LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
335 MERCHANT STREET, ROOM 310
P.O. Box 541
HONOLULU, HAWAII 96809
Phone Number: (808) 586-2850
Fax Number: (808) 586-2856
www.hawaii.gov/dcca

LAWRENCE M. REIFURTH
DIRECTOR

RONALD BOYER
DEPUTY DIRECTOR

TO THE HOUSE COMMITTEE ON FINANCE

TWENTY-FIFTH LEGISLATURE
Regular Session of 2009

Wednesday, March 4, 2009
11:30 a.m.

TESTIMONY ON HOUSE BILL NO. 1439, H.D.1 – RELATING TO INSURANCE.

TO THE HONORABLE MARCUS R. OSHIRO, 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 opposes this bill.

The purpose of this bill is amend the Life Settlements Act, Hawaii Revised Statutes ("HRS") chapter 431E, which was passed last session as Act 177, Session Laws of Hawaii. HRS chapter 431E is based upon Life Settlements Model Act ("Model Act" of the National Conference of Insurance Legislators ("NCOIL").

The Department believes that the Life Settlements Act should not be modified since it was the adoption of the Model Act. The consumer protection aspects in the Model Act should be preserved.

Specifically we are concerned with the following issues:

1. Section 2 of the bill makes it clear that a life insurance producer does not need a separate license as a life settlement broker. This would make it harder for the Insurance Division to keep track of the life settlement marketplace because our database is based on licensing. Merely notifying us of the onset of activity does not

give us a good basis for monitoring the continuation or cessation of that activity. If the intent is to regulate life settlement transitions, this change makes it harder to do.

2. Section 6 of the bill removes the requirement for the consumer to receive disclosure of the broker's compensation. Although disclosure of broker's compensation does not happen in all lines of business, it is helpful in this context where the transaction dollar amount is very large. The disclosure of broker's compensation in the real estate brokerage transaction provides an analogy.

3. Section 8 of the bill allows life settlements transactions with brokers who are affiliates of the person entering into the transaction with the owner as long as the relationship is disclosed. This may not be enough protection for consumers. The benefit of having an independent broker is that they can make an objective judgment about what kinds of life settlement products are suitable for the consumer, rather than trying to sell only one product on a controlled basis. This may be a particular problem if there is inadequate competition in this market such that consumers do not have a lot of choices.

We thank this Committee for the opportunity to present testimony on this matter and respectfully request that this bill be held.

NAIFA
HAWAII 516 Kawaihae Street, Suite E Honolulu, HI 96825

House Committee on FINANCE
Representative Marcus Oshiro, Chair

House Bill 1439, HD 1 – Relating to Insurance

Hearing Date: Wednesday – March 4, 2009 Time: 11:30 am
Agenda # 3

Chair Oshiro and members of the Committees, the National Association of Insurance and Financial Advisors (NAIFA) Hawaii is an organization made up of life insurance agents and financial advisors across Hawaii, who primarily sell life insurance disability income and long term care insurance.

We oppose HB 1439, HD1. HB 1439, HD 1, negates Act 177, 2008 Session Laws of Hawaii, (House Bill 94) that was passed last session as the "Life Settlements Act." Act 177 bans STOLI transactions for 2 years. HB 94 was NCOIL's life settlement model act to deter all manifestations of STOLI (stranger originated life insurance), whether in the form of a settlement, a trust or other scheme. The NCOIL model addresses STOLI by, among other things, defining and prohibiting STOLI transactions and requiring life settlement companies to annually report data to state insurance commissioners.

HB 1439, HD 1, through the various definitions contained in the bill will allow for stranger originated life insurance policies to be sold in Hawaii.

In its simplest terms, STOLI is a **plan** or **practice** to coax or entice someone to apply for a life insurance policy using fraudulent means for the benefit of speculators/investors who seek to profit by purchasing a life insurance policy on a stranger. Many STOLI transactions involve seniors, who can be victimized by participating in these transactions. Material facts and risks may be undisclosed.

