

ASSEMBLY, No. 1263

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Assemblyman GARY S. SCHAER

District 36 (Bergen and Passaic)

Assemblyman GORDON M. JOHNSON

District 37 (Bergen)

Senator NELLIE POU

District 35 (Bergen and Passaic)

Senator GERALD CARDINALE

District 39 (Bergen and Passaic)

Co-Sponsored by:

Assemblywoman Murphy

SYNOPSIS

Prohibits act, practice or arrangement constituting stranger-originated life insurance.

CURRENT VERSION OF TEXT

As introduced.

AN ACT concerning certain life insurance contracts and supplementing P.L.2005, c.229 (C.17B:30B-1 et seq.).

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. a. No person shall directly or indirectly engage in any act, practice or arrangement that constitutes stranger-originated life insurance.

b. A contract, agreement, arrangement, or transaction, including, but not limited to, a financing agreement or any other arrangement or understanding entered into, whether written or verbal, for the furtherance or aid of a stranger-originated life insurance policy or practice shall be void and

unenforceable at the outset.

c. A trust that is created to give the appearance of an insurable interest and that is used to initiate or procure policies for investors shall be in violation of the insurable interest laws of this State and the prohibition against wagering on life.

d. Notwithstanding the provisions of N.J.S.17B:25-4, a life insurer may contest a life insurance policy on the grounds that it was obtained by a stranger-originated life insurance practice, as defined in this section, at any time.

e. (1) As used in this section, "stranger-originated life insurance" or "STOLI" means an act, practice or arrangement to initiate or procure the issuance of a policy in this State for the benefit of a third-party investor who, at the time of policy inception has no insurable interest under the laws of this State in the life of the insured.

(2) STOLI practices shall include, but shall not be limited to, cases in which: (a) a policy is purchased with resources or guarantees from or through a person or entity who, at the time of policy inception, could not lawfully initiate or procure the policy himself, herself, or itself; and (b) at the time of policy inception, there exists an arrangement or agreement, to transfer, directly or indirectly, the ownership of that policy or the policy benefits to a third party.

f. A STOLI arrangement shall not include an otherwise lawful viatical settlement contract as permitted by the "Viatical Settlements Act," P.L.2005, c.229 (C.17B:30B-1 et seq.).

2. a. The Commissioner of Banking and Insurance may seek an injunction in a court of competent jurisdiction and may apply for temporary and permanent orders that the commissioner determines are necessary to restrain the person from committing a violation of this act.

b. Any person damaged by the acts of a person in violation of this act may bring a civil action against the person committing the violation in a court of competent jurisdiction.

c. The commissioner may issue, in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), a cease and desist order upon a person that violates any provision of this act, any regulation or order adopted by the commissioner, or any written agreement entered into with the commissioner.

d. When the commissioner finds that an activity in violation of this act presents an immediate danger to the public that requires an immediate final order, the commissioner may issue an emergency cease and desist order reciting with particularity the facts underlying the findings. The emergency cease and desist order shall be effective immediately upon service of a copy of the order on the respondent and shall remain effective for 90 days. If the commissioner begins non-emergency cease and desist proceedings, the emergency cease and desist order shall remain effective, absent an order by a court of competent jurisdiction pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

e. In addition to the penalties and other enforcement provisions of this act, any person who violates this act shall be subject to civil penalties of up to \$10,000 per violation which may be collected in a

summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). The commissioner's order may require a person found to be in violation of this act to make restitution to persons aggrieved by violations of this act.

f. A violation of this act shall be considered an unfair trade practice pursuant to N.J.S.17B:30-1 et seq. and shall be subject to the penalties contained in N.J.S.17B:30-17.

3. The Commissioner of Banking and Insurance shall promulgate regulations implementing the provisions of this act pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

4. This act shall take effect immediately.

STATEMENT

This bill supplements the "Viatical Settlements Act," P.L.2005, c.229 (C.17B:30B-1 et seq.), to address concerns regarding stranger-originated life insurance, or "STOLI," as it is sometimes called. STOLI is a practice in which a life insurance policy is purchased for the benefit of a third party who, at the time of policy issuance, has no insurable interest in the life of the insured. The long-standing legal principle of insurable interest generally requires that a person applying for a life insurance policy must have an interest in the continued life of the insured. This is most often because the insured is a blood relative or because an economic relationship exists between the parties. Since it has long been illegal and void as a wager on human life to seek to obtain insurance on a stranger, modern STOLI schemes have endeavored to hide the offensive ownership of the policy from insurers at inception and from viatical settlement companies when the policy is sought to be sold. STOLI transactions also often include acts of fraud in the application for new insurance, such as the applicant misrepresenting their net worth or the amount of in force insurance they have. STOLI practices include, but are not limited to, cases in which life insurance is purchased with resources or guarantees from or through a person or entity who, at the time of policy inception, could not lawfully initiate or procure the policy themselves and where, at the time of inception, there is an arrangement, verbal or written, to directly or indirectly transfer the ownership of the policy or policy benefits to a third party. Not only are STOLI schemes harmful because they circumvent insurable interest laws, they can also limit an insured's ability to purchase life insurance later if he has used up his capacity for insurance on the STOLI arrangement.

Specifically, the bill provides a definition of stranger-originated life insurance and explicitly states that stranger-originated life insurance is not a viatical settlement contract. The bill prohibits establishing trusts created to give the appearance of insurable interest and that are used to initiate or procure policies for investors.

The bill prohibits any person from directly or indirectly engaging in any act, practice or arrangement

that constitutes stranger-originated life insurance. The bill provides that a life insurer may contest a policy on the grounds that it was obtained by a stranger-originated life insurance practice, as defined by the bill, at any time, notwithstanding the existing statutory provision that limits contestability of a life insurance policy once it has been in force during the lifetime of the insured to a period of two years from the date of issue. The bill further provides that a contract, agreement, arrangement, or transaction, including, but not limited to, a financing agreement or any other arrangement or understanding entered into, whether written or verbal, for the furtherance or aid of a stranger-originated life insurance practice is void and unenforceable at the outset.

The Commissioner of Banking and Insurance may seek an injunction in a court of competent jurisdiction and may apply for temporary and permanent orders that the commissioner determines are necessary to restrain any person from committing a violation of the bill. Any person damaged by the acts of a person in violation of the bill may bring a civil action against the person committing the violation in a court of competent jurisdiction. The commissioner may issue a cease and desist order for a violation of the bill's provisions or an order adopted by the commissioner. If the commissioner finds that an activity in violation of the bill presents an immediate danger to the public that requires an immediate final order, the commissioner may issue an emergency cease and desist order reciting with particularity the facts underlying the findings.

In addition to the penalties and other enforcement provisions of the bill, any person who violates the bill shall be subject to civil penalties of up to \$10,000 per violation and the commissioner's order may require a person found to be in violation of the bill to make restitution to persons aggrieved by the violations. Additionally, a violation shall be considered an unfair trade practice pursuant to N.J.S.17B:30-1 et seq. and shall be subject to the penalties contained in N.J.S.17B:30-17.

A recent decision of the New Jersey Supreme Court, Sun Life Assur. Co. vs. Wells Fargo Bank, N.A., 238 N.J. 157 (2019), reaffirmed the long-standing tenet that a life insurance policy procured with the intent to benefit persons without an insurable interest in the life of the insured violates public policy of the State, and further held that such a policy is void at the outset. This bill is intended to codify that holding, and to provide appropriate penalties for violations arising from stranger-originated life insurance practices.