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Details:

(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2009-10

(session year)

Senate

(Assembly, Senate or Joint)

Committee on ... Small Business, Emergency Preparedness, Technical Colleges, and Consumer Protection (SC-SBEPTCCP)

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
 - (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**



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February 18, 2010

TO: Wisconsin Senate
FROM: Jeanne Benink – AARP Wisconsin, State Legislative Specialist
RE: Support for SB 513, Life Settlement Industry Legislation

AARP Wisconsin supports SB 513, a bill which will provide much needed consumer protection and regulatory oversight of the life settlement industry.

We would like to thank Senators Wirsch, Vinehout, Risser, Erpenbach, Grothman, Lehman & Schultz, and the cosponsors Representatives Barca, Toles, Richards, Soletski, Turner and Fields for bringing this bill forward. We also thank them for recognizing the need for this important consumer protection legislation that will preserve the safety and well-being of many older Wisconsinites.

In Wisconsin, the Life Settlement industry is basically unregulated. In this environment, conditions are prime for fraud and abuse. Because the life settlement industry targets people who are 65+, this is an area of deep concern for AARP.

SB 513 gives the Office of the Commissioner of Insurance the ability to oversee the settlement industry and also provides consumers with a set of rights within the settlement transaction/process.

Significant harm can occur to the individual selling their life insurance policy when full disclosure is not given by the life settlement broker/company. Occurrences such as the denial from other insurers if the seller wanted to purchase another policy down the road. Cash payouts to the seller of the policy are usually less than expected because broker fees & commissions are high – often times upward of 30% - and these hidden costs are often times not disclosed to the seller. Also, the seller rarely knows who has purchased their policy because life settlement companies often sell blocks of mortality futures to other investor groups. This leads to the original policy holder receiving monthly calls from complete strangers who are attempting to ascertain if they are still alive or dead.

We understand that there are valid reasons for selling a life insurance policy. Hardships such as loss of employment, bankruptcy, unexpected medical bills or divorce, etc. can all substantiate a valid need to sell one's life insurance policy to obtain cash. This bill allows the legitimate life settlement market to continue to thrive while discouraging entities from creating life insurance policies for profit.

AARP Wisconsin urges the Senate to protect Wisconsinites from these types of predatory sales practices and pass SB 513. Thank you.



Testimony before the Assembly Committee on Insurance

On AB 758 and SB 513, regarding life settlements

March 11, 2010

Chairman Cullen and members of the Assembly Committee on Insurance, thank you for holding a public hearing on Assembly Bill 758 and Senate Bill 513. Thank you also to my colleague from Kenosha, Senator Wirch, and to Commissioner Dilweg for appearing with me today.

The insurance industry in Wisconsin has a long and respected history and Commissioner Dilweg is a leader among state insurance commissioners. I have worked closely with him on a number of issues and appreciate his expertise in the area of insurance and his commitment to consumer protection.

The basic principle of insurance is to protect against loss, not create opportunities for speculation. This legislation is not about regular life insurance policies, where both the insured person and the insurer have an interest in the person living and the insured person is usually trying to provide for dependents in case of premature death, but about an exotic investment vehicle known as Stranger Originated Life Insurance Transactions or STOLIs. These are life insurance policies created to be sold to third parties to bet on death. Equally disturbing is that consumers can find that purchasing one of these policies damages their credit, especially if they were induced to borrow in order to purchase a large policy, and it can become difficult, if not impossible, to purchase regular insurance after taking out a STOLI policy.

This legislation is the result of many months of meeting by the diverse members of a working group convened by Commissioner Dilweg. The group included companies that

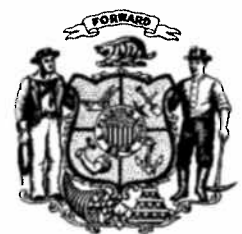
create and market these unusual policies for investors. The working group reviewed STOLs, model regulatory legislation proposed by national groups and legislation in other states and considered whether and how the state ought to regulate these life insurance policies. Like most working groups, not every member ultimately agreed with everything in this legislation.

Nevertheless, I feel strongly that the regulatory framework created in this legislation will continue to allow legitimate life settlement transactions, where the long-time holder of a life insurance policy who needs or decides to sell the policy to a third party can still do so. This legislation will also create the appropriate mechanisms for proper consumer protection in this area and reinforce public policy that discourages speculation on death. Supporters of this legislation include not only major life insurers, but also the AARP, the State Bar of Wisconsin and the Coalition of Wisconsin Aging Groups.


Commissioner Dilweg will speak more comprehensively about the details of the proposed regulation, but I am confident that the committee will agree that this legislation is reasonable and properly balances the needs of consumers for legitimate life insurance that protects against loss and yet allows consumers to exercise control over the disposition of their policies.



WISCONSIN STATE LEGISLATURE



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March 11, 2010

TO: Assembly Committee on Insurance

FR: Attorney Ben Adams
Chair, Elder Law Section

RE: support for AB 758 relating to: life settlements

Companion
to SB 513

The Elder Law Section is comprised of a cross-section of practitioners who work to protect the rights of our clients and consumers. As attorneys, we work to develop and improve the laws that affect the elderly, and promote high standards of ethical performance and technical expertise for those who practice in the area.

Assembly Bill 758 updates the viatical settlements statute and regulates life settlement transactions. The bill prohibits stranger originated life insurance (STOLI) transactions where a third party without an insurable interest buys a life insurance policy on the life of the insured. The bill prohibits STOLI transactions, but allows and regulates life settlement of insurance policies.

In recent years, a new life settlement industry has arisen, engaging in the brokering of high value policies which are purchased by consumers generally over the age of 70 with borrowed funds through non-recourse loans and sold after the two-year incontestability period has passed to syndicates or other entities who hold the policies to maturity. The insured is able to sell the policy for much more than the cash surrender value but less than the face value of the policy; pay off the loan, and pocket a profit. But the brokers profit even more with commissions paid for finding these consumers, inducing them to buy high value policies financed with non-recourse loans, and guiding them to the syndicates that buy the policies. Although technically not STOLI because the insured has purchased his own policy, the scheme accomplishes the same goal. Assembly Bill 758 regulates this practice.

