



## Ohio Department of Insurance

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**Ted Strickland, Governor**  
**Mary Jo Hudson, Director**

### Senate Insurance, Commerce & Labor Committee

Wednesday, April 23, 2008

Testimony of Mary Jo Hudson, Director

Ohio Department of Insurance

#### Introduction

Chairman Stivers, Ranking Member Kearney, and members of the Senate Insurance, Commerce, and Labor Committee, good afternoon. I am Mary Jo Hudson, Director of the Ohio Department of Insurance. Thank you for allowing me to further discuss Amended Substitute House Bill 404 and the proposed amendments to Chapter 3916 of the Ohio Revised Code. I will focus my testimony today on consumer protection aspects of the amendments and reserve additional testimony on other topics for future hearings.

Over the past several weeks, the Committee has heard testimony from life settlement professionals, premium finance companies, and their advocates that was focused on the property rights of fictitious Ohio citizens who allegedly want to obtain life expectancy estimates and learn the value that a life settlement could hold for them in a life insurance policy they have just purchased. They have spun a series of hypotheticals in an attempt to sway you that these fictitious Ohioans should be allowed to finance the entire purchase of life insurance policies through non-recourse financing and engage in life settlement transactions that primarily benefit foreign and institutional investors who are enticed into the secondary market with promises of high returns guaranteed by insurance companies and state guaranty funds. They have also attempted to focus this Committee on issues that have little or nothing to do with the real problems at hand -- irrelevant issues ranging from telemarketing to statutes of limitations. They have also told you that these amendments will prohibit all viatical or life settlements.

I am here today to discuss what is not being said as often – and should be – as you consider the proposed amendments to Chapter 3916 of the Ohio Insurance Code. I respectfully ask that you give great consideration to our constituents – those actual Ohio seniors who, right here and now, are adversely affected by STOLI and who are better protected if Amended Substitute House Bill 404 is passed without substantive amendments. Once you push aside the red herrings, there are three key consumer protection issues involved in this debate: (1) first and foremost, protecting Ohio seniors from investors who would gamble on the lives of these seniors in order to feed a hungry secondary market in viatical or life settlement transactions; (2) improving the accountability of life settlement brokers and providers to the Ohio consumers with whom they engage in viatical or life settlement transactions; and (3) protecting the Ohio life insurance market from unnecessary increases in the cost of life insurance and limiting availability of life insurance for Ohio seniors. These amendments will not stop legitimate life settlements. They would only prohibit STOLI transactions. I would like to discuss the consumer protection aspects of these amendments.

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### **Protecting Ohio Seniors**

Last week, two witnesses from the life settlement industry testified that we should protect the alleged rights of high net worth seniors to (1) obtain a life expectancy estimate prior to or soon after being issued a policy of life insurance; and (2) settle a life insurance policy soon after the policy is purchased in order to profit on their “hidden asset.” On their face, these arguments might seem reasonable. But, to someone who understands the words behind the rhetoric, these arguments are troubling.

As a practical matter, what person is going to call their insurance agent, apply for a life insurance policy, pay for the policy with their own money, then turn around and ask the agent if he or she knows anyone who can tell the person how long they may live, and, based on that information, how much the insurance policy is worth if it was settled? I don’t know about you, but I would call my doctor to check on my health and hope she would not be discussing my remaining lifespan. More importantly, I would hope that this debate is not focused on whether an Ohio senior should be delivered a financial estimate on his or her life.

The Department is concerned about the potential impact that continued STOLI transactions will have on Ohio seniors of all income levels without the deterrents Amended Substitute House Bill 404 provides. Seniors are the target market for life settlement companies engaging in STOLI transactions. According to the Ohio Department of Aging, in 2006, over 13% of Ohio’s population was over the age of 65. Contrary to prior testimony, STOLI is not an issue that affects only a small group of wealthy seniors with a net worth over \$5 million. The life settlement industry is expanding its reach beyond wealthy seniors. Some life settlement companies are beginning to target policies with face values of \$250,000 to \$500,000 to increase the number of policies available for investors. This and other trends suggest that many Ohio seniors are likely targets for a potential STOLI solicitation and transaction. We want to be sure that those seniors receive appropriate information on the settlement transaction, that the sales personnel conducting the transaction are accountable, and that the solicitation does not involve a STOLI transaction.

### **Adding Accountability to Life Settlement/Viatical Transactions**

The proposed amendments to Chapter 3916 focus on adding accountability and transparency to the solicitation activities of life settlement brokers and providers. Currently, there is no Ohio statute that, on its face, expressly prohibits anyone from entering into a viatical settlement contract before applying for or being issued a life insurance policy, or from promoting the sale of a life insurance policy with the intent of entering into a life settlement contract, i.e., a STOLI. The proposed amendments add these necessary prohibitions to the Ohio Insurance Code in recognition of a market that evolved since enactment of the Viatical Settlement Act.

