



GOV. MSG. NO. 819

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

June 16, 2008

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fourth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

This is to inform you that on June 16, 2008, the following bill was signed into law:

HB94 HD1 SD2 CD1

A BILL FOR AN ACT RELATING TO INSURANCE.
(ACT 177)

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Lingle".

LINDA LINGLE

Approved by the Governor

on JUN 16 2008

HOUSE OF REPRESENTATIVES
TWENTY-FOURTH LEGISLATURE, 2007
STATE OF HAWAII

ACT 177

H.B. NO. 94
H.D. 1
S.D. 2
C.D. 1

A BILL FOR AN ACT

RELATING TO INSURANCE.

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

1 SECTION 1. The Hawaii Revised Statutes is amended by
2 adding a new chapter to be appropriately designated and to read
3 as follows:

4 "CHAPTER

5 LIFE SETTLEMENTS

6 PART I. GENERAL PROVISIONS

7 § -1 Short title. This chapter may be cited as the Life
8 Settlements Act.

9 § -2 Definitions. As used in this chapter, unless the
10 content otherwise requires:

11 "Advertisement" means any written, electronic, or printed
12 communication or any communication by means of recorded
13 telephone messages or transmitted on radio, television, the
14 Internet, or similar communications media, including film
15 strips, motion pictures, and videos, which are published,
16 disseminated, circulated, or placed before the public, directly
17 or indirectly, for the purpose of creating an interest in or
18 inducing a person to purchase or sell, assign, devise, bequest,



1 or transfer the death benefit or ownership of a policy or an
2 interest in a policy pursuant to a life settlement contract.

3 "Broker" means a person who, on behalf of an owner and for
4 a fee, commission, or other valuable consideration, offers or
5 attempts to negotiate life settlement contracts between an owner
6 and providers, represents only the owner, and owes a fiduciary
7 duty to the owner to act according to the owner's instructions,
8 and in the best interest of the owner, notwithstanding the
9 manner in which the broker is compensated. "Broker" does not
10 include an attorney, certified public accountant, or financial
11 planner retained in the type of practice customarily performed
12 in their professional capacity to represent the owner, whose
13 compensation is not paid directly or indirectly by the provider
14 or any other person, except the owner.

15 "Business of life settlements" means an activity involved
16 in but not limited to offering to enter into, soliciting,
17 negotiating, procuring, effectuating, monitoring, or tracking of
18 life settlement contracts.

19 "Certificate" means a certificate issued pursuant to a
20 group policy.

21 "Chronically ill" means:



- 1 (1) Being unable to perform at least two activities of
2 daily living, such as eating, toileting, transferring,
3 bathing, dressing, or continence;
- 4 (2) Requiring substantial supervision to protect the
5 individual from threats to health and safety due to
6 severe cognitive impairment; or
- 7 (3) Having a level of disability similar to that described
8 in paragraph (1) as determined by the United States
9 Secretary of Health and Human Services.
- 10 "Commissioner" means the insurance commissioner.
- 11 "Financing entity" means an underwriter, placement agent,
12 lender, purchaser of securities, purchaser of a policy or
13 certificate from a provider, credit enhancer, or any entity that
14 has a direct ownership in a policy or certificate that is the
15 subject of a life settlement contract, but:
- 16 (1) Whose principal activity related to the transaction is
17 providing funds to effect the life settlement contract
18 or purchase of one or more policies; and
- 19 (2) Who has an agreement in writing with one or more
20 providers to finance the acquisition of life
21 settlement contracts.



1 The term shall not include a non-accredited investor or
2 purchaser.

3 "Financing transaction" means a transaction in which a
4 licensed provider obtains financing from a financing entity
5 including, without limitation, any secured or unsecured
6 financing, any securitization transaction, or any securities
7 offering that is either registered or exempt from registration
8 under federal and state securities law.

9 "Insured" means the person covered under the policy being
10 considered for sale in a life settlement contract.