STOLI represents a threat to Wisconsin's mostly elderly consumers and to Wisconsin life insurance companies. The practice should be regulated to prevent the deliberate purchase of a life insurance policy with borrowed funds which the purchaser has no intention of keeping. A policy purchased for the purpose of making a quick profit on the resale is a threat to the continued vitality of the life insurance industry, to the detriment of consumers who legitimately need life insurance policies for the protection of their families, their business partners and their businesses.

The harm to older consumers from the STOLI industry includes the fact that there are life

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insurance policies owned by strangers who have no insurable interest in the life of the insured and who benefit by the early death of the insured. In addition, once the STOLI policy has been issued, the insured may no longer be able to obtain additional life insurance to protect newly arising family needs for insurance. The insured who sells his policy may not understand that he is receiving taxable income.

All consumers are injured by the STOLI industry because life insurance premiums are likely to rise in the future; lapse rates assumed by the issuing insurance companies in their underwriting process do not presently take into account the never-lapsing policies owned by the syndicates who instigate and purchase these policies. If premiums rise and life insurance becomes unaffordable for middle class families, those families will suffer harm when the uninsured breadwinner in the family dies an untimely death. Small businesses will suffer if life insurance becomes unaffordable to use for insuring key persons or for funding the buyout of a business partner or purchase of the partner's share of the business from his estate.

STOLI has been the subject of lawsuits in other states and has been the subject of newspaper articles in the past year in Wisconsin. Often the transactions have involved dishonest brokers who instigated the STOLI arrangements and who profited from the sale of the policies. There have been instances of brokers who have not paid insurance premiums with money taken from the purchaser for that purpose, and of brokers who have themselves secretly purchased policies from which to personally profit on individuals who lacked capacity to understand the transactions and give consent. There are brokers who do not disclose crucial facts to prospective purchasers. But these abuses are not the only reasons for regulating the life settlement industry. The practice of buying a life insurance policy for the express purpose of selling it to make a fast profit does injury to the life insurance industry and in turn injures consumers who need life insurance protection. Wisconsin would be well advised to regulate the life settlement industry to prevent the harm to consumers and to Wisconsin businesses.

Assembly Bill 758 deals with training and licensure of anyone wishing to sell insurance policies. It requires full disclosure to the prospective purchaser of the policy. Meaningful disclosure is especially important in view of the risks involved. However, the most important protection is the prohibition on the sale of a policy in the first 5 years after its issuance, except for substantial change in circumstances that would permit an earlier sale of the policy. The exceptions stated in the bill are numerous and cover all conceivable justifiable reasons for selling one's policy in the first 5 years of ownership. A five-year period will discourage non-recourse financing of the premiums on life insurance policies and will discourage these STOLI transactions.

The lawyers who represent older clients have observed an increase in STOLI activity and have witnessed the lack of clear information received by the prospective purchasers who have been solicited to purchase these policies. There is a need for legislation to regulate STOLI transactions, and the time is now, before there are more injured consumers whom the insurance commissioner cannot protect because of the lack of adequate legislation in Wisconsin.

The Elder Law Section strongly urges your support for this bill.

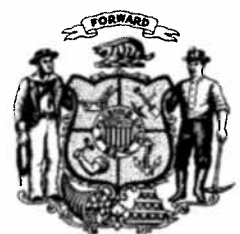
The State Bar of Wisconsin establishes and maintains sections for carrying on the work of the association, each within its proper field of study defined in its bylaws. Each section consists of members who voluntarily enroll in the section because of a special interest in the particular field of law to which the section is dedicated. Section positions are taken on behalf of the section only.

The views expressed on this issue have not been approved by the Board of Governors of the State Bar of Wisconsin and are not the views of the State Bar as a whole. These views are those of the Section alone.

If you have questions about this memorandum, please contact Sandy Lonergan, Government Relations Coordinator, at slonergan@wisbar.org or (608) 250-6045.



WISCONSIN STATE LEGISLATURE





Coalition of Wisconsin Aging Groups
Advocacy Membership Legal Services

March 11, 2010

The Coalition of Wisconsin Aging Groups (CWAG)

supports SB 513 relating to Life Settlements.

CWAG supports SB 513 especially the prohibition of stranger originated life insurance (STOLI) transactions. A STOLI transaction is where a third party buys a life insurance policy on a stranger with no legitimate purpose other than to speculate on the early death of the insured. STOLI transactions are a threat to Wisconsin's senior consumers who are the most vulnerable to this predatory sales practice. Elderly consumers who legitimately need life insurance policies for the protection of their spouses, families, estates and businesses are instead misled into the deliberate purchase of a life insurance policy with borrowed funds solely for the purpose of making a quick profit on the resale. The quick profit often comes at a cost that the insured does not understand due to non-disclosure or actual misrepresentation by the brokers engaged in selling STOLI policies. For example, once the STOLI policy has been issued, the insured may no longer be able to obtain much-needed additional life insurance for the benefit of his or her family, business and/or estate. Often the insured who sells the policy does not understand that the sale generates taxable income.

The STOLI industry hurts all insurance consumers because the industry will most likely cause an increase in life insurance premiums. Life insurance is an important safety net for middle class families who rely upon life insurance to prevent financial catastrophe upon the death of the primary breadwinner. Small businesses will suffer if life insurance becomes unaffordable to use to provide protection against the loss of key employees and which provides crucial capital to fund business buy/sell transactions to preserve continuity upon the death of business owners.

STOLI has been the subject of lawsuits in other states and Wisconsin should take the lead in regulating this industry rather than forcing individual consumers to resort to ad hoc legal remedies through the courts. STOLI transactions have involved dishonest brokers who instigated the STOLI arrangements solely to profit from the sale of the policies. There are instances of brokers who have not paid insurance premiums with money taken from the purchaser for that purpose, and of brokers who have themselves secretly purchased policies from which to personally profit on individuals who lacked capacity to understand the transactions and give consent. There are brokers who do not disclose crucial facts to prospective purchasers. These abuses must be prevented through strong regulation which SB 513 accomplishes.

