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TO THE HOUSE COMMITTEE ON FINANCE

TWENTY-SIXTH LEGISLATURE
Regular Session of 2012

Monday, April 2, 2012 – Agenda #4
5:00 p.m.

**TESTIMONY ON SENATE BILL NO. 3062, S.D. 1 H.D. 1 – RELATING TO
INSURANCE.**

TO THE HONORABLE MARCUS R. OSHIRO, CHAIR, AND MEMBERS OF THE
COMMITTEE:

My name is Gordon Ito, State Insurance Commissioner (“Commissioner”), testifying on behalf of the Department of Commerce and Consumer Affairs (“Department”). The Department supports the intent of the bill which proposes to license the entities that are engaged in life settlement contracts or viatical settlements and to regulate the conduct of this business. The Department respectfully suggests amendments were developed with industry representatives from the Life Insurance Settlement Association to overcome issues in the current version of the bill.

The viatical settlement contract is a means for a terminally ill person to receive a cash payment for their life insurance policy prior to that person's death. A life settlement contract is a similar vehicle that is available without regard to the policyholder's life expectancy. Almost all states regulate viaticals or life settlements. Until its sunset in 2010, Chapter 431E on Life Settlements was Hawaii's regulation of viaticals and life settlements. Pursuant to Chapter 431E, a total 163 licenses were issued. Of those licenses only 22 were issued to residents.

The Securities Enforcement Branch, Business Registration Division of DCCA ("SEB") has received 24 complaints on viaticals from 2000 to 2009. In 2007 and 2008 one case was filed in each year. In 2009, two cases were filed.

The use of viaticals is a wide-spread practice. The viatical settlement contract may be affected by the laws of multiple states, since the regulation of the contract would be based on the policyholder's current location or, for the case of multiple-owners of a policy, the multiple locations of the owners. Therefore, uniformity of regulation with the various jurisdictions should be pursued.

The Department respectfully requests the following amendments:

(1) The life settlement broker must be a licensed insurance producer with a life line of authority.

Page 14 lines 16 to 21 § -3 (c) to read:

~~(c) [A life insurance producer has been duly licensed as a resident insurance producer with a life line of authority in this State or the producer's home state for at least one year and is licensed as a nonresident producer in this State shall be deemed to meet the licensing requirements of this section and shall be permitted to operate as a broker.]~~ A person, wherever located, may act as a broker with an owner who is a resident of this State, if the person is a life insurance producer who has been duly licensed as a resident insurance producer with a life line of authority in this State or the producer's home state for at least one year and is issued a broker license in this State.

(2) Only the licensed business entity provider and its licensed designated representative may identify non-licensed employees who may participate in transactions.

Page 16 lines 19 to 22 and Page 17 lines 1-4 § -3(i) to read:

(i) A provider license issued to a partnership, corporation, or other entity authorizes all members, officers, and designated employees to act as a licensee under the license, if those persons are named in the application and any supplements to the application. A business entity licensed pursuant to this subsection shall designate an individual who is responsible for the actions of the entity and its agents. The designated individual shall be licensed pursuant to this chapter.

(3) Since brokers must be licensed life producers, their continuing education requirement to maintain the producers license should be sufficient for the life settlement license. This amendment would avoid duplicative and burdensome education requirements.

Page 19 lines 5 – 11 § -3(p) to be deleted:

~~[(p) An individual licensed as a broker or provider or authorized to act on behalf of a licensee pursuant to subsection (i) shall complete on a biennial basis fifteen hours of training related to life settlements and life settlement transactions, as required by the commissioner. Any person failing to meet the requirements of this subsection shall be subject to the penalties imposed by the commissioner.]~~

(4) Aside from technical non-substantive amendments, the proposed fees reflect the changes in conditions that are requested above. The business entity provider must have a designated employee with a provider license. The business entity provider may then identify non-licensed individual to participate in the transaction. On the other hand, every broker must obtain a brokers license. Therefore, the fees are higher for the provider and lower for the broker.

