A bill for an act

relating to insurance; regulating life insurance; prohibiting stranger-originated life insurance; proposing coding for new law in Minnesota Statutes, chapter 60A; repealing Minnesota Statutes 2008, sections 61A.073; 61A.074.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. **[60A.078] SHORT TITLE.**

Sections 60A.078 to 60A.0788 may be cited as the "Insurable Interest Act."

Sec. 2. **[60A.0782] DEFINITIONS.**

Subdivision 1. **Terms.** For the purpose of this act, unless the context clearly indicates otherwise, the terms in this section have the meanings given them.

Subd. 2. **Act.** "Act" means sections 60A.078 to 60A.0786.

Subd. 3. **Business entity.** "Business entity" includes, but is not limited to, a joint venture, partnership, corporation, limited liability company, and business trust.

Subd. 4. **Chronically ill.** "Chronically ill" means:

(1) being unable to perform at least two activities of daily living, such as eating, toileting, transferring, bathing, dressing, or continence;

(2) requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment; or

(3) having a level of disability similar to that described in clause (1) as determined by the United States Secretary of Health and Human Services.

Subd. 5. **Commissioner.** "Commissioner" means the commissioner of commerce.

Subd. 6. **Life expectancy evaluation.** "Life expectancy evaluation" means an evaluation conducted by any person other than the insurer or its authorized representatives

for the purpose of projecting or estimating how long a particular individual is expected to live.

Subd. 7. **Permitted settlement contracts.** "Permitted settlement contracts" mean settlement contracts that comply with Minnesota law governing viatical settlement contracts and that are not part of or in furtherance of an act, practice, or arrangement that is prohibited by this act.

Subd. 8. **Person.** "Person" means any natural person or legal entity, including, but not limited to, a partnership, limited liability company, association, trust, or corporation.

Subd. 9. **Policy.** "Policy" means an individual or group policy, group certificate, contract, or arrangement of life insurance affecting the rights of a resident of this state or bearing a reasonable relation to this state, regardless of whether delivered or issued for delivery in this state.

Subd. 10. **Policyowner.** "Policyowner" means the owner of a policy.

Subd. 11. **Settlement contract.** (a) "Settlement contract" means an agreement between an owner of a policy and another person establishing the terms under which compensation or anything of value will be paid or which compensation or value is less than the expected death benefit of the insurance policy, in return for the owner's assignment, transfer, sale, devise, or bequest of the death benefit or ownership of any portion of the policy. Settlement contract also includes:

(1) the transfer for compensation or value of ownership or beneficial interest in a trust or other entity that owns such a policy if the trust or other entity was formed or availed of for the principal purpose of acquiring one or more policies, which policy insures the life of an individual who is a resident of this state; and

(2) a premium finance loan made for a policy by a lender to a policyowner on, before, or after the date of issuance of the policy where:

(i) the policyowner or the insured receives a guarantee of a future settlement value of the policy; or

(ii) the policyowner or the insured agrees to sell the policy or any portion of its death benefit on any date following the issuance of the policy.

(b) Settlement contract does not include:

(1) a policy loan or accelerated death benefit made by the insurer under the policy's terms;

(2) a premium finance loan in which loan proceeds are used solely to pay premiums for the policy and loan-related costs, including, without limitation, interest, arrangement fees, utilization fees and similar fees, closing costs, legal fees and expenses, trustee

fees and expenses, and third-party collateral provider fees and expenses, including fees payable to letter of credit issuers;

(3) a loan made by a bank or other licensed financial institution in which the lender takes an interest in a policy solely to secure repayment of a loan or, if there is a default on the loan and the policy is transferred, the transfer of such a policy by the lender, as long as the default itself is not pursuant to an agreement or understanding with any other person for the purpose of evading regulation under this act;

(4) an agreement in which all the parties are closely related to the insured by blood or law or have a lawful substantial economic interest in the continued life, health, and bodily safety of the person insured or are trusts established for the benefit of such parties;

