



Ohio Department of Insurance

2100 Stella Court, Columbus, OH 43215-1067
(614) 644-2658 www.ohioinsurance.gov

Ted Strickland, Governor
Mary Jo Hudson, Director

House Subcommittee on Stranger Originated Life Insurance

Wednesday, January 9, 2008

Testimony of Mary Jo Hudson, Director

Ohio Department of Insurance

Introduction

Chairman Hottinger and members of the House Subcommittee, good afternoon. I am Mary Jo Hudson, Director of the Ohio Department of Insurance, and I would like to thank you for inviting me here this afternoon to discuss HB 404 and the proposed amendments to Chapter 3916 of the Ohio Revised Code, otherwise known as the Viatical Settlements Act.

As you may know, a viatical settlement allows a consumer who owns a life insurance policy to sell the policy to a third party/investor, who would then receive the death benefit when the consumer dies. The proposed amendments to the Viatical Settlements Act that we are discussing today would limit a type of viatical settlement or life settlement known as Stranger Originated Life Insurance, or STOLI transactions. We are advocating for adoption of these proposed amendments in order to protect Ohio consumers, especially seniors, and also to assure that Ohio's insurable interest law is not violated by allowing speculation on the lives of others.

Today's Viatical Settlement Market Development - Stranger Originated Life Insurance Transactions

A stranger-originated life insurance transaction, or a "STOLI," is a transaction where an investor agrees with a consumer to finance the purchase of life insurance, from the first dollar of premium paid on the life insurance policy, in order to benefit the investor. The insured is often paid a fee, up front, in order to participate in the transaction. The insured may also be promised that his or her beneficiaries may receive a small portion of the policy proceeds.

A STOLI transaction is, in effect, an arrangement where an investor - a stranger to the insured - owns the right to receive the death proceeds. The only way to recover the investor's money is for the insured to die—the sooner the better. A STOLI transaction is completely contrary to the Ohio "insurable interest" law. It may also be viewed as an illegal wager – gambling on when someone will die.

Ohio's "insurable interest" law, ORC 3911.09, defines who can benefit from insurance proceeds. The law provides that family, friends, charities and employers can benefit from an individual's life insurance policy. However, an insurance policy cannot be purchased solely for an investor to profit from the death of the insured.

Accredited by the National Association of Insurance Commissioners (NAIC)

Consumer Hotline: 1-800-686-1526

Fraud Hotline: 1-800-686-1527

OSHIP Hotline: 1-800-686-1578

(Printed in house)

Amendments Proposed by the Department

The Department has proposed amendments to HB 404 after considering comments from stakeholders in the life settlement and life insurance industries, the agent community, and upon review of the newly adopted National Conference of Insurance Legislators (NCOIL) model. We also appreciate the thorough dialogue and valuable input from comments that were made by this Subcommittee. Our suggestions are tailored to keep the impact of the amendments narrow and focused on STOLI transactions. Our priority is to protect Ohio seniors and to maintain the integrity of the life insurance sales market.

One change that varies from the NCOIL model that we have recommended is a five-year experience requirement for licensed life insurance agents to conduct incidental viatical sales. This change requires an agent to garner some experience and participate in two rounds of Continuing Education before engaging in the complicated business of viatical sales on an incidental basis. The NCOIL model currently imposes a one-year waiting period. We recommend this change to assure integrity on the Ohio insurance sales market.

Our proposed amendments to HB 404 would also prohibit contrived life settlements and other types of STOLI transactions involving the use of trusts and other legal entities. We recommend adoption of Ohio's statutory definition of "person" to maintain consistency with Ohio law.

The Department's proposed amendments focus on transparency and accountability via escrow requirements, advertising reviews and annual statement filings. These amendments are based on the NAIC model, along with recommendations from certain life settlement industry members and our financial regulation experts.

The Department's proposed amendments do not affect the ability to purchase key man insurance or the insured naming charities and colleges and universities as beneficiaries.

Additionally, we maintain that the 5-year moratorium included in HB 404, as introduced, is an effective and narrowly tailored means to adequately protect Ohio seniors and limits STOLI transactions.

We have reviewed other comments received by this Subcommittee. We have incorporated many of these comments into the Department's proposed amendments. We have attached a document that highlights the proposed amendments and attributes any sources outside of the Department.

Conclusion

HB 404 is an important amendment to Chapter 3916 of the Ohio Insurance Code. The amendments help to protect Ohio seniors against inappropriate insurance sales, and also preserve the venerable, long-standing principle of "insurable interest" in Ohio.

The Ohio Department of Insurance is in full support of these amendments, and encourages this Subcommittee to adopt these amendments. Thank you for your time and attention. I would be happy to address any questions you might have at this time.