Page 70 lines 21 to 22 and Page 71 lines 1-6; § 431:7-101 paragraphs (a) 20 to 21 (sic) to read:

(20) Life settlement ~~[contract]~~ provider's license:

Issuance before July 1, 2014..... \$150
Issuance on or after July 1, 2014..... \$75

(21) Life settlement ~~[contract]~~ broker's license:

Issuance before July 1, 2014..... \$150
Issuance on or after July 1, 2014..... \$75

~~[(20)] [(24)](22)~~ Examination for license: For each examination, a fee to be established by the commissioner.

Page 73 lines 15-22, page 74 lines 1 to 5 § 431:7-101 paragraphs (b) 20 to 23, and page 74 lines 6 to 10 to read:

(20) \$1,200 per year for all services (including extension of the license) for a regularly licensed life settlement provider; and

(21) [\$1,200]\$150 per year for all services (including extension of the license) for a regularly licensed life settlement broker[;].

~~[(22) \$150 per year for all services (including extension of the license) provided before July 1, 2014, for a regularly licensed life settlement contract broker;~~
~~and~~

~~-(23) \$75 per year for all services (including extension of the license) provided on or after July 1, 2014, for a regularly licensed life settlement contract broker.]~~

The services referred to in paragraphs (1) to ~~[(19)]~~ ~~[(23)]~~ [(21)] shall not include services in connection with examinations, investigations, hearings, appeals, and deposits with a depository other than the department of commerce and consumer affairs.

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

OFFICE OF INFORMATION PRACTICES

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To: House Committee on Finance

From: Cheryl Kakazu Park, Director

Date: April 2, 2012, 5 p.m.
State Capitol, Room 308

Re: Testimony on S.B. No. 3062, S.D. 1, H.D. 1
Relating to Insurance

Thank you for the opportunity to testify regarding Senate Bill No. 3062, S.D. 1, H.D. 1. OIP takes no position on the substance of this bill, but is testifying to recommend an amendment to a confidentiality provision proposed by this bill.

At page 30, starting on lines 5, the bill adds a new section -14 requiring confidentiality of certain insurance records described in the subsection but also, on line 18, providing that these insurance records "shall not be subject to chapter 92F. . . ." The effect of this language would not simply be to provide confidentiality, but would bring the information entirely outside the requirements of the Uniform Information Practices Act ("UIPA"), chapter 92F. In other words, the department would have no obligation to acknowledge receipt of a request and provide a reason for its denial as generally required; it could simply ignore requests for records containing that information.

OIP uniformly and strongly recommends against provisions in statutes outside of the UIPA that seek to exclude records from the UIPA's entire statutory scheme. OIP believes that, where the intent is to exempt certain records from

disclosure, it is clearer and more appropriate to instead simply make the records "confidential."

Therefore, OIP recommends that your Committee amend this bill by replacing, on page 30, line 18, the phrase "shall not be subject to chapter 92F" and inserting instead the phrase "shall not be made public." The proposed phrase "shall not be made public" is already used in other confidentiality provisions in the Insurance Code. For example, HRS section 431:5-307(j)(4)(G) states that "[a]ny memorandum in support of the opinion . . . shall be kept confidential by the commissioner and shall not be made public and shall not be subject to subpoena." Thus, inserting the phrase "shall not be made public" into the bill would provide consistent confidentiality provisions in the Insurance Code.

Thank you for considering our testimony and suggested amendment.

AMERICAN COUNCIL OF LIFE INSURERS
TESTIMONY IN SUPPORT OF SB 3062, SD 1, HD 1, RELATING TO INSURANCE

April 2, 2012

Via e mail: fintestimony@capitol.hawaii.gov

Hon. Representative Marcus R. Oshiro, Chair
Committee on Finance
State House of Representatives
Hawaii State Capitol, Conference Room 308
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Oshiro and Committee Members:

Thank you for the opportunity to testify in support of SB 3062, SD 1, HD 1, relating to Insurance.

Our firm represents the American Council of Life Insurers ("ACLI"), a national trade association, who represents more than three hundred (300) legal reserve life insurer and fraternal benefit society member companies operating in the United States. These member companies account for 90% of the assets and premiums of the United States Life and annuity industry. ACLI member company assets account for 91% of legal reserve company total assets. Two hundred thirty-five (235) ACLI member companies currently do business in the State of Hawaii; and they represent 93% of the life insurance premiums and 92% of the annuity considerations in this State.

