ACLI

Financial Security...for Life.

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The Honorable Richard Carlson
Chair, Kansas House Taxation Committee
Room 274-W
300 SW 10th
Topeka, KS 66612-1504

RE: 2012 House Bill 2763 - OPPOSE

Dear Chairman Carlson,

I am writing on behalf of the American Council of Life Insurers (ACLI), a national trade association with over 300 member companies that hold over 90% of the life insurance and annuities in force in America today. The ACLI also represent insurers writing long-term care insurance and disability income insurance. We thank you for the opportunity to comment on House Bill 2763.

The ACLI and its members strongly oppose HB 2763. The bill would, among other things, impose a "consumption tax" on life insurance, annuities, long-term care insurance and disability income insurance. Long-standing public policy encourages citizens to provide for their own financial protection as well as that of their family by purchasing these insurance products. Currently 75 million American families rely on the financial protection provided by life insurers' products. Making these products less affordable by imposing what amounts to a sales tax on them is contrary to that long-standing public policy.

The sale of insurance is not the sale or current consumption of goods or services. Rather, it is an agreement for the transfer of capital at a future time. The sale of insurance creates a contract to pay future dollars based upon the happening of future events. Placing a consumption tax on insurance raises myriad legal questions in that there has been no determination of whether the “service” to be taxed is the purchase of a promise to pay a claim at a future date or whether the “service” is the actual payment of the claim should one arise.

The operation of life insurance policies themselves would challenge legal interpretation for consumption tax purposes. How, for example, would policy dividends be treated if they are applied to reduce the premium? What about policy dividends applied to paid-up additions of insurance? If the tax is only applied to net premiums (premiums less dividends) further costly and complex administrative problems are presented. In addition, calculating the consumption tax would in many cases require separating the “insurance” from the “savings” elements of the policy.

There is also the policy owner mobility factor to consider. There will be scenarios where a policy owner buys their insurance policy in Kansas then leaves the state, yet continues to pay premiums. Or a policy

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owner buys a policy in another state then moves to Kansas while still paying premiums. Keeping track of these various situations for consumption tax purposes will confound both the insurer and the state. Moreover, how will existing Kansas policy owners be treated? Will they suddenly become subject to a tax on a "service" they purchased years ago?

Insurance is already subject to a direct tax on premiums. Adding a sales tax on top of that direct premium tax will only serve to impose a double tax and increase the price of insurance. Life insurance, long-term care insurance and disability income insurance are sold as a form of thrift to provide financial protection to the policy owner. Increasing the price of products that responsible citizens use to protect their financial well-being is not good public policy.

Annuities have become an essential tool for offering retirement savings and providing retirement income. Responsible citizens are making the effort to save for their retirement through their employer-provided 401(k), 403(b), 457 and cash balance plans. Typically, when an employee retires, they cash out these plans and roll the money into individual retirement accounts, some of which are retirement annuities. Retirees do this in order to provide themselves with a lifetime retirement income. However not everyone is covered by an employer provided retirement plan. Small business owners, sole practitioners and employees without pension plans are increasingly reliant on products like annuities to provide for their retirement. With the decline of traditional pension plans annuities have become an essential tool in retirement planning. Imposing a consumption tax on annuities will mean that retirees will have to forfeit a significant percentage of their retirement savings to the state. Making it more expensive to provide for one's retirement is in direct conflict with the state's policy of encouraging citizens to provide for their own financial security.

And speaking of employer provided plans, HB 2763 would make it more expensive for employers to provide group insurance for their employees. For many people, their employer provided group life and group disability may be the only coverage they have. Making it more expensive for employers to provide that coverage benefits neither the employer nor the employees.

Kansas recognizes that insurance already carries a heavy tax burden. In its premium tax statute at Section 40-252b the state says "....the fees, charges and taxes provided for by K.S.A. 40-252 and amendments thereto shall be in lieu of all other license fees, premium or occupation taxes, income taxes, . . . or other fees levied or assessed upon the basis of income, premiums, gross receipts . . . by this state and any municipality, county or other political subdivision of this state..." This "in lieu" clause is recognition of the already high tax burden placed on the business of insurance. Adding to that burden in the form of a consumption tax harms both the industry and the consumer.

Finally, there is the issue of retaliatory taxes. A consumption tax on insurance could provoke retaliation by other states and place Kansas domestic insurers at a crippling disadvantage doing business outside of Kansas. Every state except Hawaii has a retaliatory tax law. These laws impose burdens on out-of-state insurers to the same extent and in the same manner as other states burden the domestic state's insurers doing business in a foreign state. Imposing a consumption tax on insurance could trigger consumption tax retaliation against Kansas domestic insurers doing business in other states. Supporters of a consumption tax on insurance may argue that a consumption tax is a burden on the insurance consumer and not the insurance company and thus the retaliatory law would not be triggered. This is unrealistic not only because a burden on insurance products can be viewed as a burden on insurance companies, but also because past experience has shown that states will construe their retaliatory laws in a manner to maximize revenues.

Thank you for the opportunity to comment on HB 2763. We strongly oppose this ill-conceived bill and we urge the committee to vote against it.

Very truly yours,

James D. Hall