The amendments require the viatical or life settlement brokers and providers to make more detailed disclosures to consumers in their sales material and also in all financing transactions than is required right now. Life settlement deals are being presented to seniors as simple premium financing, with an unaffordable balloon payment at the end of two years. The laws governing these transactions do not currently require any disclosure regarding the full amount of commissions and fees being charged in association with the transaction. Amended Substitute House Bill 404 puts an end to this “see no evil, hear no evil” game and requires delivery of a disclosure statement that identifies all sources of financing, and also identifies who gets paid from those proceeds. Only then can a consumer reasonably be expected to understand the true implications of the deal.

Amended Substitute House Bill 404 provides for a strong right of rescission for consumers after they enter into a life settlement contract. This right of rescission allows a senior who has felt pressured to sign a contract a reasonable opportunity to discuss the deal with a trusted advisor or family member and decide if the transaction is right for the consumer. This right of rescission is for any life settlement transaction, and is a terrific tool to protect seniors.

The amendments require that life settlement providers and brokers who want to become licensed in Ohio demonstrate proof of financial responsibility, through a bonding requirement. Further, under the proposed amendments to Chapter 3916, viatical settlement brokers must have specialized classroom training in viatical/life settlements in order to maintain their license, similar to the requirements imposed on insurance agents. Also, under the proposed amendments to Chapter 3916, viatical settlement providers and brokers will be open to examination and reporting of their business practices to the Department. Given the complexity of the life settlement market, and the vulnerable population that the life settlement industry is targeting, all of these requirements will directly benefit Ohio consumers.

Finally, Ohio law does not define STOLI as a “fraudulent viatical settlement act.” Some have asked “why aren’t Ohio’s insurance fraud laws adequate to address the issue of viatical or life settlement licensees engaging in a STOLI transaction”? Well, if the “Black Widow” murderers of California operated in Ohio, we could certainly use our current insurance fraud laws to assist in an investigation for purposes of turning the matter over to criminal prosecutors. But, the Ohio Department of Insurance has no independent criminal prosecution authority. If a viatical or life settlement broker or provider engages in activity that violates Chapter 3916, the Ohio Department of Insurance can bring an action to revoke their license. The proposed amendments would provide the Department with additional administrative and civil remedies to detect and take action against STOLI as a defined “fraudulent viatical settlement act.”

### **Protecting the Ohio Life Insurance Market from Unnecessary Premium Increases and Less Availability**

Yesterday, the Ohio Department of Insurance and the Fairfield County Sheriff announced that we had broken up a fraud ring that had cost insurance companies and businesses over \$3 million in stolen cars, trucks, construction equipment and fraudulently purchased real estate. The Department works hard to fight insurance fraud and market abuses because the greater prevalence of such activity in a market, the more such costs are being passed on to insurance consumers. Whether we are discussing fraud or market abuses in the property casualty market or the life insurance market, unchecked abuses in any market will cause rates to increase. The Department is here today to request the additional tools necessary to limit the market abuse of STOLI in the life insurance market in order to avoid unnecessary disruption in the market or an increase in rates for older Ohioans.

The Department is seeing trends showing that an increasing number of life insurance policies issued during the past few years to seniors have indicia of STOLI. If left unchecked, these trends will likely lead to more restrictive underwriting and higher premiums for seniors by insurance companies that are trying to identify STOLI and keep it off their books. In fact, even though insurers do not usually publicize a rate increase, some major insurers have announced higher premiums for all senior applicants in response to the threat of STOLI in the marketplace. As carriers tighten their underwriting requirements for seniors, applicants may be rated so high they will not be able to afford the premiums, or they may be declined for coverage, where, in the past, they could have been accepted. As a result, seniors who are attempting to purchase life insurance for business succession or estate planning purposes may not find it available. Amended Substitute House Bill 404 will help prevent further artificial hardening of the insurance market.

### **Conclusion**

Please do not be distracted by the “red herrings” used by the opponents of this bill. Amended Substitute House Bill 404 is not about banking, premium financing, or telemarketing. It also will continue to allow legitimate life settlements, without interruption. Amended Substitute House Bill 404 is first and foremost a consumer protection bill that has two main functions.

First, it protects Ohio seniors from predatory sales practices by deterring STOLI, and adding accountability and transparency requirements to the activities of life settlement professionals. Secondly, it serves as a safeguard for the Ohio life insurance market to avoid unnecessary rate increases or unavailability.

Amended Substitute House Bill 404 does not hinder the legitimate life settlement market. Instead, it is proactive legislation that will deter and prohibit STOLI, and it will hold life settlement companies and life expectancy companies accountable for their actions. The

legitimate life settlement industry may offer a valuable service to some consumers. But, we cannot turn away from the duty to assure that we have better tools to deter STOLI, to protect consumers, and the viatical/life settlement and the insurance marketplaces.

Thank you for the opportunity to offer support for Amended Substitute House Bill 404. I would be happy to address any questions you might have at this time.