

AMERICAN COUNCIL OF LIFE INSURANCE  
TESTIMONY IN OPPOSITION TO SB 3246,  
RELATING TO INSURANCE

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

Senator Russell S. Kokubun, Chair

Committee on Commerce, Consumer Protection and Affordable Housing

State Senate

Hawaii State Capital, Conference Room 229

415 S. Beretania Street

Honolulu, HI 96813

Dear Chair Kokubun and Committee Members:

Thank you for the opportunity to testify in opposition to SB 3246, 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.

ACLI strongly supports legislation which protects consumers, particularly elderly consumers, from a growing predatory practice known as stranger-originated life insurance or "STOLI" ".

ACLI opposes SB 3246 because it provides no protection 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 <sup>after</sup> ~~within~~ 2 years but it can also be effected by the insured's irrevocably assigning a large percentage of the policy benefits ~~within~~ <sup>after</sup> 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.

STOLI is wrong.

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.

There are essentially two bills introduced this session which prohibit STOLI.

SB 3021 and HB 3099 enact the National Association of Insurance Commissioners (“NAIC”) Viatical Settlement Model Act; and HB 94 enacts the National Conference of Insurance Legislators (“NCOIL”) Life Settlement Model Act.

While each of the Model Acts approaches STOLI differently, both provide needed regulation of these practices.

ACLI strongly opposes SB 3246 because it does not address STOLI transactions.

The NAIC Model Act (SB 3021 and HB 3099) addresses STOLI transactions by prohibiting “viatical settlement contracts” at any time prior to policy issuance or within a 5 year period thereafter, unless otherwise exempted. A “viatical settlement contract” is defined under the Act as an agreement between the policy owner and another under which the owner receives payment in an amount less than the death benefit in exchange for his policy.

The NCOIL Model Act prohibits “life settlement contracts” (which has a similar definition to the NAIC’s “viatical settlement contract”) prior to policy issuance or within 2 years, unless exempted. In addition, the NCOIL Act makes engaging in “Stranger-originated life insurance” 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.

SB 3246 contains a number of provisions similar to the NAIC Model Act, including the licensing of brokers who negotiate life settlement contracts and providers who effectuate the life settlement contracts with the owner. The Bill also prohibits entering into a “life settlement contract” prior to or within 2 years of policy issuance.

However, SB 3246 neither prohibits STOLI transactions as in the NCOIL Model Act nor does it include a 5 year moratorium on policy transfers as does the NAIC Model Act. Thus, SB 3246 invites rather than prohibits STOLI and legitimizes these predatory practices by unscrupulous companies wagering on human life.

For these reasons, ACLI requests that this Committee hold this bill.

Again, thank you for giving us the opportunity to testify in opposition to SB 3246.

CHAR HAMILTON  
CAMPBELL & YOSHIDA  
Attorneys At Law, A Law Corporation



Oren T. Chikamoto  
737 Bishop Street, Suite 2100  
Honolulu, Hawaii 96813  
Telephone: (808) 524-3800  
Facsimile: (808) 523-1714  
E mail: ochikamoto@chctlaw.com