(5) any designation, consent, or agreement by an insured who is an employee or an employer in connection with the purchase by the employer, or by a trust established by the employer, of life insurance on the life of the employee;

(6) a bona fide business succession planning arrangement:

(i) between shareholders in a corporation or between a corporation and one or more of its shareholders or one or more trusts established by its shareholders;

(ii) between partners in a partnership or between a partnership and one or more of its partners or one or more trusts established by its partner; or

(iii) between members in a limited liability company or between a limited liability company and one or more of its members or one or more trusts established by its members;

(7) an agreement entered into by a service recipient, or a trust established by the service recipient, and a service provider, or a trust established by the service provider, who performs significant services for the service recipient's trade or business; or

(8) any other contract, transaction, or arrangement exempted from the definition of settlement contract by the commissioner based on a determination that the contract, transaction, or arrangement is not of the type intended to be regulated by this act.

Subd. 12. **Stranger-originated life insurance practices.** "Stranger-originated life insurance practices" or "STOLI practices" mean an act, practice, or arrangement to initiate a life insurance policy for the benefit of a third-party investor who, at the time of policy origination, has no insurable interest in the insured. 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 the policy themselves, and where, at the time of inception, there is an arrangement or agreement, whether verbal or written, to directly or indirectly transfer the ownership of the policy and/or the policy benefits to a third party. Trusts that are created to give the

appearance of insurable interest and are used to initiate policies for investors violate the insurable interest requirements and the prohibition against STOLI practices.

Subd. 13. **Terminally ill.** "Terminally ill" means having an illness or sickness that can reasonably be expected to result in death in 24 months or less.

Sec. 3. **[60A.0783] INSURABLE INTEREST REQUIRED.**

Subdivision 1. **Insurance on life of another.** A person may not procure or cause to be procured or effected a policy upon the life of another individual unless the benefits under the policy are payable to the insured, the personal representatives of the insured's estate, or to a person having, at the time the policy is issued, an insurable interest in the individual insured.

Subd. 2. **What constitutes an insurable interest.** Insurable interest, with reference to insurance on the life of another, includes only the following interests.

(a) An individual has an insurable interest in the life of another person to whom the individual is closely related by blood or by law and in whom the individual has a substantial interest engendered by love and affection.

(b) An individual has an insurable interest in the life of another person if such individual has a lawful and substantial economic interest in the continued life of the individual insured, as distinguished from an interest that would arise only by or would be enhanced in value by the death of the individual insured.

(c) An individual party to a contract for the purchase or sale of an interest in any business entity and, if applicable, a trust or the trustee of a trust of which the individual is a settlor, has an insurable interest in the life of each other individual party to the contract, but only for the purpose of carrying out the intent and purpose of the contract.

(d) A trust, or the trustee of a trust, has an insurable interest in the life of an individual insured under a life insurance policy owned by the trust, or the trustee of the trust acting in a fiduciary capacity, if the insured is the settlor of the trust; an individual closely related by blood or law to the settlor; or an individual in whom the settlor otherwise has an insurable interest if, in each of the situations described in this paragraph, the life insurance proceeds are primarily for the benefit of trust beneficiaries having an insurable interest in the life of the insured and the trust is not used, directly or indirectly, as part of or in furtherance of an act, practice, or arrangement that is otherwise prohibited by this act.

(e) A guardian, trustee, or other fiduciary, acting in a fiduciary capacity, has an insurable interest in the life of any person for whose benefit the fiduciary holds property, and in the life of any other individual in whose life the person has an insurable interest so long as the life insurance proceeds are used primarily for the benefit of persons having an

insurable interest in the life of the insured and the guardianship or fiduciary relationship is not used, directly or indirectly, as part of or in furtherance of an act, practice, or arrangement that is otherwise prohibited by this act.

(f) An organization in section 170(c) of the United States Internal Revenue Code of 1986, as amended through December 31, 2008, has an insurable interest in the life of any person who consents in writing to the organization's ownership or purchase of that insurance.