CWAG supports SB 513 because it also provides important regulation of the life settlement industry in which a life insurance policy is sold by the owner to a third party for less than death benefit but more than the cash surrender value. SB 513 mandates that meaningful and thorough

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disclosures are required to be made by purchasers and brokers to the owner of the policy subject to a life settlement about the risks. The most important regulation offered by SB 513 is the prohibition on the sale of a policy in the first 5 years after its issuance, except for substantial change in circumstances that would permit an earlier sale of the policy. The exceptions stated in the bill are numerous and cover all conceivable justifiable reasons for selling one's policy in the first 5 years of ownership. A five-year period will discourage non-recourse financing of the premiums on life insurance policies and will discourage these STOLI transactions.

CWAG supports this legislation to regulate life settlements and prohibit STOLI transactions. The insurance commissioner needs this legislation to protect seniors and other Wisconsin consumers from very real deceptive and abusive practices.

Sincerely,

Julie A. Short

Director – CWAG Elder Law Center

John Hendrick

Governmental Affairs Director

Coalition of Wisconsin Aging Groups



Wisconsin Council of Life Insurers
 Parrett & O'Connell, LLP
 10 East Doty St. - Suite 621, Madison, WI 53703
 Phone: 608-251-1968

Allianz Life Insurance Company of North America
 American Equity Investment Life Insurance Co.
 Ameriprise Financial Services, Inc.
 American Family Life Insurance Company
 Aviva USA
 Catholic Knights
 CUNA Mutual Insurance
 Equitable Reserve
 Guardian Life Insurance Company of America
 Genworth Financial
 MetLife
 National Guardian Life Insurance Company
 Northwestern Mutual
 Prudential Life Insurance
 State Farm
 Thrivent Financial for Lutherans
 WEA Trust

MEMORANDUM

TO: HONORABLE MEMBERS OF ASSEMBLY INSURANCE COMMITTEE

FROM: CONNIE L. O'CONNELL, 
 WISCONSIN COUNCIL OF LIFE INSURERS

SUBJECT: LIFE SETTLEMENT REGULATION - AB 758

→ 

DATE: MARCH 11, 2010

The Wisconsin Council of Life Insurers, an organization representing both domestic and nondomestic life insurance companies licensed in Wisconsin, strongly supports Assembly Bill 758 (AB 758) providing consumer protection in life settlement transactions.

AB 758 provides critical consumer protections within life settlement transactions, particularly those transactions known as Stranger Originated Life Insurance (STOLI). STOLI schemes involve investors, who are wholly unrelated to an individual, acquiring life insurance on that person solely to profit from his or her death. The sooner the person dies, the higher the profit. In effect, STOLI allows investors to speculate on the insured's life. This practice disregards state insurable interest laws that mandate life insurance not be used for wagering on human life.

The Wisconsin Office of the Commissioner of Insurance, the Department of Financial Institutions, consumer groups, the Elder Law Section of the Wisconsin State Bar, AARP, the Coalition of Wisconsin Aging Groups, the life insurance industry, the National Association of Insurance and Financial Advisors, and others strongly support AB 758.

AB 758 is similar to laws adopted by Ohio, Iowa and Minnesota. In order to deter the manufacture of life insurance policies, AB 758 includes limitations, **but not a ban**, on

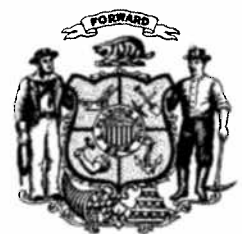
the ability to settle a policy that carries one or more “hallmarks” of this kind of arrangement within 5 years of purchasing the policy. These hallmarks do not exist in a normal insurance purchase and include: 1) an agreement to sell the policy; 2) a separate analysis of the purchaser’s mortality; and 3) premiums which are financed without any personal stake on the part of the purchaser. Even if a policy is initiated with one of the hallmarks, the five year limit does not apply if the individual has a hardship need to sell the policy such as bankruptcy, illness, divorce, etc. In an abundance of caution, the legislation includes rulemaking authority for OCI to identify additional hardship causes to allow earlier settlement of a policy that has the characteristics of a STOLI transaction. Further, an individual who purchased insurance for legitimate protection reasons will not be subject to this limitation at all.

This targeted provision, along with the consumer disclosure and other provisions in AB 758, will allow the legitimate life settlement market to continue to operate but will greatly discourage entities from the manufacture of life insurance policies for profit. The life settlement industry is opposed to this bill and is supporting alternative legislation. The measure they support does not include the five year limitation on suspicious transactions and creates loopholes that would allow the sale and marketing of STOLI schemes to continue.

The Wisconsin Council of Life Insurers strongly encourages you to support AB 758 to effectively regulate life settlement transactions and create a strong deterrent for STOLI. Please do not hesitate to contact me should you have any questions.



WISCONSIN STATE LEGISLATURE





To: Assembly Committee on Insurance

From: Jason Johns, Representing Coventry

Re: Opposition to SB 513/AB 758

Date: March 11, 2010

Chairman Cullen and Members of the Committee;

Good morning and thank you for allowing me to appear before you to express my client's opposition to SB 513/AB 758. I have had the opportunity prior to today to discuss this legislation with each of you in-depth so will refrain from reciting the technical aspects. Rather, I would like to address the flawed process this legislation has undergone and briefly touch on the major concerns my client Coventry has with these bills.

As you are aware from written materials I have submitted to your offices, SB 513 has clearly been railroaded through the Senate without what we feel was an adequate legislative process. In the short period of just under one month SB 513 was circulated, heard, voted out of committee and subsequently passed by the full Senate. This comprehensive, 50 page piece of legislation, introduced at the request of the Insurance commissioner, affecting dozens of insurance codes, and regulating the sale of life insurance policies, did not go through the Senate Insurance committee. In addition, legislation circulated by the Insurance Committee chair, which was based on the alternative NCOIL model passed in 19 other states, was not even given the light of day to be properly debated next to SB 513. This is no way to conduct the business of the people in the Legislature.

Coventry has many concerns with this legislation. But the major ones on the forefront include:

- 1) **Prohibition on assignment of life insurance policies to the life settlement market for a period of 5 years from inception of policy:**
 - Why? Current U.S. and Wisconsin law, dating back to 1886 in Wisconsin, states that a life insurance policy is the property of the insured and includes the protected right to sell the property in an open and competitive market. A five year ban on life settlements takes away these property rights and, in the words of one of the National Association of Insurance Commissioner's (NAIC) own funded consumer advocates, "**restores a monopoly**" for life insurance companies.

