

TESTIMONY OF THE AMERICAN COUNCIL OF LIFE INSURERS
COMMENTING ON SENATE CONCURRENT RESOLUTION 44, SENATE DRAFT 1,
REQUESTING THE INSURANCE COMMISSIONER TO CONDUCT A FACT-FINDING
AND FEASIBILITY STUDY ON THE VIABILITY OF USING ACCELERATED DEATH
BENEFITS AND VIATICAL SETTLEMENTS AS A SOURCE OF
FUNDING FOR LONG-TERM CARE NEEDS

April 11, 2012

Via e mail

Hon. Senator David Y. Ige, Chair
Committee on Ways and Means
State Senate
Hawaii State Capitol, Room 211
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Ige and Committee Members:

Thank you for the opportunity to comment on SCR 44, SD 1, which proposes that the Insurance Commissioner be requested to conduct a fact-finding and feasibility study on the viability of using accelerated death benefits and viatical settlements as a source of funding for long-term care needs.

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.

The ACLI respectfully opposes that portion of the proposed Senate Concurrent Resolution which requests the Insurance Commissioner to conduct a fact finding and feasibility study on the viability of using viatical settlements as a funding source for long-term care. Further, the Resolution would direct the Insurance Commissioner to provide “the percentage of life insurance policies in Hawaii that are converted to life settlement contracts”

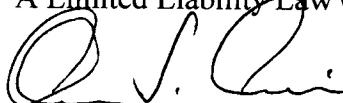
The Resolution in this regard is premature. Such a study puts the cart before the horse. That is, it is premature to study whether it is feasible to use viatical settlements in the absence of law establishing such transactions as respectable and sufficiently regulated to protect consumers. After all, there are many well-documented cases of insurance owners and investors abused by

viatical settlement providers over the decades of transactional experience in other states.¹ Meanwhile, legislation to re-enact the sunset of Hawaii's viatical settlement law is pending.² Should this legislation be enacted, it might then enable a study of the contribution that viatical settlements might make to long-term care financing, if any. Until there is a viatical settlement law enacted, it is impossible to study whether viatical settlements contribute any value whatsoever.

Accordingly, the ACLI respectfully recommends that that portion of SCR 44, SD 1, relating to a fact finding and feasibility study to be conducted by the Insurance Commissioner relating to viatical settlements be deleted from the measure pending enactment by Hawaii's Legislature of a comprehensive viatical settlements law.

Again, thank you for the opportunity to comment on SCR 44, SD 1.

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¹ "There has been substantial criminal and civil litigation arising from the fraudulent activities known to occur in the viatical settlement industry. See, e.g., *Liberte Capital Group, LLC v. Capwill*, 462 F.3rd 543 (6th Cir. 2006); *Wuliger v. Kelco, Inc.*, 2006 U.S. Dist. LEXIS 561, 2006 WL 51126 (S.D. Ohio, Jan. 10, 2006). It has been observed that the 'risk of fraud' is 'somewhat common in the viaticals business.' *People ex rel. Wood v. Innovative Financial Services, Inc.*, 2006 Cal. App. Unpub. LEXIS 1439, 2006 WL 392030, *3 (Cal.App. 4th Dist., Feb. 17, 2006) (unreported).

² There is currently pending in the Legislature SB 3062 which would reenact Hawaii's life settlement law passed by the Legislature in 2008 as Act 177, which by its terms sunset on June 16, 2010. Act 177 enacted the National Conference of Insurance Legislators ("NCOIL") Life Settlements Model Act.