(g) A trustee, sponsor, or custodian of assets held in any plan governed by the Employee Retirement Income Security Act of 1974, 29 United States Code, subsection 1001, et seq., or in any other retirement or employee benefit plan, has an insurable interest in the life of any participant in the plan provided consent is obtained in writing from the participant before the insurance is purchased. An employer, trustee, sponsor, or custodian may not retaliate or take adverse action against any participant who does not consent to the issuance of insurance on the participant's life.

(h) A business entity has an insurable interest in the life of any of the owners, directors, officers, partners, and managers of the business entity or any affiliate or subsidiary of the business entity, or key employees or key persons of the business entity or affiliate or subsidiary, provided consent is obtained in writing from key employees or persons before the insurance is purchased. The business entity or affiliate or subsidiary may not retaliate or take adverse action against any key employee or person who does not consent to the issuance of insurance on the key employee or key person's life. For purposes of this subdivision, a "key employee" or "key person" means an individual whose position or compensation is described in section 101(j)(2)(A)(ii) of the Internal Revenue Code of 1986, as amended through December 31, 2008.

(i) A financial institution or other person to whom a debt is owed, whether for the purposes of premium financing or otherwise, has an insurable interest in the life of the borrower limited to the amount of debt owed plus reasonable interest and service charges.

Subd. 3. **Insured's own life.** An individual has an insurable interest in their own life and an individual of competent legal capacity that procures or effects a policy on their own life may designate any person as the beneficiary, provided the policy is not part of or in furtherance of an act, practice, or arrangement that is otherwise prohibited by this act.

Subd. 4. **Reliance on statements.** An insurer is entitled to rely upon all reasonable statements, declarations, and representations made by an applicant for life insurance relative to the existence of an insurable interest; and no insurer shall incur legal liability, except as set forth in the policy, by virtue of untrue statements, declarations, or representations so relied upon in good faith by the insurer.

Subd. 5. **Consent of insured.** A policy upon the life of an individual, other than a policy of noncontributory group life insurance, may not be effectuated unless, on or before the time the policy is effectuated, the individual insured, having legal capacity to contract, applies for or consents in writing to the policy and its terms. Consent may be given by another in the following cases:

(1) a parent or a person having legal custody of a minor may consent to the issuance of a policy on a dependent child;

(2) a court-appointed guardian of a person may consent to the issuance of a policy on the person under guardianship;

(3) a court-appointed conservator of a person's estate may consent to the issuance of a policy on the person whose estate is under conservatorship;

(4) an attorney-in-fact may consent to the issuance of a policy on the person that appointed the attorney-in-fact for the limited purpose of replacing one or more policies with one or more new policies, provided the aggregate amount of life insurance on the person as the result of the replacement remains the same or decreases;

(5) a trustee of a revocable trust may consent to the issuance of a policy on the life of a settlor of the trust; and

(6) a court of general jurisdiction may give consent to the issuance of a policy upon a showing of facts the court considers sufficient to justify the issuance of the policy.

Sec. 4. **[60A.0784] PROHIBITED PRACTICES.**

It is unlawful for any person to:

(1) procure or cause to be procured or effected a policy in violation of section 60A.0783;

(2) engage in STOLI practices or otherwise wager on life;

(3) solicit, market, or otherwise promote the purchase of a policy for the purpose of or with an emphasis on the subsequent sale of the policy in the secondary market;

(4) enter into a premium finance agreement with any person or agency, or any person affiliated with such person or agency, pursuant to which the lender or any person affiliated with the lender shall receive any proceeds, fees, or other consideration, directly or indirectly, from the policy or owner of the policy or any other person with respect to the premium finance agreement or any settlement contract or other transaction related to such policy that are in addition to the amounts required to pay the principal, interest, and service charges related to policy premiums pursuant to the premium finance agreement or subsequent sale of such agreement; provided, further, that any payments, charges, fees, or other amounts in addition to the amounts required to pay the principal, interest, and

service charges related to policy premiums paid under the premium finance agreement shall be remitted to the insured or to the insured's estate if the insured is not living at the time of the determination of the overpayment; or

(5) enter into or to offer to enter into a settlement contract prior to the issuance of a policy that is the subject of the settlement contract or proposed settlement contract.