In a traditional life insurance purchase, an **insurable interest** exists between the policyholder and the policy's named beneficiaries. For example, an individual has an insurable interest in his own life, in that of his spouse, and in that of his business partner. **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.

In a STOLI transaction, there is no insurable interest. Seniors are induced to purchase the life insurance, usually receiving some incentive, often a cash payment for buying the policy. In most cases, the "stranger" even pays the premium for the policy. Under the STOLI agreement, the policy is later "sold" to the stranger, who is paid the proceeds of the policy upon the death of the insured. The incentives, especially cash payments, used to lure seniors to participate in STOLI schemes are taxable as ordinary income. Stranger/investors will identify older, high-net-worth individuals. These senior individuals are targeted because of their relatively short life expectancy and their wealth qualifies them for substantial amounts of life insurance.

STOLI attempts to circumvent state insurable interest statutes — laws that are intended to assure that people who buy life insurance have a true and meaningful interest in the life of the insured. The investment firms fully finance the transaction and continue paying premiums throughout the life of the contract. Two years into the contract, the investment firms — speculators — purchase the policy and stand to profit from the death benefits from policies on lives of strangers.

Usually, in a life settlement transaction, an elderly person sells a survivorship, whole, universal, variable, or term life insurance policy for a certain portion of the policy's face value. Percentages are based on life expectancy. Life settlement transactions are desirable because of many factors, including estate planning needs, rise in tax liabilities, a change of business, changes of coverage needs, or changes in life situations (divorce, death, illness).

From an insurance standpoint, STOLI threatens to undermine the life insurance market especially for senior citizens. Life insurers have increasingly found ways to make life insurance both available and affordable to senior citizens who want to secure the financial future of a child, a grandchild or other family member. However, if millions of dollars in benefits are paid for contrived arrangements, who can predict what will happen to this market?

Should this growing market be impaired due to skyrocketing and inappropriate claims, the real victims of STOLI could well be those senior citizens who have legitimate needs for life insurance.

We believe it is unsound public policy to turn life insurance products into commodities for investment by third parties that have no relation to the insured. This measure will allow STOLI promoters to evade state insurable interest laws and violate the social purpose of life insurance.

We ask that this measure be held due to the detrimental effects on sound public policy. Thank you for allowing us to share our views.

Cynthia Hayakawa
Executive Director

AMERICAN COUNCIL OF LIFE INSURERS
TESTIMONY IN OPPOSTION TO HB 1439, HD 1, RELATING TO INSURANCE

March 4, 2009

Via E Mail: fintestimony@capitol.hawaii.gov
Hon. Representative Marcus R. Oshiro, Chair
House Committee on Finance
Hawaii State Capital, Conference Room 308
415 S. Beretania Street
Honolulu, HI 96813

Dear Chair Oshiro and Committee Members:

Thank you for the opportunity to testify in opposition to HB 1439, HD 1, relating to Insurance.

Our firm represents the American Council of Life Insurers ("ACLI"), a national trade association whose three hundred forty (340) member company's account for 94% 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 fifty-three (253) ACLI member companies currently do business in the State of Hawaii.

Last session the legislature passed Act 177 which enacted into law the National Conference of Insurance Legislators ("NCOIL") Life Settlement Model Act.

As of December 3, 2008, Hawaii is one of 13 states nationwide which have enacted laws that address Stranger Originated Life Insurance ("STOLI") – a growing predatory practice by investors who purchase life insurance on the lives of consumers, particularly elderly consumers, for profit.

Of these 13 states Hawaii is one of 7 states that enacted the NCOIL Model Act. The others are Arizona, Connecticut, Indiana, Kansas, Maine and Oklahoma.

