TALHI
Texas Association of
Life & Health Insurers

TALHI CONCERNS WITH HB 3008/SB 1285

Background:

Life insurers are in the business of providing financial protection to consumers in case of the death of a family member or business partner. Our products provide consumers with peace of mind that their financial obligations will be covered in case of a loss. On the other hand, life settlement companies are looking at the life insurance policy as an investment. Life settlement companies seek out high net worth elderly individuals or high net worth chronically or terminally ill persons to buy their life insurance policies. The amount the life settlement company offers to pay for the policy is based on how long the insured is expected to live. Once the life settlement company buys the policy, the company or its investor must continue to pay the premiums on the policy until the insured dies. Unlike life insurers, life settlement companies have an interest in the insured dying quickly, because the sooner the person dies, the more money the life settlement company will make. The life settlement company intends to make a profit on the death of the insured.

The proposed prohibitions in this bill interfere with an agent's and company's ability to contract and ultimately could force life insurers to assist in marketing another industry's product to their existing policyholders.

Historically, agents have contracted with insurance companies and the contract dictated the terms of what an agent and company could or could not do. If an agent does not like the way that they are treated, they can freely choose to seek another company to do business with. This legislation would set precedent that the Texas Legislature or Texas Department of Insurance will in the future dictate the terms of the contract, not the agent or the company. The proposed legislation would ultimately require life insurers to advertise the existence of life settlements on behalf of the life settlement industry. This provides no real benefit to the consumer/insured, undermines the relationship between consumers and their insurance companies and interferes with the contractual relationship between agents and insurers.

While consumers should have access to information, that access should be provided through the life settlement industry's own efforts, and not at the expense of undermining existing customer relationships between insurance companies and their policyholders.

The concept of "intimidation' is already prohibited in Ch. 541 and is a basic anti-trust concept that has clear meaning and interpretations under state and federal anti-trust laws.

These existing laws do not prohibit or restrict the freedom of contract between insurers and agents as contemplated by this bill. The term "interference" is not used in other provisions of Ch. 541 or in long standing anti-trust laws.

Mandating that insurers allow their agents to become life settlement agents puts seniors at risk for becoming more attractive to stranger-originated life settlement (STOLI) perpetrators as they mistakenly believe that insurers are promoting life settlements.

Insurers are concerned about possible liability arising from acts of their agents or employees acting as life settlement brokers because of the misrepresentations, fraud, and deceptive acts or practices used by some in the life settlement business. Among other things, proceeds from life settlement transactions differ materially from proceeds or benefits under a life policy in several respects. These include the fact that amounts paid to an owner of a policy by a life settlement provider may have federal income tax consequences for the owner and be subject to claims of creditors. Death benefits under a life policy are not subject to federal income taxation and are exempt from the claims of creditors. Brokers who do not properly make adequate or accurate disclosures could create vicarious liability for insurers under certain circumstances. This legislation may call into question whether companies could contract or minimize their exposure for an agent's conduct as a life settlement broker because it may constitute some type of direct or indirect "interference" with an agent.

Proponents of this bill admit "interference" is not a problem in Texas. Complaint data from TDI verifies it is not a problem. This bill is not necessary.

Data from a TDI Open Records Request regarding complaints from agents about "intimidation" over the past 5 years shows that this is not a problem in Texas. Complaints from 2011 through 2016 ranged in total number from 12 to 24 and justified complaints over those 5 years ranged from 2 to 9.

There is no need for this legislation. If the life settlement industry contends that they cannot find "brokers" to sell their contracts, this is contradicted by information on the website for their trade association that reflects little, if any, problem in recruiting "brokers".

Per the Life Insurance Settlement Association (LISA) website, Texas has 18 life insurance settlement providers and 7 life settlement brokers available for Texas consumers to sell their life insurance policies. There doesn't appear to be an availability issue in Texas.

Largest life settlement fraud perpetuated in Texas. The sale of life insurance policies in the secondary market has been under ongoing scrutiny by Congress, the U.S. Securities and Exchange Commission (SEC), The Government Accountability Office (GAO), state Attorneys General, the Texas Department of Insurance (TDI) and the Texas Securities Board.