Sec. 5. **[60A.0785] PRESUMPTION OF STOLI PRACTICES.**

A settlement contract entered into within the five-year period commencing with the date the policy is issued creates a rebuttable presumption of STOLI practices, unless one or more of the following conditions have been met within the five-year period:

(1) the policyowner or insured is terminally ill or chronically ill;

(2) the policyowner's spouse dies;

(3) the sole beneficiary of the policy is a natural person closely related to the policyowner by blood or law and the beneficiary dies;

(4) the policyowner divorces a spouse;

(5) the policyowner retires from full-time employment;

(6) the policyowner becomes physically or mentally disabled and a physician determines that the disability prevents the policyowner from maintaining full-time employment;

(7) a final order, judgment, or decree is entered by a court of competent jurisdiction on the application of a creditor of the owner adjudicating the policyowner in default, bankrupt or insolvent, or approving a petition seeking reorganization of the policyowner or appointing a receiver, trustee, or liquidator to all or a substantial part of the policyowner's assets; or

(8) all of the following criteria are present:

(i) the policyowner has funded policy premiums using one or both of the following methods:

(A) policy premiums have been funded exclusively with unencumbered assets provided by the insured or by a natural person who is closely related to the insured by blood or law or who has a lawful substantial economic interest in the continued life, health, and bodily safety of the insured; or

(B) full recourse liability financing incurred by the insured;

(ii) there is no agreement or understanding between the insured and any other person to guarantee any liability or to purchase, or stand ready to purchase, the policy, including through an assumption or forgiveness of a loan; and

(iii) the insured did not undergo a life expectancy evaluation during the 18 months immediately preceding the issuance of the policy.

Sec. 6. **[60A.0786] PERMITTED SETTLEMENT TRANSACTIONS.**

Nothing in this act prevents:

(1) any policyholder of life insurance, whether or not the policyholder is also the subject of the insurance, from entering into a permitted settlement contract;

(2) any person from soliciting a person to enter into a permitted settlement contract;

(3) a person from enforcing the payment of proceeds from the interest obtained under a permitted settlement contract; or

(4) the assignment, sale, transfer, devise, or bequest with respect to the death benefit or ownership of any portion of a life insurance policy provided such assignment, sale, transfer, devise, or bequest is not part of or in furtherance of STOLI practices.

Sec. 7. **[60A.0787] PROCESSING CHANGE OF OWNERSHIP OR BENEFICIARY REQUESTS.**

Subdivision 1. **Obligation to process change of ownership or beneficiary requests.** Upon receipt of a properly completed request for change of ownership or beneficiary of a policy and, if applicable, the completed questionnaire described in this section, the insurer shall respond in writing within 30 calendar days with written acknowledgment confirming that the change has been effected or specifying the reasons why the requested change cannot be processed. The insurer shall not unreasonably delay effecting change of ownership or beneficiary and shall not otherwise interfere with any permitted settlement contract entered into in this state.

Subd. 2. **Written questionnaire.** If the insurer receives a request for change of ownership or beneficiary within the five-year period commencing with the date the policy is issued, the insurer may require, as a condition of effecting the requested change, that the policyowner complete and return a written questionnaire designed to determine whether the change request relates to or is made in accordance with a settlement contract and, if so, whether the presumption under section 60A.0785 applies. The questionnaire shall be in a form approved by the commissioner and shall include, but not be limited to, the following:

(1) the definition of settlement contract;

(2) an inquiry regarding whether the request for change of ownership or beneficiary relates to or is made in accordance with a settlement contract;

(3) if the answer to clause (2) is "yes," then a request that the policyowner identify which, if any, of the conditions listed in section 60A.0785 have been met;

(4) if the policyowner represents that one or more of the conditions listed in section 60A.0785, clauses (1) to (7), have been met, then a request that the policyowner provide independent evidence to support the representation;

(5) a disclosure that presenting false material information, or concealing material information, in connection with the questionnaire is defined under the laws of this state as a fraudulent act; and

(6) a signed certification by the policyowner that the answers and information provided in and pursuant to the questionnaire are true and complete to the best of their knowledge and belief.