In its current form Act 177 provides an effective tool in the regulation of stranger-originated life insurance or "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 relinquishing the ownership of the policy to the investor after 2 years but it can also be effected by the insured's irrevocably assigning a large percentage of the policy benefits after 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 relinquish 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 relinquish 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 opposes passage of HB 1439, HD 1. Its objections include (but are not limited to) the matters set forth below.

- HB 1439, HD 1, weakens consumer protections against STOLI transactions under current law.

  - Paragraph 4 of Section 1 of HB 1439, HD 1 (page 6, lines 16 – 22, page 7 and page 8, lines 1 and 2 of the Bill), amends the definition of "stranger–originated life insurance" so as to limit STOLI only to situations where the third party without an insurable interest owns or controls the policy at inception. This is already a violation of the insurable interest requirement under current law. Accordingly, the suggested amendment adds no new provision to prevent STOLI.

  - The original NCOIL definition of STOLI set forth on page 6, lines 16-22, and page 7, lines 1-8) includes within its definition "practices or plans" to secure a policy for an investor; cases where the policy is paid for or guaranteed by the investor; and where there is an "arrangement" or an "agreement", "whether verbal or written", to transfer the policy to the investor.

  - Limiting the Model Act's provisions to "<u>new</u> life insurance" at any time after the policy is procured would enable the STOLI pay-off to investors; and the deletion of the existing law's reach to "an arrangement or agreement, whether verbal or written" would create a loophole for verbal STOLI agreements.

  - Further, the bill removes the ability of the regulator from characterizing other forms of transactions that are in substance STOLI transactions. As currently drafted STOLI is defined to mean a practice or plan to secure a policy for the benefit of a 3rd party who does not have an insurable interest at the time of application which <u>includes</u> the arrangements defined in current paragraph (1) and trusts in current paragraph (2) of Hawaii's law. The use of the term "<u>includes</u>" does not, therefore, foreclose other situations which may be STOLI transactions. By deleting this text by defining STOLI to mean only the procurement of "new life insurance" as described in new paragraph (1) and lawful

assignments of a life policy or life settlement contract as described in new paragraph (2) of the Bill, the regulator is prevented from characterizing other forms of transactions as being STOLI.

- HB 1439, HD 1's, proposed amendment on page 3, at lines 6-8, deletes non-recourse loans from the definition of a "life settlement contract". This would allow predatory finance arrangements typical in STOLI transactions.

- Section 7 of HB 1439, HD 1 amends Section 431E-32, HRS which would shift the life settlement providers marketing and promotional costs to insurers under the guise of "consumer disclosure" (beginning on page 22, lines 16-21, and page 23, lines 1-20).

- Where a senior (defined as 60 years or older) or terminally or chronically ill insured seeks to surrender his/her life insurance policy, secure an accelerated (discounted) death benefit, collaterally assign his/her policy for a loan or allow his/her policy to lapse, Section 7 of the Bill would require a life insurer to provide written notice that a life settlement of the policy is available to him/her as an alternative transaction.

- Whether a life settlement is in the consumer's best interest is questionable. Research reveals that for most seniors, a life insurance settlement may not make economic sense. Recent news reports indicate that life settlements are paying seniors only a fraction of the policy's face value, 5 to 8 cents on the dollar.

- A study of the independent Life Insurance Marketing and Research Association (LIMRA) found that only 10% of seniors who own a life policy might ever have an interest in a life settlement. Moreover, only 1-in-5 of those who are interested is a viable candidate. Yet all insurance consumers, including seniors and others having no interest in a life settlement would have to bear their share of the compliance costs.

- Requiring life insurers and ultimately the consumer to bear the marketing cost of a life settlement where the settlement itself may not be in the consumer's best interest is simply a bad law.

- Settlement providers should have no trouble promoting settlements on their own if they make economic sense to policy owners.

- ACLI strongly objects to Section 8 of the Bill (on page 24, lines 14-22) which removes as a fraudulent settlement act the marketing of the purchase of a life policy for the purpose of entering into a life settlement contract and the proposed removal of an insurer's ability to test applications for insurable interest in Section 7 of the bill which deletes the first sentence in section 431E-32 (page 19, lines 21-22, and page 20, lines 1-2).

