transactions is the most effective and efficient way of preventing STOLI-related fraud. Enabling investors to use life insurance as just another investment vehicle threatens the public policy foundation which supports the favorable treatment that life insurance products receive under federal law.

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February 6, 2008

TO: Senator Russell S. Kokubun  
Chair, Committee on Commerce, Consumer Protection, and  
Affordable Housing  
Hawaii State Capitol, Room 407

Via Email: [testimony@capitol.hawaii.gov](mailto:testimony@capitol.hawaii.gov)

FROM: Gary M. Slovin  
RE: SB No. 3021 – Relating to Viatical Settlements  
Hearing: Thursday, February 7, 2008 at 9:00 am

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Dear Chair Kokubun and Members of the Committee on Commerce, Consumer Protection, and Affordable Housing:

I am Gary Slovin testifying on behalf of Life Settlements Institute (LSI). LSI membership consists of the world's leading institutional investors and intermediaries in the mortality and longevity marketplace. LSI supports the intent of SB 3021 but has concerns regarding certain provisions of the bill.

SB 3021 protects those with terminal or chronic illnesses from unscrupulous brokers who trade in life insurance policies of the sick, by requiring disclosure of the consequences to the consumer, providing the right to rescind the contract, and prohibiting the transfer of the life insurance benefits to the new owner for five years.

SB 3021 is a significant step in pursuing consumer protection in the life settlement market and curbing improper transactions. While LSI supports many of the proposals contained in this legislation, we have reservations with certain provisions.

LSI's most significant concern with SB 3021 is the language requiring a five year prohibition on life settlements. This provision will impose a significant restriction on a consumer's ability to transfer his or her life insurance policy. This restriction will decrease the value of a consumer's policy. LSI proposes instead a two-year prohibition on settling a life insurance policy commencing from the date of policy issuance.

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With respect to the rescission period, LSI feels the proposed period is overly restrictive and does not take into consideration the actual amount of time a consumer has participated in the process prior to consummating a transaction. We note that a 15 day rescission period is standard in the industry. A typical life settlement transaction takes several months from start to finish, and the insured has many opportunities during that period of time to reconsider whether he or she wishes to enter into a transaction. Accordingly, there is no need to extend the rescission period beyond 15 days. An extension of the rescission period beyond 15 days could create unforeseen risks and uncertainties that may drive certain participants from the market resulting in fewer options and lower settlement prices for Hawaii residents. To address this concern LSI proposes maintaining the present 30 calendar day after the signing of the contract or 15 calendar days after the viator receives the viatical settlement proceeds.

LSI notes that this Committee is also hearing SB 3246 today, which also pertains to viatical settlements, also known as life settlements. LSI prefers the language contained in SB 3246 with certain amendments and refers the Committee to our testimony on that bill.

Thank you very much for this opportunity to submit testimony.