Proponents claim given the "exceptions" permitted to allow assignment after 2 years, that if a life settlement transaction does not meet the exception, then it must be STOLI. This is simply not true and turns



property rights on its head, requiring policyowners to prove they qualify for one of the so-called “hardship” exceptions to restore their property rights.

- The problem of stranger-originated life insurance (STOLI) is a **PRIMARY MARKET** problem, involving the improper and illegal manufacturing of life insurance. The solution of STOLI, therefore, is a primary market solution-and does not involve limiting the right to assign a policy. In other words, STOLI cannot be realized unless a policy is issued by an insurance company. No policy issuance, no STOLI.
- This is nothing more than a protectionist proposal to reduce life settlements, and not address STOLI. As the Chief Actuary from Northwestern Mutual stated “The vast majority of policyholders who lapse their policies before death are the “losers”. They receive much less at surrender than what any reasonable person would perceive as acceptable value.... If an issuing company does not provide fair value, policyholders will proceed directly to a secondary market-presumably, a viatical (life settlement) company-to get a better deal. There will be a secondary market for these contracts, and this will not be good for the life insurance industry.”

2) Definition and prohibition of “Stranger Originated Life Insurance”:

- SB 513/AB 758 defines STOLI as “an act, practice, plan, or arrangement, **individually** or in concert with others, to initiate a life insurance policy for the benefit of a 3rd-party investor who, at the time of policy origination, has no insurable interest in the insured..... How can a person who takes out insurance on their own life-individually-where there is no stranger-be guilty of STOLI? It is impossible. This language has not been proposed or seen anywhere in the U.S. and simply demonstrates the insincerity of the proponents of the bill.
- Further, several courts have held that a unilateral intent to sell a policy pursuant to a lawful life settlement is NOT STOLI:
 - a) In First Penn v. Evans (United States Court of Appeal, Fourth Circuit, 2009), it was set forth that “No third party participated in the procurement of (the insured’s) policy and therefore no one was “wagering” on (the insured’s) life in violation of **public policy**. Furthermore, as amicus curiae noted in its brief and at oral argument, evaluating the insurable interest on the basis of the subjective intent of the insured at the time the policy issues, as (the insurer) would have us do, would be unworkable and would inject uncertainty into the secondary market for insurance.”
 - b) In Sun Life v. Paulson, dated February 15, 2008, Minnesota Federal District Court Judge David Doty stated “the insured could give his properly procured life insurance policy to a third party without an insurable interest...The most important factor in determining the parties’ intent is ‘whether or not the assignment (from the insured to the third party) was done in pursuance of a preconceived agreement.’ Intent however, is irrelevant without facts or allegations suggesting that a third party lacking an insurable interest intended, at the time (the owner) procured the policy, to acquire the policy upon expiration of the contestability period and the ‘mere fact that a life settlement company purchased a



policy from (the owner) after the expiration of the contestability period does not establish that the company intended to purchase the policy when it was issued.

3) Separate licensure required to act as a life settlement provider or broker:

- SB 513/AB 758 includes an unprecedented and unjustified requirement that life agents, who are licensed to counsel consumers on the provisions of their policies—like the assignment and change of ownership and beneficiary clauses used in a life settlement- must obtain a separate license to advise and assist a policyowner with the very contract of insurance; and an even more bizarre exemption, which allows a patent, antitrust, criminal, or any other lawyer or CPA who knows nothing about life insurance to broker settlements without a broker's license. This directly contradicts BOTH the NAIC and NCOIL models and every other state in the nation. Its effect is not to protect consumers, but rather to protect insurers from competition by preventing and gagging life agents from giving basic advice to consumers about their property rights.
- It is demonstrably false for anyone to assert that consumers need this form of additional protection in life settlement transactions. According to the NAIC, from 2006 to 2009, state insurance regulators received a total of 16 consumer complaints involving life settlements. Compare that with the 72,000 consumer complaints regarding life insurance.

Coventry supports the prohibition of stranger originated life insurance and also wholeheartedly supports regulation of the life settlement industry. All sides of this issue agree that these issues need to be addressed. However, they do not need to be addressed in such a hurried and frantic way that has the effect of adversely affecting consumer choice and property rights, creates a monopoly that benefits insurance companies, and turns 140 years of insurance law in Wisconsin on its head.

It is clear that this legislation is very complex and causes many questions and concerns to arise. Other states have needed years to accurately and correctly address it. Consider the following:

- 19 states have adopted laws based on the NCOIL Model (or NCOIL Model provisions): California, New York, Illinois, Kansas, Indiana, Maine, Connecticut, Oklahoma, Utah, Montana, Arkansas, Hawaii, Kentucky, Georgia, Idaho, Washington, Arizona, Rhode Island, and Tennessee.
- In 12 of those 19 states the NAIC Model (what SB 513/AB 758 is modeled after) was initially proposed and was rejected in favor of the NCOIL Model (Kansas, Indiana, Maine, Connecticut, Oklahoma, Utah, Montana, Arkansas, Hawaii, Idaho, Arizona, Tennessee).
- 6 states adopted the NAIC Model, including those with so-called "hybrid approach"; Nebraska, Iowa, Ohio, North Dakota, West Virginia, and Oregon. Three unique laws have been adopted in Nevada, Vermont and Minnesota.



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- In 7 of the 9 states that adopted the NAIC Model, the hybrid or something else, the legislature never considered the NCOIL Model (Ohio, Nebraska, North Dakota, West Virginia, Nevada, Vermont and Oregon).

We urge you to oppose passage of SB 513/AB 758 and allow for a proper and transparent legislative process to be conducted on this issue in the next legislative session. In the meantime, Coventry would support a Legislative Council Study to help facilitate this fair and appropriate process.