When the NCOIL Model Act was adopted life insurance and life settlement organizations, including ACLI and Coventry, agreed to its provisions, notably its definition of STOLI. While ACLI strongly supported passage of the NCOIL Model Act last session in its entirety, without any changes, and continues its support of the Model Act by opposing this Bill, Coventry now seeks to undo its agreement by supporting it.

ACLI believes that the current law is good law protecting all Hawaii insurance consumers and policy owners.

For the foregoing reasons, ACLI respectively requests that this Committee withhold passage of HB 1439, HD 1.

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

COVENTRY

REDEFINING INSURANCE®

7111 Valley Green Road
Fort Washington, PA 19034

March 1, 2009

Representative Marcus R. Oshiro, Chair
Representative Marilyn B. Lee, Vice Chair
Committee on Finance
Hawaii State Capitol, Room 308
Honolulu, HI 96813

RE: HB1439 HD1 Relating to Insurance

Dear Chair Oshiro, Vice Chair Lee and Members of the Committee:

Thank you for this opportunity to submit written testimony in strong support of HB1439 HD1 which would make various clarifying and technical amendments, and corrects inadvertent errors, in the Life Settlements Model Act, chapter 431E, HRS, which establishes consumer protections in life settlement transaction.

The Hawaii Life Settlements Act, HRS Chapter 431E (the "Hawaii Act") was based on the Life Settlements Model Act of the National Conference of Insurance Legislators (NCOIL), adopted in November 2007 (NCOIL Model Act). The following is a summary of proposed amendments to the Hawaii Act:

1. Most of the proposed amendments are based on the 2008 laws adopted in Kansas, Indiana, Maine, Connecticut, Kentucky, Oklahoma and Arizona. Likewise, the proposed amendments are similar or legislation passed by the California General Assembly and by the New York Senate.

2. The key interested parties – life insurance and life settlement organizations – supported and endorsed laws that included amendments similar or identical to the proposed amendments. The American Council of Life Insurers (ACLI) issued public statements praising the new laws in most of the aforementioned states, and praised the California legislation.

3. The majority of the proposed amendments are technical amendments to the NCOIL Model Act, correcting several errors that impair the effectiveness or enforcement of the law, as well as several scriveners' errors.

4. The definition of Stranger-Originated Life Insurance (STOLI) is amended to improve the detection and enforcement against such practices and in light of several recent federal court decisions. In 2008 eight state legislatures acted to amend the NCOIL Model Act definition. In particular, STOLI is defined as the procurement of new life insurance BY a stranger (rather than by a person with an insurable interest) and not the lawful assignment of a life insurance policy.

5. The proposed amendments include measures to protect the property rights of Hawaii's life insurance policyowners and responds to documented evidence of anti-consumer market conduct of life

insurers that impairs policyowners' access to information and assistance about the value of their life insurance and about life settlements. The proposed amendments:

a. Ensure that policyowners are aware of the market value of their life insurance policy whenever they are faced with the lapse or surrender of the policy and under other limited circumstances;
b. Ensure that policyowners are able to receive information and assistance from their trusted life insurance agent, as the law currently prescribes life agents are authorized and qualified to assist policyowners with life settlements;
c. Prohibit life insurers from interfering with Hawaii consumers' property right to assign their life insurance, including life settlements, or from issuing false and misleading information about life settlements.

6. The proposed amendments clarify the Hawaii Legislature intent under the current law that duly licensed life insurance producers are deemed to meet all the requirements as a settlement broker, provided that they notify the Commissioner and acknowledge that they will comply with the provisions of this Act. Contrary to the Hawaii Act, the NCOIL Model Act and the model act of the National Association of Insurance Commissioners, the Department of Insurance has not followed this mandate and has required duly licensed life insurance producers to submit full applications for a life settlement broker license, which has resulted in a restriction on the availability of life settlements to Hawaii consumers.