In April 2016 the Waco, Texas, based company Life Partners settled litigation for over $1 billion brought by investors who claimed they were duped into buying bad life insurance settlements with the promise of big returns[1]. At the federal level, the SEC obtained a $47 million jury verdict against the company in 2015. The SEC issued a report[2] of its Life Settlements Task Force on July 22, 2010 recommending that life settlements be clearly defined as securities so that the investors in these transactions are protected under the federal securities laws. In its staff report[3], manipulation of life insurance policies through Stranger-originated-life-insurance (STOLI) is described. In its July 2010 report to the U.S. Senate Special Committee on Aging, the GAO recognized that:

> Despite their potential benefits, life settlements can have unintended consequences for policy owners, such as unexpected tax liabilities. Also policy owners commonly rely on intermediaries to help them, and some intermediaries may engage in abusive practices.[4]

Also in 2010, in his Biennial Report to the Governor and the Texas Legislature[5], then-Insurance Commissioner Mike Geeslin provided an issue update on the business of life settlements. The Commissioner's report states that the life settlement industry reached a peak in 2008, with over $1 billion in policies being purchased in Texas. The Commissioner cites numerous factors for the growth of the life

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[1] "Life Partners Called One of the State's Biggest Fraud Cases Ever", Bloomberg News, March 7, 2016

[2] SEC Releases Report of the Life Settlements Task Force Press Release

[3] SEC Staff Report to the U.S. Securities and Exchange Commission dated July 22, 2010 (pages 11-14)

[4] Government Accountability Office July 2010 Report: Life Insurance Settlements – Regulatory Inconsistencies May Pose a Number of Challenges

[5] Biennial Report of the Texas Department of Insurance to the 82nd Legislature, December 2010 (Page 42).

settlements business nationwide, including the general increased awareness of the availability of life settlements. The report further states that: "Policies that traditional purchasers turn down are sometimes acquired by fraudulent operations. Further, due to the duration of the investment, fraud can occur before it can easily be detected by investors."[6]

TDI issued an Alert[7] to insurers and agents doing business in Texas about STOLI and assisting in the sale of "estate maximization plans", "zero premium life insurance" or "no cost to the insured" policies to senior consumers between the ages of 65 and 85. A similar consumer Alert[8] was simultaneously issued because of an increase in consumer inquiries regarding these types of sales, including a "non-recourse premium finance transaction." Commissioner Geeslin also issued a bulletin to viatical and life settlement providers, representatives, brokers, life and annuity insurers, and insurance agents regarding suspicious practices targeting Texas seniors through studies or surveys use to elicit sensitive health and financial information for the possible solicitation of a life insurance policy to be purchased for the sole purpose of selling the policy to a viatical or life settlement provider.[9]

TDI and the Texas Securities Board have issued a number of Cease and Desist Orders over the past several years relating to the business of life settlements, which in some cases resulted in prosecution and conviction of STOLI perpetrators.[10] Not surprisingly, the Texas Securities Board included life settlements in its Top 10 Investor Traps.[11]

Not all life settlement transactions lead to fraud or STOLI, but it is clear that activity in the life settlements industry has caused enough concern to garner the attention of the SEC, TDI and the State Securities Board.

This bill is a "solution" in search of a problem. Ultimately the provisions of this bill interfere with the ability of a life insurer to contract with its agents and undermine the relationship between life insurers and their customers. Agent groups are not asking for this legislation—it is being supported solely by the industry that would profit from its passage. For these reasons, TALHI must oppose this legislation.

For questions or information, please contact:

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[6] Id.
[7] TDI Agent and Company Alert "Zero Premium Life Insurance"
[8] TDI Stranger-Owned Life Insurance: Zero Premium Life Insurance and New Issue Settlements"
[9] TDI Commissioner's Bulletin #B-0054-07
[10] Texas Securities Board April 8, 2010 Bulletin; April 22, 2010 Bulletin; May 6, 2010 Bulletin; June 3, 2010 Bulletin; June 17, 2010 Bulletin; July 1, 2010 Bulletin; September 30, 2010 Bulletin; November 25, 2010; December 9, 2010 Bulletin; January 20, 2011 Bulletin; March 3, 2011;
[11] Texas Securities Board August 5, 2010 Bulletin