Thank you,

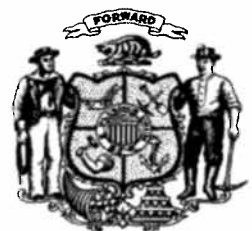
Jason Johns

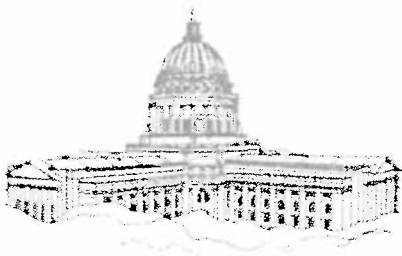
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WISCONSIN STATE LEGISLATURE





LENA C. TAYLOR

Wisconsin State Senator • 4th District

HERE TO SERVE YOU!

Statement of Senator Lena C. Taylor

Assembly Committee on Insurance

Opposing SB 513/AB 758

Thursday, March 11, 2010

Honorable Chairperson Cullen and members of the Committee:

As the chairperson of the Senate Committee with jurisdiction over Insurance matters, I felt compelled to submit written testimony expressing my hope that you will not support passage of SB 513/AB 758. From my own personal experience in the Senate, I can attest that the process in regards to this legislation is not representative of the charge we have been given by our constituents to thoroughly examine all sides of an issue before making it law. When I realized that SB 513 was being fast tracked through the Senate, I attempted to introduce counter-legislation that was based on the NCOIL model act, but it was evident that such a measure was not welcome. My hope was that my colleagues would examine both SB 513 and its counter-legislation, become informed on each, and then make an informed decision before casting their vote one way or the other, as it should be. However, as you have clearly been made aware, this was not the case. Given the expedited time frame of SB 513 (which began circulation on January 29th and was passed out of the Senate on February 23rd), it is clear that the consequences its passage would have on consumer property rights and protection of a competitive marketplace were not properly considered.

I am very concerned with the fact that this legislation affects the choice a consumer has to sell their property on the life settlement market by expanding the prohibition from 2 to 5 years. Although proponents claim that there are exceptions to still allow sale after 2 years, a layer of bureaucracy will now be placed upon the consumer to prove they qualify for an exception. And this expansion is being justified for no legitimate reason. Given that they now have un-restricted free choice of what to do after two years, it remains a reality that under SB 513/AB 758 their rights will be changed and impeded upon. I hesitate to change 125 years of case law in Wisconsin, at the detriment of the consumer, without a legitimate public reason or proof of harm.

I am not stating that stranger originated life insurance should not be prohibited, and that the life settlement market should not be properly regulated. They should. However, these issues are very complex and impact literally dozens of insurance codes and multiple consumer property and choice rights. Thus, they require in-depth exploration and debate as well as a clear and transparent process.

I urge you not to support passage of SB 513/AB 758 at this time. Allow us, as legislators, the opportunity to properly write language to prohibit STOLI, regulate the life settlement market, and in the meanwhile, protect invaluable consumer rights in a legal and professionally recognized competitive marketplace. It can be achieved, if done right. 19 other states have been able to do just that, I ask why can't Wisconsin do the same?

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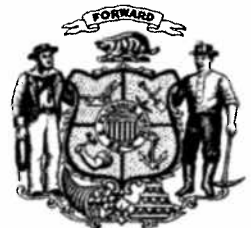
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Joint Committee on Finance
Joint Committee for Review of Criminal Penalties (Co-Chair)
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SB 513?

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STRANGER ORIGINATED LIFE INSURANCE SETTLEMENTS – STOLI
Position Statement – January 2010

Position: NAIFA Wisconsin is strongly opposed to “stranger originated life insurance” settlements, commonly known in the industry as “STOLI” transactions. These transactions are, by definition, targeted at the elderly population and are, at their core, merely gambling by speculators on the mortality of the insured elder using life insurance policies procured specifically for that purpose. We support legislation (to be introduced this session at the request of the Commissioner of Insurance) to outlaw these transactions in accord with national models.

Summary: Life insurance is designed to protect beneficiaries from financial hardship upon the untimely death of the insured such as a primary wage earner in a family or a key partner in a business. In recent years, a productive secondary market has evolved for policies where either:

- The owner is terminally ill and needs early distribution of the death benefit (for example to pay medical costs) – “viatical settlements” or
- The owner no longer needs the insurance protection for the reason the policy was originally purchased and wishes to recoup some of the premiums paid – seasoned life settlements

The above settlements are in keeping with accepted law and practice in the industry.

A third type of life settlement has more recently evolved wherein the policy is sold to a person over 70 years of age, with a contemporaneous agreement to sell it to “investors” (speculators) who have in fact paid (by financing) all of the premium and arranged the purchase in the first place. The transactions are complex and fraudulent and present multiple financial perils to the insured elder. The insurance is never meant to protect anyone.

Status: The Office of the Commissioner of Insurance intends to introduce legislation to outlaw STOLI transactions during this session. A broadly representative working group was convened under the auspices of OCI on this subject and came to consensus on numerous issues.

Background: Both the National Association of Insurance Commissioners and the National Council of Insurance Legislators have recognized the dangers of STOLI transactions and have created models to deal with it. Many states have already initiated or passed legislation to eliminate STOLI transactions. The mainstream life insurance industry is opposed to these transactions and is supporting Commissioner Dilweg’s efforts to protect Wisconsin citizens from STOLI predators.



Dad?

SB 513 – Life Settlements

I want to thank Commissioner Dilweg for appearing here with me today.

It has been my pleasure to work with the Commissioner on a number of consumer protection issues such as senior designations, the suitability of annuities, and this legislation related to life settlements.

This bill prohibits Stranger Originated Life Insurance (STOLI) transactions, which is a life insurance policy that is purchased by a third party without an insurable interest in the insured. STOLI transactions create an investment vehicle that creates a financial interest in the death of the policy owner.

The sooner a policy holder dies, the greater the return on the investment.

While the bill bans STOLI transactions, life settlement transactions, where the owner of a policy chooses to sell their life insurance policy to a third party, continue to be permitted.

The bill provides a regulatory framework for life settlement transactions by providing a common definition of life settlements, Stranger Originated Life Insurance, and fraudulent life settlement acts. The bill also requires life settlement providers and brokers to be licensed by the Commissioner, who would have the power to deny or revoke a license.

I want to thank the Commissioner for working with me to introduce this important consumer protection bill and I know he has additional information to share with you.