Subd. 3. **Other inquiries.** Nothing in this section should be interpreted to limit an insurer's ability to make other inquiries to detect STOLI practices.

Sec. 8. **[60A.0788] FRAUDULENT ACTS.**

Subdivision 1. **Fraudulent acts.** No person shall commit a fraudulent act or otherwise attempt to circumvent the requirements of this act. A person who commits a fraudulent act as defined in this section commits insurance fraud and may be sentenced under section 609.611, subdivision 3.

Subd. 2. **List of fraudulent acts.** All of the following acts are fraudulent when committed by a person who, knowingly or with intent to defraud and for the purpose of depriving another of property or for pecuniary gain, commits, or permits any of its employees or its agents to commit them:

(1) failing to disclose to the insurer where the insurer has requested such disclosure that the prospective insured has undergone a life expectancy evaluation;

(2) misrepresenting a person's state of residence or facilitating the change of the state in which a person resides for the express purpose of evading or avoiding the provisions of this act; and

(3) presenting, causing to be presented, or preparing with knowledge or belief that it will be presented to an insurer any false material information, or concealing any material information, as part of, in support of, or concerning a fact material to one or more of the following:

(i) a questionnaire as provided for under section 60A.0787; and

(ii) any other documents or communications, whether written or verbal, which are intended to detect STOLI practices or demonstrate compliance with this act.

Sec. 9. **[60A.0789] REMEDIES.**

Subdivision 1. **Actions to recover death benefits.** (a) If the beneficiary, assignee, or other payee receives the death benefits under a life insurance policy initiated by STOLI practices or a policy procured or effected in violation of section 60A.0783, the personal representative of the insured's estate or other lawfully acting agent may maintain an action to recover such benefits from the person receiving them.

(b) Where a person receives the death benefit as a result of a nonwillful violation of this act, the court may limit the recovery to unjust enrichment, calculated as the benefits received plus interest from the date of receipt, less premiums paid under the policy by the recipient and any consideration paid by the recipient to the insured in connection with the policy.

(c) Where a person receives the death benefits as the result of a willful violation of this act, the court may, in addition to actual damages, order the defendant or defendants to pay exemplary damages in an amount up to two times the death benefits. A pattern of violations of this act and conduct involving one or more fraudulent acts are evidence of willfulness. The exemplary damages shall be paid to one or more governmental agencies charged with combating consumer fraud, including the Department of Commerce.

(d) The court may award reasonable attorney fees, together with costs and disbursements, to any party that recovers damages in any action brought under this subdivision.

Subd. 2. **Enforceability of contracts.** Any contract, agreement, arrangement, or transaction prohibited under this act is voidable.

Subd. 3. **Declaratory judgment action.** If, prior to payment of the death benefits, the insurer believes the policy was initiated by STOLI practices, the insurer may bring a declaratory judgment action seeking a court order declaring the policy void.

Subd. 4. **Statute of limitations.** An action under this act must be brought within three years after the death of the insured.

Subd. 5. **Effect on other law.** This act shall not:

(1) preempt or limit other civil remedies, including, but not limited to, declaratory judgments, injunctive relief, and interpleaders;

(2) preempt the authority or relieve the duty of other law enforcement or regulatory agencies to investigate, examine, and prosecute suspected violations of law; or

(3) limit the powers granted elsewhere by the laws of this state to the commissioner or an insurance fraud unit or the attorney general to investigate and examine possible violations of law and to take appropriate actions against wrongdoers.

Sec. 10. **REPEALER.**

Minnesota Statutes 2008, sections 61A.073; and 61A.074, are repealed.

Sec. 11. **EFFECTIVE DATE.**

This act is effective for policies issued on or after August 1, 2009.