Thank you for your consideration of these comments.

Respectfully Submitted,
Michael Freedman
Senior Vice President, Government Affairs

LIFE INSURANCE AND PROPERTY RIGHTS IN HAWAI'I LAW

Introduction/Summary

Hawai'i law is clear with respect to life insurance, insurable interest, and property rights, explicitly recognizing that:

- Any person may take out a policy on his own life and do with it as he pleases.
- Any other potential policyowner must have a valid insurable interest, which attaches specifically at policy inception in order for the arrangement to be valid.
- Once properly formed with insurable interest, the owner may alienate the policy on the open market to whomever she wishes for the best price available, regardless of whether the purchaser has an insurable interest or not.
- Life insurance policies are to be treated like other property in order to maximize their value for consumers.
- Wager policies where in investor funds premiums and takes control of the death benefit from policy inception are against public policy.

This is no academic concern. As many as 90% of life insurance policies lapse without paying a claim, and many policies marketed as an investment are, according to a leading life insurance industry actuary, sold with "grossly inadequate" cash surrender values. The secondary market remedies this market defect for the benefit of consumers by allowing them to capture the true value of their policies created by their premium payments. Legislation regulating this market should foster rather than impede the exercise of these property rights.

The Insurable Interest Statute Attaches At Policy Inception Only

The Hawai'i insurable interest statute allows any person to take out a policy on his own life and do with it as he pleases. HI Stat. § 431:10-204(a) ("Any individual of competent legal capacity may procure or effect an insurance contract upon the individual's own life or body for the benefit of any person.")

The statute requires that, in order to take out a contract on another, the purchaser must have insurable interest. This requirement explicitly only attaches at policy inception. HI Stat. § 431:10-204(b) ("No person shall procure or cause to be procured any insurance contract upon the life or body of another individual unless the benefits under the contract are payable to the individual insured or the insured's personal representatives, or to a person having, ***at the time the contract was made***, an insurable interest in the individual insured") (emphasis added).

Insurable interest in Hawai'i is statutory and mirrors the categories in the common law and other States' statutes, including "individuals related closely by blood or law"; individuals with "a lawful and substantial economic interest in having the life ... of the individual insured continue"; business partners; and certain charities. *See* HI Stat. § 431:10-202.

The Well-Established Property Rights In A Life Insurance Policy In Hawai'i

The property rights in a life insurance policy were established nearly a century ago by Hawai'i's highest court. Citing and quoting at length the seminal U.S. Supreme Court case of *Grigsby v. Russell*, Hawai'i's high court explained:

> In *Grigsby v. Russell*, 222 U.S. 149, 154, the court says: "Of course the ground suggested for denying the validity of an assignment to a person having no interest in the life insured is the public policy that refuses to allow insurance to be taken out by such persons in the first place. A contract of insurance upon a life in which the insured has no interest is a pure wager that gives the insured a sinister counter interest in having the life come to an end. * * * But when the question arises upon an assignment it is assumed that the objection to the insurance as a wager is out of the case. * * * This being so, not only does the objection to wagers disappear, but also the principle of public policy referred to. * * * The danger that might arise from a general license to all to insure whom they like does not exist. Obviously it is a very different thing from granting such a general license, to allow the holder of a valid insurance upon his own life to transfer it to one whom he, the party most concerned, is not afraid to trust. * * * So far as reasonable safety permits it is desirable to give to life policies the ordinary characteristics of property."
>
> If a man can assign a policy of life insurance to one having absolutely no interest in his life, it would be absurd to assert that a man may not insure his own life in favor of one who has no insurable interest in it. This conception of the position of the parties is fully sustained by the authorities.

Rumsey v. New York Life Ins. Co., 25 Haw. 141 (1919).