Sen. Mark
Tishman





State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

Jim Doyle, Governor
Sean Dilweg, Commissioner

Wisconsin.gov

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DATE: August 19, 2009
TO: Sean Dilweg
Commissioner
FROM: Eileen Mallow
Assistant Deputy Commissioner
SUBJECT: Life Settlements Working Group Recommendations

The Life Settlements working group has completed its deliberations and prepared the attached recommendations for a statutory framework to regulate this industry in Wisconsin. The workgroup held 7 meetings between December 18, 2008 and June 25, 2009. While the group was able to reach consensus on many issues, there are several issues in which the group was unable to agree on a recommendation or that were not unanimous decisions of the workgroup. In describing the results of the committee's work, I'll highlight the areas where agreement could not be reached. A draft bill, containing their recommendations is attached.

A significant point of contention that the group could not resolve was whether a life settlement could occur within 2 years or 5 years of the purchase of the policy. While the majority supported a 5 year limit, the life settlement industry representatives indicated they could not support that language and expressed their preference for a 2 year limit.

Definitions – other than listed below, the group agreed to the definitions contained in the draft.

Life settlement – The representative of Timber Creek Financial and Coventry requested the definition of a life settlement reference their language that excluded any agreement to sell or transfer a policy in the event of a default. They also requested that a life settlement definition include the lawful assignment of a policy or annuity or the interest in a policy or annuity.

Stranger Originated Life Insurance (STOLI) – all parties agreed that STOLI should include agreements with investors or purchasers who have no insurable interest in the insured's life. However, committee members representing the life settlement industry requested that the draft not include language including premium financing arrangements as creating a STOLI transaction. They also objected to the language that defines a STOLI transaction to include "plans or arrangements".

Licensing Arrangements - The draft creates a licensing framework for brokers and agents that was generally accepted by the group. The framework includes fee arrangements and continuing education (CE) requirements. Representatives of TCC requested that the agent training requirements have a delayed effective date until an adequate number of educational courses are available.

Coventry opposed the training requirements and Timber Creek Financial took no position given the language had not been shared with others from Timber Creek.

License Suspension - The group agreed with the language giving the Commissioner, following due process, the ability to suspend an agent or broker license.

Contract Requirements – Language was agreed to that requires all forms be filed with the office prior to use.

Reporting Requirements and Privacy – Language was agreed to requiring life settlement providers to annually file with the office an annual statement, including the number of policies that are subject to the requirements of the statute (2 year vs. 5 year). Penalties for failing to file were provided.

Examinations and Alternatives – Language was agreed to giving the Commissioner authority to examine certain activities of any licensee or applicant.

Disclosure to Owner – Language was agreed to creating disclosure requirements to be provided to the policy owner at the time of application for a life settlement, creates a right to rescind a life settlement within specified time frames, creates time frames for funds to be transferred once the agreement is signed, and creates specific disclosure language.

Disclosure to Purchaser – Language was included creating disclosures to individuals or groups that purchase life settlements.
Coventry opposes all of the proposed disclosures to purchasers.

Disclosure to Insurer – Language was included creating requirements for an insurer to be notified of pending life settlement transactions, including the initiation of a "plan" to engage in a life settlement.
Coventry opposes the inclusion of a "plan."

Timber Creek Financial advocated for language that allows life insurers to inquire whether the proposed owner intends to pay premiums with the assistance of financing from a lender that will use the policy as collateral to support the financing. Timber Creek wanted language prohibiting an insurer from rejecting a life insurance application solely because the premiums will be financed. All other council members opposed this effort.

Timber Creek and Coventry supported language requiring insurers to send written notice to policy owners age 60 or older (or those known to be terminally ill) indicating that a life settlement is an available alternative. All other members of the workgroup were opposed to this.

General Rules – Language was including establishing guidelines for life settlement brokers to enter into agreements, including medical evaluations, timelines for parties to respond to inquiries, and ability to rescind the agreement.

There is a requirement that an insurer respond to a request for verification of coverage submitted on an approved form by a provider or broker within 30 calendar days of the date the request is received **and indicate whether, based on the medical evidence and documents provided, the insurer intends to pursue an investigation at this time regarding the validity of the insurance contract or possible fraud.**

ACLI and WCLI advocated deleting the bolded language. All other members agreed the language should be included in the proposal

Prohibited Practices – Language was included that with certain exceptions, prohibits a person from entering into a life settlement contract within a 5 year period commencing with the date of issuance of the insurance policy. Timber Creek Financial and Coventry opposed the 5 year restriction and advocated for 2 years.

Prohibited Practices and Conflicts of Interest – Language was included restricting a person from entering into a life settlement arrangement if the life insurance policy was obtained with false, deceptive or misleading information. This section contains language that restricts the sale of life insurance for the primary purpose of entering into a life settlement arrangement. While the majority of the group settled on "primary purpose", representatives from Coventry preferred "sole purpose" for this section.

Advertisements of Life Settlement Contracts and Purchase Agreements – Language was agreed to creating advertising regulations for life settlement contracts and purchase agreements.

Fraud Prevention and Control – Language was agreed to prohibiting fraudulent life settlement transactions.

Remedies – Language was agreed to creating penalties and remedies for violations of the life settlements act

Rule Making – Language was agreed to establishing authority for the Commissioner to create rules to implement the statute.

I would be happy to answer any questions you may have.

Life Settlement Subgroup Members

Eileen Mallow (Chair)

Assistant Deputy Commissioner
OCI

Jason Johns

Partner
Tenuta and Johns
Representing: Coventry

Ron Kuehn

Attorney
Representing Pacifica (subsidiary of
Timber Creek Financial)

John Gerni

Regional VP of State Relations
ACLI

Connie O'Connell

Attorney
Parrett & O'Connell
Representing: WCLI.

