ACLI
Financial Security...for Life.

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Legislative Director

March 2, 2020

The Honorable Anne R. Kaiser
Chair, House Ways & Means Committee
131 House Office Building
6 Bladen St
Annapolis, MD 21401

RE: House Bill 1628 – Sales and Use Tax – Rate Reduction and Services

Dear Madame Chair:

The American Council of Life Insurers is the leading trade association driving public policy and advocacy on behalf of the life insurance industry. 90 million families rely on the life insurance industry for financial protection and retirement security. ACLI's member companies are dedicated to protecting consumers' financial wellbeing through life insurance, annuities, retirement plans, long-term care insurance, disability income insurance, reinsurance, and dental, vision and other supplemental benefits. In Maryland, ACLI's 235 member companies represent approximately 93% of the life insurance market.

ACLI appreciates the opportunity to present our concerns with House Bill 1628 ("H. 1628") as it relates to an expansion of the sales taxes to insurance and financial services, which is currently before the House Ways & Means Committee. Specifically, ACLI has concerns with the bill's deletion of § 11-219, which provides for an exemption of insurance services from the tax. By doing away with this important carveout, H. 1628 would lead to unintended consequences and place the burden of increased costs on consumers who rely on access to life insurers' products. For the reasons listed below, ACLI respectfully requests that this Committee submit an unfavorable report on H. 1628.

I. Reasons why it is inappropriate to impose a sales tax on the sale of life insurance

Insurers already face a host of taxes and fees. Premium and retaliatory taxes, plus a variety of state fees and assessments combine to produce a substantial financial burden on a life insurance company doing business in any given state, including Maryland. In addition to these taxes and assessments, life insurers also pay state property and sales taxes. At the state level, life insurers are generally taxed on the premiums they receive. Premium taxes have existed for more than a century, pre-dating the corporate income tax, and are usually applied to the gross premiums received for life insurance contracts in the state. States have retained the premium tax because it produces a substantial amount of revenue in comparison to the corporate income tax. As such, states have enacted what is commonly referred to as an "in lieu" clause. These clauses, contained in the states' premium tax statutes, generally provide that, with the exception of sales taxes and property taxes, the premium tax on insurance companies is in lieu of all other taxes imposed by the state. Thus, life insurers are not subject to states' corporate income taxes and are insulated from double taxation.

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By subjecting insurers to a sales tax, however, H. 1628 will impose such a double tax on insurance companies who are already subject to a direct tax on premiums. This will hinder their ability to deliver services at competitive prices. In its premium tax statute, Maryland law explicitly acknowledges the fact that insurance already carries a heavy tax burden and should be shielded from additional attempts to tax its services and products. At Section 6-112 of the Maryland Insurance Code, the state says that "a county or municipal corporation of the State may not impose a tax on a person subject to taxation under this subtitle." 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 sales tax harms both the industry and the consumer.

In addition, a sales tax on insurance could provoke retaliation by other states and place Maryland domestic insurers at a crippling disadvantage doing business outside of Maryland. 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 sales tax on insurance could trigger sales tax retaliation against Maryland domestic insurers doing business in other states.

II. Reasons why it is inappropriate to impose a sales tax on insurance agent commissions

It is widely accepted that sales taxes are not applicable to services performed by an employee for an employer. However, if the "services" to be taxed are to include those rendered by an insurance agent, this will result in considerable confusion, disruption, and inequities in the marketing systems of insurers. For example, under the general agency system used by some insurance companies, the general agent is an independent contractor and thus commissions received by him would be subject to the tax. On the other hand, under the branch manager system u sed by other insurance companies, the branch manager is an employee and his compensation would not be subject to the tax.

When the agents themselves are considered, the confusion and inequities become even more complex. With some insurers, all of their agents are employees for all purposes and would thus not be subject to the tax. With other companies, all of their agents are independent contractors for all purposes, and they would be subject to the tax. Between these two poles, agents' contracts with their companies range the full gamut of being employees for some purposes and not for others. Moreover, some companies could be using several different types of agents' contracts within their own agency force, depending on the circumstances of each individual agent.

In other words, both within one company and as between different companies, different individuals can be doing the same thing and receiving essentially the same amount of compensation as other individuals, but some will have to suffer a sales tax on their compensation while others will not.

III. Conclusion

Through payment of premium taxes and other fees and assessments, insurance companies, and life insurers in particular, already contribute their fair share to Maryland's fiscal health and economic strength. The life insurance industry alone, in Maryland, provides good stable jobs and long-term investment capital that spurs economic growth. In Maryland, the life insurance industry:

- Generates 33,800 jobs
- Invests $117 billion in Maryland's economy
- Provides $14 billion in mortgage loans on farms, residential, and commercial property; and
- Makes $90 billion of its investments in stocks and bonds that help finance business development and job creation in the state.

Imposition of a sales tax on insurance services and insurance agent commissions will only lead to inequities in the marketplace and increased costs that will ultimately be paid by Maryland consumers. No other state in the union has a sales tax on life insurance premiums or services, a tax that is ultimately paid by the consumer, not the insurer. Imposing a sales tax on insurance was considered in Pennsylvania in 1970, California in 1974, Florida in 1987 and in Kansas in 1989. In each case, the bill was defeated or abandoned. The sales tax exemption for insurance helps encourage consumers to take responsibility for their own financial and retirement security. Adding a sales tax on top of the existing premium tax will only increase the cost of these essential products and would be a disincentive for consumers. Moreover, applying a sales tax would add to the already complex administrative burdens of both the industry and the state.

America's private sector, including life insurers, plays a key role in addressing the challenges facing American families. Ninety-million American families rely on life insurers for financial security and peace of mind, now and in retirement. These companies, including ACLI's members, contribute proudly to the financial and retirement security of Americans through a broad range of products and services offered directly to individuals and through employer-sponsored plans, including life insurance, disability income insurance, long-term care insurance, annuities, mutual funds, qualified plan administration and record keeping. Making life insurance products more expensive through a sales tax will harm the good progress consumers are making on their goal of financial security.

For the aforementioned reasons, ACLI urges this Committee to submit an unfavorable report on H. 1628. Thank you in advance for your consideration. I am available at your convenience to address any questions.

Sincerely yours,

VINCENT J. RYAN