11 "Life expectancy" means the arithmetic mean of the number
12 of months the insured under the policy to be settled can be
13 expected to live as determined by a life expectancy company
14 considering medical records and appropriate experiential data.

15 "Life insurance producer" means any person licensed in this
16 state as a resident or nonresident insurance producer who has
17 received qualification or authority for life insurance coverage
18 or a life line of coverage pursuant to article 9A of chapter
19 431.

20 "Life settlement contract" means:

21 (a) (1) A written agreement entered into between a provider
22 and an owner, establishing the terms under which



1 compensation or any thing of value will be paid, which
2 compensation or thing of value is less than the
3 expected death benefit of the owner's policy or
4 certificate, in return for the owner's assignment,
5 transfer, sale, devise, or bequest of the death
6 benefit or any portion of the policy or certificate
7 for compensation, where the minimum value of the
8 contract is greater than a cash surrender value or
9 accelerated death benefit available under the policy
10 or certificate at the time of an application for a
11 life settlement contract;

12 (2) The transfer for compensation or value of ownership or
13 beneficial interest in a trust or other entity that
14 owns such policy or certificate if the trust or other
15 entity was formed or availed of for the principal
16 purpose of acquiring one or more life insurance
17 contracts, which life insurance contract insures the
18 life of a person residing in this state; or

19 (3) (A) A written agreement for a loan or other lending
20 transaction, secured primarily by an individual
21 or group policy; or



- 1 (B) A premium finance loan made for a policy on or
2 before the date of issuance of the policy where:
3 (i) The loan proceeds are not used solely to pay
4 premiums for the policy and any costs or
5 expenses incurred by the lender or the
6 borrower in connection with the financing;
7 (ii) The owner receives on the date of the
8 premium finance loan a guarantee of the
9 future life settlement value of the policy;
10 or
11 (iii) The owner agrees on the date of the premium
12 finance loan to sell the policy or any
13 portion of its death benefit on any date
14 following the issuance of the policy.

15 "Life settlement contract" does not include:

- 16 (b) (1) A policy loan by a life insurance company pursuant to
17 the terms of the policy or accelerated death
18 provisions contained in the policy, whether issued
19 with the original policy or as a rider;
20 (2) A premium finance loan, as defined herein, or any loan
21 made by a bank or other licensed financial
22 institution, so long as neither default on such loan



1 nor the transfer of the policy in connection with such
2 default is pursuant to an agreement or understanding
3 with any other person for the purpose of evading
4 regulation under this chapter;

5 (3) A collateral assignment of a policy by an owner;

6 (4) A loan made by a lender that does not violate any
7 insurance premium finance law of this state; provided
8 that the loan does not qualify as a life settlement
9 contract;

10 (5) An agreement where all the parties:

11 (A) Are closely related to the insured by blood or
12 law; or

13 (B) Have a lawful substantial economic interest in
14 the continued life, health, and bodily safety of
15 the person insured, or are trusts established
16 primarily for the benefit of such parties;

17 (6) Any designation, consent, or agreement by an insured
18 who is an employee of an employer in connection with
19 the purchase by the employer, or trust established by
20 the employer, of life insurance on the life of the
21 employee;



- 1 (7) A bona fide business succession planning arrangement:
- 2 (A) Between one or more shareholders in a corporation
- 3 or between a corporation and one or more of its
- 4 shareholders or one or more trusts established by
- 5 its shareholders;
- 6 (B) Between one or more partners in a partnership or
- 7 between a partnership and one or more of its
- 8 partners or one or more trusts established by its
- 9 partners; or
- 10 (C) Between one or more members in a limited
- 11 liability company or between a limited liability
- 12 company and one or more of its members or one or
- 13 more trusts established by its members;
- 14 (8) An agreement entered into by a service recipient, or a
- 15 trust established by the service recipient, and a
- 16 service provider, or a trust established by the
- 17 service provider, who performs significant services
- 18 for the service recipient's trade or business; or
- 19 (9) Any other contract, transaction, or arrangement that
- 20 is a life settlement contract and that the
- 21 commissioner determines is not of the type intended to
- 22 be regulated by this chapter.