Heather J. Thenell

Senior Counsel
Insurance Products and Operations Law
Thrivent

Martin O'Brien

Principal Financial Group
Representing: NAIFA

Dave Larson

American Family Insurance

Doug Head

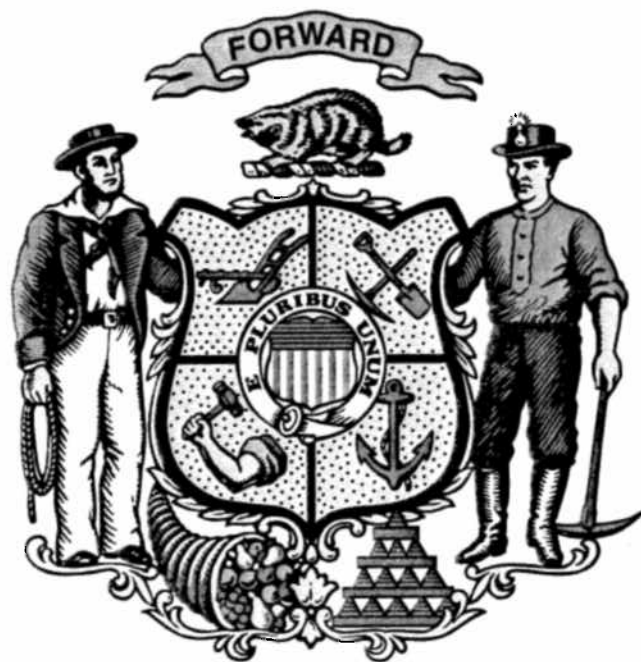
Executive Director
National Life Insurance Settlement
Association (LISA)

Barbara Becker

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Grant Nyhammer

Legal and Program Services Director
Coalition of Wisconsin Aging Groups





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Watchdog Reports

Journal Sentinel Watchdog Report

Christian school puts financial faith in death

By [Cary Spivak](#) and [Amy Hetzner](#) of the Journal Sentinel

Posted: Jan. 23, 2010

Richard Incandela came to Heritage Christian Schools as a smooth talker selling a creepy product.

In return for recruiting school staff and student relatives to sign up for life insurance policies, naming Heritage as beneficiary, the school was told in 2004 it could reap millions of dollars when the insured people died. The death benefits were meant to help build an endowment and lower tuition to entice more students at a time when enrollment was plummeting.

The two-time felon was a persuasive salesman. The school ultimately spent \$1.5 million to buy about 40 policies, mostly on school staff and administrators, each with a \$250,000 payout on death.

In addition, at least 10 more policies, taken out on "high net worth individuals" connected to the school, were to be sold to investors, although school officials are still trying to figure out what happened with those policies. Those policies carried death benefits of up to \$10 million each, said Mark Garsombke, a director on the school's board.

The school's dreams of riches collapsed in 2008. When faced with a cash-flow problem, officials looked closer at the policies and discovered they were worth at least \$1 million less than they had been led to believe, said Garsombke, a partner at the law firm of Whyte Hirschboeck Dudek.

"The school was a victim of fraud by Rich Incandela, and we are looking at all our legal remedies right now in terms of pursuing the money the school was defrauded," he said.

"We want to make sure justice is done and something like this doesn't happen to another school or religious organization," he said.

Today, the school is struggling financially. Kindergarten through 12th-grade enrollment on the school's two campuses, in the Town of Brookfield and West Allis, has continued to tumble and is now 43% lower than it was a decade ago. The newly appointed school board is trying to recoup its money from Incandela, who has paid back \$1.2 million of the \$1.5 million paid to him by the school for the insurance policies, although he has failed to meet the June 2009 deadline to return the remainder, Garsombke said.

School officials say the current financial problems facing Heritage are separate from their dealings with

Incandela, but Garsombke acknowledged that the school had lowered tuition based on its plans to create the endowment. A \$9 million addition to the school's upper campus in West Allis also was built on the belief that the lowered tuition would spark an enrollment gain that never materialized, a project that the school apparently expected to pay for out of its regular operating budget.

Incandela delayed answering any questions from reporters from Monday until late Friday afternoon.

He said that he worked with Heritage for several years, during which time he said he raised more than \$500,000 for the school, helped it with fund-raising, arranged a mortgage and even briefly managed the schools' accounts payable.

Now, he said, he has "wound down" most of his relationship with the school. "We settled everything up except for the last 5%," he said.

He gave variations of the statement when asked repeatedly whether he defrauded Heritage.

"It's a sad ending to what was a wonderful relationship," Incandela said. Although Incandela's wife, Barbara, is registered to sell insurance in Wisconsin, he isn't and never has been. Barbara Incandela's license to sell insurance in Florida was revoked this month, after Florida insurance regulators alleged she had misappropriated money from insurance transactions for Richard Incandela, who did not have a license.

Incandela already was facing problems elsewhere. In each case, Incandela said the entities had already been made whole or would soon be.

A lawsuit against Incandela and several of his businesses, which Incandela is contesting, is pending in a Florida circuit court. In October, a federal judge in Oklahoma ordered Incandela and two of his companies to pay more than \$205,000 to Mid-American Christian University in Oklahoma City.

Risky 'life settlements'

Complaints in both cases lay out similar stories to Heritage. All involve policies known as life settlements, risky investments that have drawn the scrutiny of state and federal legislators as well as law enforcement.

Both lawsuits involve small Christian organizations that were looking to build a secure financial future. And they also involve allegations of Incandela's unfulfilled promises to pay back money he had been given for premium payments.

A South Carolina school, Shannon Forest Christian School, was able to recoup its money from Incandela without going to court, according to school head Brenda Hillman. Even though the school bought into Incandela's system, some had concerns about how the program was supposed to make money for the school, she said.

"It's just very indicative of our inward sense of depravity," Hillman said. "I think the numbers looked wonderful and it was done for the right reasons, to secure and stabilize a ministry that people felt so strongly about. And to be able to secure it so easily, I think, was a pretty easy sell."

Heritage was no different. When Incandela first came to the school, a nondenominational Christian academy, its longtime superintendent, Thomas Wittkamper, was looking to build an endowment to

provide financial stability. Wittkamper did not return calls for comment.

School administration embraced Incandela's idea at first. But some parents felt queasy, especially after Incandela repeatedly urged them to solicit their parents to agree to have life insurance policies taken out on them.

"It's just kind of creepy, offering your family up on a life insurance policy," Heritage parent Pam Jerzak said. "When some guy comes from Florida and you're supposed to surrender your parents' information - to me that's just creepy."

Stephan R. Leimberg, a financial consultant who last year testified before a U.S. Senate committee about the life settlement industry, said about the market, "It's a heck of a business model - the business model is: The sooner you die, the more we profit."

