

AMERICAN COUNCIL OF LIFE INSURERS
TESTIMONY IN SUPPORT OF SB 53, RELATING TO INSURANCE

March 30, 2009

Via E Mail: cpctestimony@capitol.hawaii.gov
Honorable Representative Robert N. Herkes, Chair
Committee on Consumer Protection and Commerce
Honorable Jon Riki Karamatsu, Chair
Committee on Judiciary
State House of Representatives
Hawaii State Capital, Conference Room 325
415 S. Beretania Street
Honolulu, HI 96813

Dear Chair Herkes, Chair Karamatsu and Committee Members:

Thank you for the opportunity to testify in support of SB 53, 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 into law Act 177 which enacted the National Conference of Insurance Legislators ("NCOIL") Life Settlements Model Act (the "NCOIL Model Act") which became effective on June 16, 2008.

As of March 11, 2009, 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 adopted the NCOIL Model Act. The others are Arizona, Connecticut, Indiana, Kansas, Maine and Oklahoma. However, unlike any of these other states, unless Hawaii's legislature provides otherwise Hawaii's NCOIL Model Act is repealed next year effective June 16, 2010. Secondly, Hawaii's Insurance Division is required to deliver an annual report to the legislature on January 1 of this year and next year relating to (among other matters) the laws effectiveness in regulating STOLI.

The law should not be repealed and the reporting requirements by the Insurance Division are unnecessary.

The NCOIL Model Act was carefully crafted by NCOIL. Work on the Model Act began on March 7, 2007 and 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.

There are no provisions in the Act which would justify postponement of its permanent enactment until there is a track record of its effectiveness in preventing STOLI transactions.

1. STOLI is morally wrong and wrong for the life insurance industry and consumers.

Wagering on the lives of people is wrong.

- STOLI violates the intended purpose of life insurance. Life insurance is designed to protect an individual's family and estate in the case of a death – not to financially benefit a group of strangers gambling on a person's life.
- STOLI benefits investment groups and hedge funds, not families. It circumvents insurable interest laws and does not protect consumers.

2. STOLI invites wrong-doing.

- STOLI investors are betting on the early deaths of consumers, not on their continuing good health. This gaming scheme simply invites wrong-doing that targets elderly seniors.
- With STOLI, consumers do not have control over their own life insurance policies. Their life insurance is owned by or sold to strangers who do not have their health and welfare at heart.
- Under STOLI transactions, consumers do not know who owns their life insurance policy and what that person or persons intend to do with it.

3. Preying on the elderly is wrong.

- STOLI takes advantage of the elderly – inducing them to buy something they would not normally buy and do not need.
- There may be hidden tax consequences for elderly consumers that investors do not warn them about.
- If people enter into a STOLI arrangement, they may not be able to obtain more life insurance at a time they really need it.
- STOLI is an unregulated business that preys on the elderly.

4. STOLI is unfair to consumers.

While the cost of life insurance continues to fall, enabling more Americans to obtain good coverage, STOLI could reverse this positive trend at the expense of all consumers.

5. STOLI is detrimental to the life insurance industry.

STOLI, if permitted by law, will likely alter the way life insurance companies do business. Insurance companies have been consistently able to raise the age at which they are able to provide affordable life insurance. STOLI may eventually result in fewer choices for insurance consumers.

The NCOIL Model Act is an effective tool in deterring STOLI.

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 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.

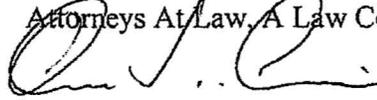
ACLI strongly supports legislation which effectively deters STOLI transactions.

The protections afforded to consumers in preventing STOLI should not be taken away.

For all of the foregoing reasons, ACLI respectfully requests that this Committee pass SB 53, unamended.

Again, thank you for giving us the opportunity to testify in support of SB 53.

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