



PHOENIX

March 13, 2012

To: Insurance and Real Estate Committee

Re: COMMENTS AND OBJECTIONS TO RAISED S.B. NO. 409

**FTR**

Dear Chairman Crisco, Chairman Megna and Members of the Committee,

Raised S.B. No. 409 combines two very different insurance subjects under one bill. Section 2 of the bill amends an existing statute that regulates the sale of insurance products containing long-term care benefits. The amendment of Section 2 permits the sale of annuities, in addition to insurance products, to be sold with statutorily defined long-term care benefits.

Section 1 of SB-409 is an entirely new section that purports to provide disclosure in the event a life insurance company raises the cost of insurance charges built into certain policies. Section 1 of the bill goes much farther than providing disclosure and is in effect designed to provide risk free investment security and profit to third party investors in life insurance policies. Under the guise of providing valuable notice to consumers, SB-409 significantly alters the role of the Insurance Commissioner, encourages litigation, and disregards current insurance laws and regulations established for individual consumers purchasing a life insurance policy for the benefit of family members, while providing a windfall for sophisticated investors.

Specific concerns with SB-409:

- Disclosure regarding Cost of Insurance (COI) is already provided to consumers in a variety of places, including policy illustrations, policy schedule pages, annual statements and in the policy itself.
- Illustrations used in the sale of universal life policies, require disclosure of the impact of both the guaranteed (maximum) and current (non-guaranteed) COI rates upon policy values. The content of illustrations is regulated and must comply with the National Association of Insurance Commissioners (NAIC) model act and with Connecticut law. Illustrations clearly show to the consumer the guaranteed (or maximum) COI rates and disclose that non-guaranteed rates, charges, and credited interest can and do change.
- Maximum COI rates are contained in the policy forms that are reviewed and approved by the Insurance Department. These maximums are based on COI tables that are developed by the NAIC and independent actuaries. The definition in SB-409 of "excessive" rate increases ignores the fact that the policies already have a built-in maximum that is in accordance with industry standards and has been reviewed and approved by the Insurance Department.
- The disclosure of detailed actuarial pricing formulas, methodology, and assumptions to individuals as required by SB-409 is not required by state insurance departments for good reason; it is proprietary and confidential and its disclosure could have anticompetitive effects. This disclosure, rather than being useful to the initial purchasers of life insurance who buy

coverage for such traditional needs as providing security to their beneficiaries, appears to be a provision solely to benefit sophisticated investors and financial entities that purchase life insurance policies as investments in the secondary life settlement market.

- The Bill significantly alters existing in-force contractual rights and encourages litigation. As worded, SB-409 creates a win-win situation for a policy owned by a third party investor. Upon notification of a proposed COI increase, the policyholder can bring an action in Superior Court contesting the increase. During the pendency of the action the policyholder is not required to pay the increase, and if the policyholder wins the case, it has preserved the costs of its investment without investing any additional dollars. If the policyholder loses the case, it has the right to rescind the policy (i.e. declare it to be null and void) and receive a refund of premium. The language of the bill is somewhat unclear about the amount of premium to be refunded, but can be read to require a refund of all premiums paid since the policy was issued. The policyholder/investor has created a true "heads I win, tails you lose" scenario. That is, the investor has either maintained the cost of its investment at current COI rates, or receives a full refund of all premium paid (which may very well significantly exceed all amounts the third party has invested in the policy), while having received free insurance from the date of its investment until the date of rescission.
- Insurance departments have ample authority to regulate COI increases through the policy approval process and existing authority to enforce unfair insurance trade practices.
- Policyholders already have the right to resort to the courts to challenge COI increases under a variety of state laws, including (i) common law breach of contract and breach of the duty of good faith and fair dealing, and (ii) statutory consumer protection statutes. The rights of action the Bill creates are unnecessary to protect consumers.
- By imposing such draconian changes in disclosure, procedure, substantive contract rights, and regulatory and judicial remedies, the Bill will require insurers to set current COI rates at or near the maximum lawful rates, to the detriment of consumers, or drive them entirely from the Connecticut market. While the Bill in the short term will benefit investors in the life settlement market, it will have lasting, unintended consequences for life insurers and consumers who purchase their products to satisfy genuine life insurance needs.

Though Section 2 of the bill would be beneficial to Phoenix and the insurance industry, the provisions of Section 1 are so objectionable that we respectfully urge the Committee to reject SB-409.

Sincerely,



Gina Collopy O'Connell  
Senior Vice President  
The Phoenix Companies, Inc.