1 "Net death benefit" means the amount of the policy or
2 certificate to be settled less any outstanding debts or liens.

3 "Owner" means the owner of a policy or a certificate holder
4 under a group policy, with or without a terminal illness, who
5 enters or seeks to enter into a life settlement contract, but
6 shall not be limited to an owner of a policy or a certificate
7 holder under a group policy that insures the life of an
8 individual with a terminal or chronic illness or condition,
9 except where specifically addressed.

10 "Owner" does not include:

- 11 (1) Any provider or other licensee under this chapter;
- 12 (2) A qualified institutional buyer as defined in Rule
13 144A of the Securities Act of 1933, as amended;
- 14 (3) A financing entity;
- 15 (4) A special purpose entity; or
- 16 (5) A related provider trust.

17 "Patient identifying information" means an insured's
18 address, telephone number, facsimile number, electronic mail
19 address, photograph or likeness, employer, employment status,
20 social security number, or any other information that is likely
21 to lead to the identification of the insured.



1 "Person" means any natural person or legal entity,
2 including but not limited to a partnership, limited liability
3 company, association, trust, or corporation.

4 "Policy" means an individual or group policy, certificate,
5 contract, or arrangement of life insurance owned by a resident
6 of this state, regardless of whether delivered or issued for
7 delivery in this state.

8 "Premium finance loan" means a loan made primarily for the
9 purposes of making premium payments on a policy, which loan is
10 secured by an interest in such policy.

11 "Provider" means a person, other than an owner, who enters
12 into or effectuates a life settlement contract with an owner.

13 The term does not include:

14 (1) Any bank, savings bank, savings and loan association,
15 or credit union;

16 (2) A licensed lending institution or creditor or secured
17 party pursuant to a premium finance loan agreement
18 that takes an assignment of a policy or certificate as
19 collateral for a loan;

20 (3) The insurer of a policy or rider to the extent of
21 providing accelerated death benefits, riders, or cash
22 surrender value;



- 1 (4) Any natural person who enters into or effectuates no
- 2 more than one agreement in a calendar year for the
- 3 transfer of a policy or certificate for compensation
- 4 or anything of value less than the expected death
- 5 benefit payable under the policy;
- 6 (5) A purchaser;
- 7 (6) Any authorized or eligible insurer that provides stop
- 8 loss coverage to a provider, purchaser, financing
- 9 entity, special purpose entity, or related provider
- 10 trust;
- 11 (7) A financing entity;
- 12 (8) A special purpose entity;
- 13 (9) A related provider trust;
- 14 (10) A broker; or
- 15 (11) An accredited investor or qualified institutional
- 16 buyer as defined respectively in Rule 501 of
- 17 Regulation D and Rule 144A of the Securities Act of
- 18 1933, as amended, who purchases a life settlement
- 19 contract from a provider.

20 "Purchased policy" means a policy or certificate that has
21 been acquired by a provider pursuant to a life settlement
22 contract.



1 "Purchaser" means a person who pays compensation or
2 anything of value as consideration for a beneficial interest in
3 a trust that is vested with, or for the assignment, transfer, or
4 sale of, an ownership or other interest in a policy or a
5 certificate that has been the subject of a life settlement
6 contract.

7 "Related provider trust" means a titling trust or other
8 trust established by a licensed provider or a financing entity
9 for the sole purpose of holding the ownership or beneficial
10 interest in purchased policies in connection with a financing
11 transaction, that includes a written agreement with the licensed
12 provider under which the licensed provider is responsible for
13 ensuring compliance with all statutory and regulatory
14 requirements and under which the trust agrees to make all
15 records and files relating to life settlement transactions
16 available to the insurance division as if those records and
17 files were maintained directly by the licensed provider.

18 "Settled policy" means a policy or certificate that has
19 been acquired by a provider pursuant to a life settlement
20 contract.