SB 3062, SD 1, HD 1, would reenact Hawaii's life settlement law passed by the legislature in 2008 as Act 177 (HB 94, HD1, SD2, CD1). Act 177 was codified into law as Hawaii Revised Statutes Chapter 431E of the Hawaii Insurance Code and by its terms sunset on June 16, 2010.

Act 177 enacted the National Conference of Insurance Legislators ("NCOIL") Life Settlements Model Act (the "NCOIL Model Act" or "Act"). The Act authorizes the Insurance Commissioner:

. . . to regulate the form of life settlement contracts, license life settlement brokers and providers, and to examine and investigate the business and affairs of any licensee or applicant. It also prohibits fraudulent life settlement acts, including stranger-originated life insurance ("STOLI"). As a consumer protection measure, Act 177 is intended to protect individuals, particularly senior citizens and those suffering from chronic or terminal illness, from fraudulent activity relating to the selling and buying of life insurance policies. Report on Life Settlements Act to the 24th

Legislature, Insurance Division, Department of Commerce and Consumer Affairs, State of Hawaii, December 2008.

The NCOIL Model Act is, therefore, a comprehensive and cohesive piece of legislation addressing the regulation of the business of life settlements; and was the product of intense discussion and debate that began nearly 2 years prior to its adoption by NCOIL. With the assistance and approvals of all stakeholders in the Life Settlement Insurance industry, including ACLI, National Association of Independent and Financial Advisors (NAIFA), Association of Advanced Life Underwriters (AALU), Life Insurance Settlement Association (LISA), Coventry, Institutional Life Markets Association (ILMA), Life Insurance Financing Association (LIFA) and Life Settlement Institute (LSI), the Act was adopted by NCOIL at its annual meeting on November 7, 2007.

As of November 29, 2011, of the 30 states that enacted legislation regulating the business of life settlements 11 states have adopted the NCOIL Model Act, namely, Arizona, California, Washington, Idaho, Utah, Kansas, Oklahoma, Arkansas, Indiana, Georgia, New York, Connecticut and Maine. As of that same date, November 29, 2011, 10 states introduced legislation regulating life settlements.

Hawaii's life settlement law, ACT 177, should never have been repealed.

Hawaii's consumers and the elderly need and should continue to be afforded effective and comprehensive laws to protect them from STOLI and other fraudulent life settlement practices.

Indeed, such protection is needed now, more than ever.

In its Final Report¹, the Hawaii Long-Term Care Commission recommended life settlements as a source of funding the cost of long-term care for the coming wave of Hawaii's aging "baby-boomers". However, as a warning the report goes on to say:

Since viatical settlements are not currently regulated in Hawaii, there may be some policyholders who could be victimized by unscrupulous operators unless strict oversight is established. These operators may take advantage of desperate people who need immediate cash for medical or long-term care, paying them only a small portion of the value of their benefit.

The Commission concludes, therefore, that: "[b]ecause of the potential for abuse, the Commission recommends that these settlements be strictly regulated".

ACLI submits that the reenactment of Act 177 would provide this needed regulation to protect Hawaii's seniors and other consumers.

When the Model Act was unanimously adopted by its members, NCOIL's then President, Brian Kennedy, said of the Act:

¹ Long Term Care Reform in Hawaii: Report of the Hawaii Long-Term Care Commission - Final Report, January 18, 2012.

. . . [W]e believe that it is a strong model that protects the property rights of individual policyowners while addressing STOLI abuses.

NCOIL believes the model act, as adopted at its 2007 Annual Meeting, will isolate and make illegal STOLI transactions through clear definitions, disclosures, and a strong penalties section. It includes a first-of-its-kind definition of STOLI, and requires certain disclosures to owners and insurers as well as provider reporting of settled policies as part of an annual statement, and disclosure of broker compensation information.

Act 177 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.

The NCOIL Model Act 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.

The centerpiece of the Act’s regulatory scheme is its definition as to what constitutes “Stranger Originated Life Insurance”.