The Practical Importance Of Property Rights As A Remedy To Insurers' Anti-Consumer Cash Surrender Practices

By specifically quoting *Grigsby's* key formulation that "[s]o far as reasonable safety permits it is desirable to give to life policies the ordinary characteristics of property," Hawai'i law has long established the basic property rights in a life insurance policy which form the legal and intellectual underpinnings of the secondary market for life insurance.

This market has sprung to life in an institutional manner in the last decade as life insurers began to emphasize sales of products with, as a leading insurer actuary described it, "grossly inadequate cash values." This is of great practical importance, because it is estimated that as many as 90% of life insurance policies lapse without paying a claim, leaving the consumer with only cash value—or the opportunity to seek market value through a life settlement.

In an influential article published in 2000 in *Best's Review*, Northwestern Mutual chief actuary William Koenig explained that it has become common in many life insurance products for "someone who surrenders a cash-value policy in the early years [to] receive[ ] a cash value (or nonforfeiture benefit) far less than premiums paid." These policies "depend on lapse-supported pricing," a "pricing method ... unfair to consumers" since "[t]he vast majority of policyholders who lapse their policies before death are the 'losers.' They receive much less at surrender than what any reasonable person would perceive as acceptable value."

Koenig warned that—because of the market defect caused by insurers' "unfair" treatment of consumers—policyowners would seek a market solution which would allow them to receive a fair return on their investment. "The current environment suggests that if an issuing company does not provide fair value, policyholders will proceed directly to a secondary market—presumably, a viatical company—to get a better deal. There will be a secondary market for these contracts, and this will not be good for

the life insurance industry."

That is precisely what has happened. Responding to consumer demand, the secondary market is now well established, paying out billions of dollars a year over cash surrender value to consumers who would otherwise have lapsed their policies. Consumers have benefited from competition, and life insurers have lost a source of profits (lapsed policies where they pay out no death benefit and instead a "grossly inadequate" cash surrender). This explains why carriers are today seeking protectionist legislation from the States to, in effect, codify their "unfair" practices by insulating them from competition from the secondary market. These efforts by life insurers should be rejected because regulation of commerce in the public interest is supposed to remedy—not perpetuate—market defects.

Ensuring Property Rights While Preventing Wager Policies

Good legislation would give honor to both of the key instructions in *Grigsby v. Russell*, the recognized law of the land passed down by the U.S. Supreme Court and specifically followed by Hawai'i courts.

In *Grigsby*, Justice Oliver Wendell Holmes aggressively articulated the importance of recognizing and honoring the property rights in a life insurance policy—key to which, he said, is the ability to alienate the policy on the open market to any willing buyer, regardless of that purchaser's insurable interest.

> [L]ife insurance has become in our days one of the best recognized forms of investment and self-compelled saving. So far as reasonable safety permits, it is desirable to give to life policies the ordinary characteristics of property.... To deny the right to sell except to persons having such an [insurable] interest is to diminish appreciably the value of the contract in the owner's hands.

Grigsby v. Russell, 222 U.S. 149.

Holmes also reaffirmed the importance of insurable interest at policy inception as a means of preventing wager policies which are against public policy. "And cases in which a person having an interest lends himself to one without any, as a cloak to what is, in its inception, a wager, have no similarity to those where an honest contract is sold in good faith." *Id.* Holmes explained what constitutes "a cloak to what is, in its inception, a wager": "the policy having been taken out for the purpose of allowing a stranger association to pay the premiums and receive the greater part of the benefit, and having been assigned to it at once." *Id.*

The National Conference of Insurance Legislators (NCOIL), in its recently adopted amendments to its Life Settlements Model Act, specifically codified this formulation of what constitutes a violation of insurable interest, and otherwise followed *Grigsby's* teachings. Legislation in Hawai'i should likewise codify these established rules, best articulated by the U.S. Supreme Court, pertaining to insurable interest and property rights:

- The law should foster, rather than impede the principal that life insurance policies should be given "the ordinary characteristics of property."

