

SB3062

Measure Title: RELATING TO INSURANCE.

Report Title: Insurance; Insurance Commissioner; Viatical Settlements

Description: Requires viatical settlement providers to be licensed by the insurance commissioner. Requires the insurance commissioner to establish licensing requirements, fees, and standards for viatical settlement providers. Permits the commissioner to examine the insurance accounts, records, documents, and transactions of viatical settlement providers.

Companion:

Package: None

Current Referral: CPN

Introducer(s): BAKER

<u>Sort by</u> <u>Date</u>		Status Text
1/25/2012	S	Introduced.
1/27/2012	S	Passed First Reading.
1/27/2012	S	Referred to CPN.
1/31/2012	S	The committee(s) on CPN has scheduled a public hearing on 02-22-12 9:00AM in conference room 229.



NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
LT. GOVERNOR

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KEALI'I S. LOPEZ
DIRECTOR

TO THE SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

TWENTY-SIXTH LEGISLATURE
Regular Session of 2012

Wednesday, February 22, 2012
9 a.m.

TESTIMONY ON SENATE BILL NO. 3062 – RELATING TO INSURANCE.

TO THE HONORABLE ROSALYN H. BAKER, 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 viatical settlement contracts and to regulate the conduct of this business. The Department respectfully suggests amendments.

The viatical settlement contract is a means for the 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. Thirty-nine states regulate viaticals or life settlements. From 2008 until its sunset in 2010, Chapter 431E Life Settlements was Hawaii's insurance 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 Insurance Division does not recommend the insertion of the new law into Article 8 Unauthorized Insurers and Surplus Lines. Instead, Article 10D Life Insurance and Annuities may be a better location.

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



HAWAII

Senate Committee on Commerce & Consumer Protection
Hearing on February 22, 2012 – 9:00 am
Senator Rosalyn Baker, Chair
Senator Brian Taniguchi, Vice Chair

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

Chair Baker, Vice Chair Taniguchi, 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 add a new section to Hawaii's insurance code on viatical settlements (aka life settlements) requiring licensing requirements, standards, rules, and regulations for a viatical settlement, and bonding for providers. A viatical settlement allows an investment in another person's life insurance policy where the life insurance policy is purchased at a price less than the death benefit; the seller sells the life insurance at a discount from the face value usually for cash; when the seller dies, the purchaser (new owner) of that policy collects on the death benefit. Viatical settlements were used to address the AIDS cases and for those who are terminally ill using the accelerated death benefits (aka living benefits) which is paid out before the insured dies. It's a complicated process and caution should be exercised.

While we support the intent of this measure, we ask that you **amend this measure to re-enact Act 177, SLH 2008 (HB 94, HD1, SD2, CD1), without the 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. 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.

The Hawaii Long Term Care Commission in its final report recommended that viatical settlements be regulated in Hawaii and should be more aggressively used as a source for long term care funding. Life settlements 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 like a viatical settlement, STOLI contracts permit private investors to purchase life insurance on the lives of unrelated individuals by evading state's insurable interest laws.

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In advance, we agree with ACLI's proposed draft of this measure and ask for your favorable consideration and move this measure forward.

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

Cynthia Takenaka
Executive Director
Ph: 394-3451

AMERICAN COUNCIL OF LIFE INSURERS
TESTIMONY COMMENTING ON SB 3062, RELATING TO INSURANCE

February 22, 2012

Via E Mail

Honorable Senator Rosalyn H. Baker, Chair
Committee on Commerce and Consumer Protection
State Senate
Hawaii State Capital, Conference Room 229
415 S. Beretania Street
Honolulu, HI 96813

Dear Chair Baker and Committee Members:

Thank you for the opportunity to comment on SB 3062, 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 seeks to regulate the business of life settlements. The bill delegates to the Insurance Commissioner the responsibility to establish licensing requirements, fees and standards for licensure for life settlement providers and among other matters, adopt rules governing the terms and provisions of the life settlement contract. The bill would also authorize the Insurance Commissioner to examine the accounts, records, documents and any transaction entered into by a life settlement provider who enters into or effectuates a life settlement contract.

While ACLI is in support of the intent and purpose of SB 3062, ACLI submits that the preferred legislation would be to 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”.

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

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:

. . . [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".

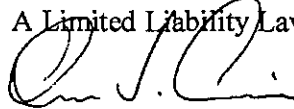
In a press release the executive director of the Life Insurance Settlement Association ("LISA") has characterized the NCOIL definition as a pioneering consumer protection measure. In commenting on the STOLI transaction which was the subject of a lawsuit filed in the U.S. District Court case of Life Product 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 respectfully recommends, therefore, that this Committee reenact Act 177 in place of the current provisions in SB 3062. A proposed draft of SB 3062, SD1, has been delivered to the Committee's Chair for the Committee's consideration.

Again, thank you for giving us the opportunity to comment on SB 3062, relating to Insurance.

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