21 "Special purpose entity" means a corporation, partnership,
22 trust, limited liability company, or other legal entity formed



1 solely to provide either directly or indirectly access to
2 institutional capital markets for a financing entity or provider
3 in connection with a transaction in which the securities in the
4 special purpose entity:

5 (1) Are acquired by the owner or by a "qualified
6 institutional buyer" as defined in Rule 144A of the
7 Securities Act of 1933, as amended; or

8 (2) Pay a fixed rate of return commensurate with
9 established asset-backed institutional capital
10 markets.

11 "Stranger-originated life insurance" or "STOLI" means a
12 practice or plan to initiate a policy for the benefit of a third
13 party investor who, at the time of policy origination, has no
14 insurable interest in the insured, and includes:

15 (1) Arrangements in which life insurance is purchased with
16 resources or guarantees from or through a person or
17 entity who at the time of policy inception, could not
18 lawfully initiate the policy by oneself or itself, and
19 where, at the time of inception, there is an
20 arrangement or agreement, whether verbal or written,
21 to directly or indirectly transfer the ownership of



1 the policy, the policy benefits, or both, to a third
2 party; and

3 (2) Trusts created to give the appearance of insurable
4 interest and used to initiate policies for investors.

5 "STOLI" does not include those practices set forth in
6 subsection (b) of the definition of "life settlement contract".

7 "Terminally ill" means having an illness or sickness that
8 can reasonably be expected to result in death in twenty-four
9 months or less.

10 **§ -3 Licensing requirements.** (a) No person, wherever
11 located, shall act as a provider or broker with an owner who is
12 a resident of this state, without first having obtained a
13 license from the commissioner.

14 (b) Application for a provider or broker license shall be
15 made to the commissioner by the applicant on a form prescribed
16 by the commissioner, and the application shall be accompanied by
17 a fee in the amount provided by section 431:7-101.

18 (c) A life insurance producer who has been duly licensed
19 as a resident insurance producer with a life line of authority
20 in this state or the producer's home state for at least one year
21 and is licensed as a nonresident producer in this state shall be



1 deemed to meet the licensing requirements of this section and
2 shall be permitted to operate as a broker.

3 (d) Not later than thirty days from the first day of
4 operating as a broker, the life insurance producer shall notify
5 the commissioner that the life insurance producer is acting as a
6 broker on a form prescribed by the commissioner, and shall pay a
7 fee in the amount provided by section 431:7-101. Notification
8 shall include an acknowledgement by the life insurance producer
9 that the life insurance producer will operate as a broker in
10 accordance with this chapter.

11 (e) The insurer that issued the policy that is the subject
12 of a life settlement contract shall not be responsible for any
13 act or omission of a broker, provider, or purchaser, arising out
14 of or in connection with the life settlement transaction, unless
15 the insurer receives compensation for the placement of a life
16 settlement contract from the provider, purchaser, or broker in
17 connection with the life settlement contract.

18 (f) A person licensed as an attorney, certified public
19 accountant, or financial planner accredited by a nationally
20 recognized accreditation agency, who is retained to represent
21 the owner, and whose compensation is not paid directly or
22 indirectly by the provider or purchaser, may negotiate life



1 settlement contracts on behalf of the owner without obtaining a
2 license as a broker.

3 (g) Licenses may be renewed every year on their
4 anniversary date upon payment of fees in the amounts required
5 under section 431:7-101. Failure to pay the fees within the
6 terms prescribed shall result in the automatic inactivation of
7 the license.

8 (h) The applicant shall provide such information as the
9 commissioner may require on forms prepared by the commissioner.
10 The commissioner shall have authority, at any time, to require
11 such applicant to fully disclose the identity of its
12 stockholders, other than stockholders owning fewer than ten per
13 cent of the shares of an applicant whose shares are publicly
14 traded, and the identity of its partners, officers, and
15 employees. The commissioner may, in the exercise of the
16 commissioner's sole discretion, refuse to issue such a license
17 in the name of any person if not satisfied that any officer,
18 employee, stockholder, or partner thereof who may materially
19 influence the applicant's conduct meets the standards under
20 subsection (j).