Heritage parents who met Incandela back in 2004 described him as a slick salesman who capitalized on his professed Christianity to make vague pitches and lofty promises. Unknown to school officials and parents was his criminal background, which includes committing the largest fraud in Lake County, Ill., history at the time of his conviction in 1993.

Incandela, the son of an Illinois millionaire, served two years of a six-year sentence in Illinois prison after pleading guilty to the scheme, which netted more than \$1.1 million. Incandela owned a suburban Chicago dining club with an exclusive clientele, including Michael McCaskey, owner of the Chicago Bears.

The crime: "He created fictitious tabs for meals they never had" and submitted bills to a credit card company which then paid him, said George Strickland, who prosecuted the case.

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That criminal background was not known to the Heritage parents he approached a decade later.

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Playing on faith

The initial pitch was made to groups of parents, but those who raised questions about his product or the salesman were courted individually, several parents said. Sometimes those who resisted had their Christian faith questioned.

Incandela, 57, also relied on the Christianity of the parents to sell the policies and to relate to them as well, encouraging them to recruit students' grandparents for the program. He told some parents that he had been inspired to devote the remainder of his life to helping Christian organizations by the book "Halftime" by Bob Buford, in which the author shares personal stories about his faith to urge others to make something significant of their later years.

"Absolutely, he told us he was a Christian, and I didn't believe a word he said," said Solper, who did not participate in the program.

Enough people at the school did believe Incandela, however, and it wasn't until the school tried to tap into the life insurance policies to help with finances in early 2008 that school officials discovered the policies were worth far less than they had been told by Incandela.

Periodic statements sent to the school on insurance company letterhead by Incandela had shown an inflated value on the policies that did not match what the insurance company directly told the school they were worth, Garsombke said. Instead of paying premium amounts that would have paid off the policies within seven years, which he had been sent by the school, Incandela had been paying the insurance company the minimum amounts to keep the policies from lapsing.

The school is still investigating what happened to 10 policies that the school is aware of that were taken out on individuals affiliated with the school and were supposed to be sold to outside investors, Garsombke said.

"The whole area is still foggy," he said.

Heritage is also working to keep its school afloat.

Staff was slashed, as were salaries, after financial problems caused the school to miss five paychecks at the end of the last school year. School leaders have said they have until the end of June to raise \$710,000 just to fund Heritage's operations for the rest of the school year. So far, they have been able to raise \$560,000, including pledges.

School officials are now expressing confidence the school will remain open in the next school year, but they also have signaled that major changes could be ahead and are trying to refinance their mortgage so they can keep their school buildings.

The school has far to go to resolve its financial problems, and that worries those connected with the school. Sheryl Mamerow, a Brookfield resident who has sent five children to Heritage schools, lays the blame in Incandela's lap because of the promises he made for the endowment program and the ramifications of actions the school is now taking - such as raising tuition - will have on its future.

"If they have to close the school, he did, you know, the most damage he could possibly do," she said. "It certainly has set families back. It has denied families that would like to send their kids there the ability to do so, at least comfortably so. It's hurt the teachers because there's back pay that's supposed to be paid to them."

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Tierney, Michael

From: Childress, Jason M. [JChildress@foley.com]
Sent: Sunday, January 24, 2010 8:50 AM
Subject: FW: JS story on life settlement

See below. Yet another example of the shady side of life settlements.

<http://www.jsonline.com/watchdog/watchdogreports/82527527.html>

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By Cary Spivak and Amy Hetzner of the Journal Sentinel

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Watchdog Online

Betting on death risky for a nonprofit

By [Amy Hetzner](#) and [Cary Spivak](#) of the Journal Sentinel

Posted: Jan. 23, 2010

Making money off the death of relatives has long been the hallmark of the life insurance industry, but making money off the death of strangers is the domain of life settlements.

The life settlement industry has its roots in the AIDS epidemic. Critically ill people looking for money would sell their policies to third parties, thereby giving them cash to pay for drugs or other immediate needs and allowing the investors to collect death benefits after paying a limited number of premiums.

The industry took off from there, eventually leading brokers to recruit large numbers of elderly adults to sell policies to investors speculating on their deaths. The sooner the insured seniors died, the better the investors did because they would not have to pay as much of the large premiums that go with such policies.

Life settlements are now a nearly \$8 billion industry in America. But it can be a dangerous market for nonprofits, said Matthew Piaker, a Boston-area attorney specializing in investments and estate planning.

"It's a very highly unregulated area, often fraught with fraud," he said. "There is little accountability. It's kind of the Wild, Wild West."

In Wisconsin, local school districts in particular have been courted by investment firms to borrow money to buy into the life settlement market.

The Whitefish Bay School District made \$400,000 to \$500,000 on policies it took out on its own employees, with their permission, to help pay for retiree benefits. But that investment had a guaranteed annual return, regardless of whether any deaths took place, said district business manager Shawn Yde.

Other school districts, including Elmbrook and Wauwatosa, have expressed interest in an investment opportunity in which they can purchase life insurance policies on people not affiliated with their school systems.

They might have to act quickly. Lawmakers are catching up with the industry, as at least 20 states have passed laws regulating it in the last two years.

Changes possible

The Wisconsin Office of the Insurance Commissioner is working to draft legislation that would prohibit so-called stranger-originated life insurance - that is, policies written with the intent of quickly selling them to life settlement investors.

The proposal also would impose a five-year waiting period for people to sell their own life insurance policies, with an exception for extraordinary circumstances. And life settlement brokers would have to register for licenses and take training courses, assistant deputy insurance commissioner Eileen Mallow said.

"We've seen problems in other states," Mallow said. "It was more pre-emptive for what we're worried might come here."

The industry opposes measures such as the five-year ban.

Doug Head, executive director of the Life Insurance Settlement Association, said such practices benefit life insurance companies that would rather see policies lapse or pay out at lower amounts than the death benefits paid to investors.

"We are under attack because the insurers think that we're cutting into their profit margins," he said.

Even so, some investors lose their wagers if they stop paying the premiums because the sellers live longer than anticipated.

"A lot of people wound up buying these from people who never died, and the sellers benefit and the buyers never benefited," Head said.

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