

New Jersey Enacts Anti-STOLI Legislation

Earlier this year, we reported on the New Jersey Assembly's unanimous (78-0) vote approving Assembly Bill 1263, supplementing New Jersey's Viatical Settlements Act, *N.J.S.A. 17B-30B-1, et seq.*, and outlawing stranger-originated life insurance (STOLI) — broadly defined by the bill as “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 the State in the life of the insured.”

On August 27, 2020, the New Jersey Senate also approved this bill in a unanimous (38-0) vote, and on October 19, 2020, New Jersey's governor signed the bill into law.

This law deems STOLI practices to non-exclusively include “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.”

This law also (i) prohibits any person from engaging in any “act, practice or arrangement that constitutes” STOLI; (ii) renders, as “void and unenforceable,” any written or verbal “contract, agreement, arrangement, or transaction” — including a “financing agreement” — in “furtherance” or “aid” of STOLI; and (iii) provides that 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.”

Moreover, this law authorizes (i) civil actions by any “person damaged” by any such violation; and (ii) insurers to contest the validity of STOLI policies, with an express exemption from the two-year contestable statute, *N.J.S.A. 17B:25-4*.

Furthermore, this law imposes a civil penalty of up to \$10,000 per violation. The Commissioner of Banking and Insurance is also authorized to (i) seek an injunction to restrain any violation; (ii) issue cease and desist orders; and (iii) order restitution “to persons aggrieved by violations of this act.”

As acknowledged by the Assembly Financial Institutions and Insurance Committee's Statement, this law is “intended to codify” the New Jersey Supreme Court ruling — secured by our law firm — in *Sun Life Assurance Company v. Wells Fargo Bank, N.A.*, 238 N.J. 157 (2019) (*Bergman*) that STOLI is illegal and void in New Jersey.

In *Bergman*, the New Jersey Supreme Court held that a life policy procured with the intent to benefit persons without an insurable interest violated New Jersey public policy and was void *ab initio*. The \$5 million policy at issue in *Bergman* was part of a larger scheme in which a total of five policies (issued by multiple insurers) with a total face amount of \$37 million were allegedly taken out by stranger investors on an elderly insured's life. The application for the policy failed to disclose the existence of these other policies and misrepresented that the insured was a wealthy woman with a need for insurance. The policy was initially owned by a trust created in the insured's name with her adult grandson as trustee, while stranger investors covertly funded the premiums. Within weeks of the policy being issued, the investors replaced the grandson as trustee and his beneficial interest in the trust was transferred to them. Upon expiration of the two-year contestable period, the policy was sold (as originally planned) on the secondary market, with the sales proceeds going to the investors.

The policyowner in *Bergman* argued that the policy was valid based upon technical compliance with the insurable interest statute because (the owner argued) an insurable interest only has to exist at the time that the policy is issued and the initial policyowner and beneficiary was a trust with the



Charles J. Vinicombe

Of Counsel

cvinicombe@cozen.com
Phone: (856) 910-5003
Fax: (856) 910-5075



Michael J. Miller

Chair, Life
Insurance &
Annuities

Co-Chair,
Software

mjmiller@cozen.com
Phone: (215) 665-4114
Fax: (215) 372-2347

Related Practice Areas

- Life Insurance & Annuities

insured's grandson as beneficiary. The court rejected this form over substance argument, holding that, "[i]f a third party without an insurable interest procures or causes an insurance policy to be procured in a way that feigns compliance with the insurable interest requirement, the policy is a cover for a wager on the life of another and violates New Jersey's public policy."