21 (i) A license issued to a partnership, corporation, or
22 other entity authorizes all members, officers, and designated



1 employees to act as a licensee under the license, if those
2 persons are named in the application and any supplements to the
3 application.

4 (j) Upon the filing of an application and the payment of
5 the license fee, the commissioner shall make an investigation of
6 each applicant and may issue a license if the commissioner finds
7 that the applicant:

8 (1) If a provider, has provided a detailed plan of
9 operation;

10 (2) Is competent and trustworthy and intends to transact
11 its business in good faith;

12 (3) Has a good business reputation and has had experience,
13 training, or education so as to be qualified in the
14 business for which the license is applied;

15 (4) If a legal entity is formed or organized pursuant to
16 the laws of this state or is a foreign legal entity
17 authorized to transact business in this state, or
18 provides a certificate of good standing from the state
19 of its domicile; and

20 (5) Has provided to the commissioner an anti-fraud plan
21 that meets the requirements of section -48.



1 (k) The commissioner shall not issue any license to a
2 nonresident applicant unless a written designation of an agent
3 for service of process is filed and maintained with the
4 commissioner or unless the applicant has filed with the
5 commissioner the applicant's written irrevocable consent that
6 any action against the applicant may be commenced against the
7 applicant by service of process on the commissioner.

8 (l) Each licensee shall file with the commissioner on or
9 before the first day of March of each year an annual statement
10 containing the information as the commissioner by rule may
11 prescribe.

12 (m) A provider may not use any person to perform the
13 functions of a broker unless the person holds a current, valid
14 license as a broker.

15 (n) A broker may not use any person to perform the
16 functions of a provider as defined in this chapter unless such
17 person holds a current, valid license as a provider, and as
18 provided in this section.

19 (o) A provider or broker shall provide to the commissioner
20 new or revised information about officers, ten per cent or more
21 stockholders, partners, directors, members, or designated
22 employees within thirty days of the change.



1 (p) An individual licensed as a broker shall complete on a
2 biennial basis fifteen hours of training related to life
3 settlements and life settlement transactions, as required by the
4 commissioner; provided that a life insurance producer who is
5 operating as a broker pursuant to this section shall not be
6 subject to the requirements of this subsection. Any person
7 failing to meet the requirements of this subsection shall be
8 subject to the penalties imposed by the commissioner.

9 **§ -4 License suspension, revocation, or refusal to**
10 **renew.** (a) The commissioner may suspend, revoke, or refuse to
11 renew the license of any licensee if the commissioner finds
12 that:

- 13 (1) There was any material misrepresentation in the
14 application for the license;
- 15 (2) The licensee or any officer, partner, member, or
16 director has been guilty of fraudulent or dishonest
17 practices, is subject to a final administrative
18 action, or is otherwise shown to be untrustworthy or
19 incompetent to act as a licensee;
- 20 (3) The provider demonstrates a pattern of unreasonably
21 withholding payments to policy owners;



- 1 (4) The licensee no longer meets the requirements for
2 initial licensure;
- 3 (5) The licensee or any officer, partner, member, or
4 director has been convicted of a felony, or of any
5 misdemeanor of which criminal fraud is an element; or
6 the licensee has pleaded guilty or nolo contendere
7 with respect to any felony or any misdemeanor of which
8 criminal fraud or moral turpitude is an element,
9 regardless of whether a judgment of conviction has
10 been entered by the court;
- 11 (6) The provider has entered into any life settlement
12 contract that has not been approved pursuant to this
13 chapter;
- 14 (7) The provider has failed to honor contractual
15 obligations set out in a life settlement contract;
- 16 (8) The provider has assigned, transferred, or pledged a
17 settled policy to a person other than a provider
18 licensed in this state, a purchaser, an accredited
19 investor or qualified institutional buyer as defined
20 respectively in Rule 501 of Regulation D or Rule 144A
21 of the federal Securities Act of 1933, as amended, a



1 financing entity, a special purpose entity, or a
2 related provider trust; or

3 (9) The licensee or any officer, partner, member, or key
4 management personnel has violated this chapter.

