



NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
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: 586-2850
Fax Number: 586-2856
www.hawaii.gov/dcca

KEALI'I S. LOPEZ
DIRECTOR

TO THE HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

TWENTY-SIXTH LEGISLATURE
Regular Session of 2012

Monday, March 12, 2012
2:10 p.m.

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

TO THE HONORABLE ROBERT HERKES, 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.

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.

S.B. No. 3062, S.D. 1
DCCA Testimony of Gordon Ito
Page 2

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) Page 4, lines 15-19 to read:

"Life insurance producer" means any person licensed in this State as a resident or nonresident insurance producer who has received qualification for life insurance pursuant to article 9A of chapter 431."

(2) Page 16, lines 3-5 to read:

"(g) Licenses are issued and renewed in accordance with article 9A chapter 431 upon payment of fees in the amounts required under section 431:7-101. Failure to pay the fees within the terms prescribed shall result in the automatic inactivation of the license."

(3) Page 16, lines 21-22 and page 17, lines 1-3 to read:

"(i) A 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."

(4) Page 17, lines 4-7 to read:

"(j) Upon the filing of an application and the payment of the license fee, the commissioner shall make an investigation of each applicant and may issue a provider or a broker license if the commissioner finds that the applicant: . . ."

S.B. No. 3062, S.D. 1
DCCA Testimony of Gordon Ito
Page 2

(5) Page 18, lines 1-7 to read:

"(k) Each licensed nonresident broker or provider shall appoint the commissioner as its agent to receive service of legal process issued against the broker or provider in this State upon causes of action arising within this State. Service upon the commissioner as agent shall constitute effective legal service upon the broker or provider. The appointment shall be irrevocable for as long as there could be any cause of action against the broker or provider arising out of the broker's or provider's insurance transactions in this State. Service of process on the commissioner shall be made in accordance with section 431:2-206."

(6) Page 19, lines 1-9 to read:

"(p) An individual licensed as a broker, 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."

Finally, in light of the additional burden on the Division to review the licensee's plans of operation and contracts, and because a business entity may engage the services of multiple unlicensed individuals, we suggest a higher fee:

(7) Page 73, lines 15-22 and page 74, lines 1-5 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 per year for all services (including extension of the license) for a regularly licensed life settlement broker."

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



HAWAII

House Committee on Consumer Protection & Commerce
Hearing on March 12, 2012 – 2:10 pm
Representative Robert Herkes, Chair
Representative Ryan Yamane, Vice Chair

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

Chair Herkes, Vice Chair Yamane, 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 strongly support SB 3062, SD1.

This measure was amended by the Senate to **re-enact Act 177, SLH 2008 (HB 94, HD1, SD2, CD1), without the original sunset language.** Act 177 was repealed on June 16, 2010.

Act 177, SLH 2008, is the NCOIL Life Settlements Model Act that regulates life settlements, that was adopted by NCOIL in November 2007. It also bans stranger originated life insurance (STOLI) transactions. Over 30 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** his/her 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.

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, used to lure seniors to participate in STOLI schemes 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 to move this measure forward.

Thank you for this opportunity to offer our testimony on this measure.

Cynthia Takenaka
Executive Director
Ph: 394-3451



HAWAII

House Committee on Consumer Protection & Commerce
Hearing on March 12, 2012 - 2:10 pm

RE: Senate Bill 2768, SD1 – Relating to Insurance

Chair Herkes, Vice Chair Yamane, 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.

We are addressing Sections 13 & 14 on pages 38 to 42, relating to HRS 431:10D-622 and 626 (Insurance Producer Training).

The amendments provided by the Insurance Commissioner updates Act 108, SLH 2011, that adopted the NAIC Suitability in Annuity Transactions Model Regulation to comply with the federal Dodd-Frank Wall Street Reform and Consumer Protection Act.

Producers (insurance agents) authorized to sell annuity products are required to complete a one time 4-hour annuity training course by January 31, 2012, to sell annuities, or if a new licensee, after 1-31-2012, complete the training before being allowed to sell annuity products.

Additionally, producers must also be in compliance with their respective insurers' standards for product training. Insurers are responsible to ensure that producers complete the mandatory training prior to allowing producers to sell the annuity.

We support this section of the bill.

Mahalo for the opportunity to support this measure.

Cynthia Takenaka 808-394-3451
Executive Director

Todd Thakar
Vice President, Government Relations
Prudential Financial
2377 Gold Meadow Way, Suite 100
Gold River, California 95670
916-442-3423

Committee on Consumer Protection and Commerce
and
Committee on Judiciary

Monday, March 12, 2012
2:10p.m.

HI-SB 3602, SD1

The Honorable Chairman Herkes, Chairman Keith-Agaran and Committee Members:

Prudential Financial respectfully requests your support of SB 3062, SD1 to enact the National Conference of Insurance Legislators, Life Settlements Model Act.

The Life Settlements Model Act affords comprehensive reforms to regulate the life settlement business and limit stranger-originated life insurance (STOLI) transactions.

Under these contrived arrangements, seniors are induced to take out life insurance policies they would *not* otherwise purchase, so investors can acquire the policy and profit when the senior's life expectancy falls short of actuarial projections. Investors use the guise of "free insurance" and property rights to obscure the fact that they speculate in human life by shifting the balance of economic interest from the insured's survival to their early death, precisely the conduct found both unconscionable and unconstitutional by the U.S. Supreme Court.

Passage of the Life Settlement Act in 2008 (HRC Chapter 431E) put Hawaii on the cutting edge in protecting its citizenry from becoming victims of STOLI. Since then, the majority of states have enacted legislation to regulate the settlement industry and prohibit STOLI transactions. Unfortunately, Chapter 431E included a two-year sunset. Enactment of SB 3062, SD1 will restore the Life Settlement Act protections to the citizens of Hawaii.

In a January 2009 report, Florida Insurance Commissioner Kevin McCarty issued a warning as to the detriments STOLI arrangements can have on seniors. The Hawaii Long Term Care Commission raised similar concerns and passage of the Life Settlement Act will address these concerns by implementing important consumer protections.

For all of these reasons, Prudential supports SB 3062, SD 1 and we respectfully urge your strong support.

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

March 12, 2012

Via e mail: cpctestimony@capitol.hawaii.gov

Hon. Representative Robert N. Herkes, Chair
Committee on Consumer Protection and Commerce
State House of Representatives
Hawaii State Capitol, Conference Room 325
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Herkes and Committee Members:

Thank you for the opportunity to testify in support of SB 3062, SD 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, 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”.

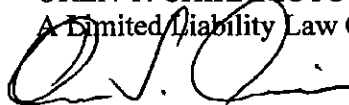
In a press release the executive director of the Life Insurance Settlement Association (“LISA”) has characterized the NCOIL definition as a pioneering consumer protection measure. In commenting on the STOLI transaction which was the subject of a lawsuit filed in the U.S. District Court case of Life Product 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, 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, relating to Insurance.

LAW OFFICES OF
OREN T. CHIKAMOTO
A Limited Liability Law Company



Oren T. Chikamoto
737 Bishop Street, Suite 2100
Honolulu, Hawaii 96813
Telephone: (808) 531-1500
Facsimile: (808) 531-1600