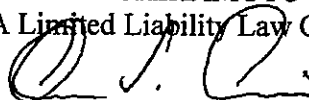
In a press release the executive director of the Life Insurance Settlement Association (“LISA”) has characterized the NCOIL definition as a pioneering consumer protection measure. In commenting on the STOLI transaction which was the subject of a lawsuit filed in the U.S. District Court case of Life Product Clearing LLC, vs. Angel, 530 F. Supp.2d 646, (Jan. 22, 2008, S.D.N.Y.) LISA observed:

The Angel order repeatedly demonstrates the wisdom of the NCOIL Model . . . The NCOIL Model provides a legislative definition of STOLI as “a practice or plan to initiate a life insurance policy for the benefit of a third party investor.” This is virtually identical language to the court’s holding in Angel. And NCOIL’s pioneering consumer affirmations – including written certifications stating “I have not entered into any agreement or arrangement providing for the future sale of this life insurance policy” and “I have not entered into any agreement by which I am to receive consideration in exchange for procuring this policy” – would likely have stopped issuance of this policy.

ACLI is, therefore, in strong support of SB 3062, SD1, HD 1, and requests that this committee pass this measure into law.

Again, thank you for giving us the opportunity to testify in support of SB 3062, SD1, HD 1, relating to Insurance.

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HAWAII

House Committee on Consumer Protection & Commerce
Hearing on April 2, 2012 – 5:00 pm – AGENDA #4
Representative Marcus Oshiro, Chair
Representative Marilyn Lee, Vice Chair

RE: Senate Bill 3062, SD1, HD1 – Relating to Insurance

Chair Oshiro, Vice Chair Lee, and members of the Committee, the National Association of Insurance and Financial Advisors (NAIFA) Hawaii is made up of life and health insurance agents throughout Hawaii, who primarily market life insurance, annuities, long term care and disability income products.

SB 3062, SD1, re-enacts Hawaii's insurance code on life settlements requiring licensing requirements, reporting requirements, standards, rules, and regulations for life settlement contract providers and brokers, and bans stranger originated life insurance contracts.

We support the purpose and intent of SB 3062, SD1, HD1. The Insurance Commissioner have further amendments that will be presented to this Committee and we support the following amendments: a life settlement broker must be a licensed insurance producer with a life line of authority; deleting the requirement of 15 hours of life settlement training and its transactions (page 19, (p)); and adjusting the licensing fees to \$150 for the life settlement provider and \$75 for the life settlement broker (pages 73 to 74).

SB 3062, SD1 was amended by the Senate **to re-enact Act 177, SLH 2008 (HB 94, HD1, SD2, CD1)**, without including the original sunset language. Act 177 was repealed on June 16, 2010. SB 3062, SD1, was further amended in House CPC.

Act 177, SLH 2008, is the National Conference of Insurance Legislators (NCOIL) Life Settlements Model Act regulating life settlements, that was adopted by NCOIL in November 2007. It also bans stranger originated life insurance (STOLI) transactions. 29 states have adopted legislation on life settlements and 11 states have adopted the NCOIL model act. There are 10 more states with legislation on life settlements as of November 2011.

In life settlement transactions, the policyholder **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 may be 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.

Some life settlement contracts can be considered as risky investments and seniors are targeted with "stranger originated life insurance" – STOLI – a type of life settlement contract. **The NCOIL model act defines and prohibits STOLI transactions.** Although a business transaction between 2 parties, STOLI contracts will permit private investors to purchase life insurance on the lives of unrelated individuals by evading state's insurable interest laws.

In a traditional life insurance purchase, an **insurable interest** exists between the policyholder and the policy's named beneficiaries. **Insurable interest** is a fundamental concept in a well functioning life insurance marketplace. The concept preserves the social purpose of life insurance that enables families to protect their loved ones, businesses to plan for their future and helps to assure that the product will not be abused.

In a STOLI transaction, there is no insurable interest. Seniors are often 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, are used to lure seniors to participate in STOLI schemes that are taxable as ordinary income.

Seniors are targeted because of their relatively short life expectancy and their wealth qualifies them for substantial amounts of life insurance. 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 on lives of strangers.

The concept of insurable interest preserves the social purpose of life insurance...society is diminished when life insurance is used as a vehicle for wagering on human life. Life insurance should NOT be used as a commodity for investment by third parties with no insurable interest to the insured.

We ask for your favorable consideration and move this measure forward with the amendments proposed by the Insurance Commissioner.

Thank you for this opportunity to offer our testimony.

Cynthia Takenaka
Executive Director
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