- Limiting the right of resale "is to diminish appreciably the value of the contract in the owner's hands."

- Schemes where investors pay premiums and receive immediate assignment of the policy are "a cloak to what is, in its inception, a wager."

STATE STATUS AS OF DECEMBER 8, 2008

- THE **OVERWHELMIING MAJORITY OF STATES** that have taken up life settlement/anti-STOLI legislation in 2008 **CONSIDERED AND REJECTED THE NAIC MODEL and ADOPTED NCOIL MODEL BASED PROVISIONS**. According to an October 2008 report by the NAIC, of twenty six states that introduced settlement/anti-STOLI legislation in 2008, only two adopted the NAIC Model Act.

- The NCOIL Model or NCOIL Model provisions that were adopted in 2008 were almost universally amended to strengthen the administration and enforcement of the laws and to address scrivener's errors and operational matters.

- THE ACLI and its subsidiary organizations supported nearly every bill that adopted the NCOIL Model or amended NCOIL Model provisions.

- A growing number of state insurance regulators have supported the adoption of the amended NCOIL Model or amended NCOIL Model Provisions, including Kansas, Connecticut, Indiana, Maine, Kentucky and Rhode Island. Likewise, the insurance regulators in New York, Washington State, Idaho and the District of Columbia rejected the 5 year ban while supporting other NAIC provisions.

- The so-called "new NAIC/NCOIL" or "hybrid" bill is like lipstick on a pig, since the NAIC Model was a near total failure in 2008 because it is anti-consumer and protectionist, as has been determined by NCOIL members, the NAIC's own consumer advocates and numerous state legislatures.

TO DATE in 2008:

NCOIL Bills that PASSED:

Kansas, Indiana, Maine, Connecticut – Introduced NAIC Model, but passed NCOIL anti-STOLI provisions.

Hawaii – Introduced NAIC Model, but passed NCOIL Model.

Oklahoma – Introduced NAIC Model, but passed NCOIL anti-STOLI provisions.

Kentucky – Introduced and passed NCOIL Model provisions.

Arizona – Introduced NCOIL STOLI definition, passed amended STOLI definition.

Rhode Island – Introduced NCOIL; Passed with no amendments. Vetoed.

California – Introduced NCOIL Model; PASSED BOTH CHAMBERS, Vetoed

NAIC and so-called "hybrid" Bills:

Nebraska and West Virginia – Introduced and passed NAIC Model without consideration of NCOIL model.

Ohio and Iowa – Adopted NAIC with NCOIL provisions. Ohio's 5 year ban unique (not NAIC).

Other 2008 Action to date (including actions for 2009):

New York – NY Insurance Superintendent introduced a unique bill with no 5 year ban; Senate Passed modified NCOIL bill; Identical Bill on the Floor of the Assembly, awaiting a vote.

Georgia – Introduced NCOIL; Passed Senate; no action in House; modified bill expected for 2009.

Washington – Introduced NCOIL; Held for consideration; NCOIL modified bill pending for 2009.

North Carolina – Introduced NAIC in 2007, died in committee; in 2008 attempted NCOIL without amendments and bill was not heard by the committee.

Massachusetts – NAIC introduced and study bill introduced – both sent to study till 2009.

District of Columbia – Commissioner introduced NAIC Model, without the 5 year ban or anti-premium finance provisions; strong consumer protections. Did not pass. NCOIL to be introduced in 2009

Illinois and Minnesota– Both NAIC and NCOIL introduced; no action taken.

Idaho – Commissioner proposing NAIC without 5 year ban or anti-premium financing provisions for 2009.

Wyoming – Interim Committee rejected hybrid for 2009.

Arkansas – Department rejected NAIC and is proposing NCOIL for 2009.

Utah – Interim Committee pulled hybrid bill from consideration for 2009.

Alaska – Department proposed 5 year ban; Department pulled regulation.

Wisconsin – Department proposed hybrid for 2009; pulled from immediate action pending further study.