5 (b) Before the commissioner may deny a license application
6 or suspends, revokes, or refuses to renew the license of any
7 licensee under this chapter, the commissioner shall conduct a
8 hearing in accordance with chapter 91.

9 § -5 **Contract requirements.** (a) No person may use any
10 form of life settlement contract in this state unless it has
11 been filed with and approved, if required, by the commissioner
12 in a manner that conforms with the filing procedures and any
13 time restrictions or deeming provisions, if any, for life
14 insurance forms, policies, and contracts.

15 (b) No insurer may, as a condition of responding to a
16 request for verification of coverage or in connection with the
17 transfer of a policy pursuant to a life settlement contract,
18 require that the owner, insured, provider, or broker sign any
19 form, disclosure, consent, waiver, or acknowledgment that has
20 not been expressly approved by the commissioner for use in
21 connection with life settlement contracts in this state.



1 (c) A person shall not use a life settlement contract form
2 or provide to an owner a disclosure statement form in this state
3 unless first filed with and approved by the commissioner. The
4 commissioner shall disapprove a life settlement contract form or
5 disclosure statement form if, in the commissioner's opinion, the
6 contract or provisions contained therein fail to meet the
7 requirements of sections -21, -31, -33, and -43 of
8 this chapter or are unreasonable, contrary to the interests of
9 the public, or otherwise misleading or unfair to the owner. At
10 the commissioner's discretion, the commissioner may require the
11 submission of advertising material.

12 **§ -6 Reporting requirements and privacy.** (a) For any
13 policy settled within five years of policy issuance, each
14 provider shall file with the commissioner on or before March 1
15 of each year an annual statement containing the information as
16 the commissioner may prescribe by rule. In addition to any
17 other requirements, the annual statement shall:

18 (1) Specify the total number, aggregate face amount, and
19 life settlement proceeds of policies settled during
20 the immediately preceding calendar year, together with
21 a breakdown of the information by policy issue year;
22 and



1 (2) Include the names of the insurance companies whose
2 policies have been settled and the brokers that have
3 settled said policies.

4 The information shall be limited to only those transactions
5 where the insured is a resident of this state and shall not
6 include individual transaction data regarding the business of
7 life settlements or information that there is a reasonable basis
8 to believe could be used to identify the owner or the insured.

9 Every provider that wilfully fails to file an annual
10 statement as required in this section, or wilfully fails to
11 reply within thirty days to a written inquiry by the
12 commissioner in connection therewith, shall, in addition to
13 other penalties provided by this chapter, be subject, upon due
14 notice and opportunity to be heard, to a penalty of up to \$250
15 per day of delay, not to exceed \$25,000 in the aggregate, for
16 each such failure.

17 (b) Except as otherwise allowed or required by law, a
18 provider, broker, insurance company, insurance producer,
19 information bureau, rating agency or company, or any other
20 person with actual knowledge of an insured's identity, shall not
21 disclose the identity of an insured or information that there is
22 a reasonable basis to believe could be used to identify the



1 insured or the insured's financial or medical information to any
2 other person unless the disclosure:

3 (1) Is necessary to effect a life settlement contract
4 between the owner and a provider, and the owner and
5 insured have provided prior written consent to the
6 disclosure;

7 (2) Is necessary to effectuate the sale of life settlement
8 contracts, or interests therein, as investments, so
9 long as the sale is conducted in accordance with
10 applicable state and federal securities law and the
11 owner and the insured have both provided prior written
12 consent to the disclosure;

13 (3) Is provided in response to an investigation or
14 examination by the commissioner pursuant to the
15 requirements of section -17 or any other
16 governmental officer or agency;

17 (4) Is a term or condition to the transfer of a policy by
18 one provider to another provider, in which case the
19 receiving provider shall be required to comply with
20 the confidentiality requirements of this section;

21 (5) Is necessary to allow the provider or broker or their
22 authorized representatives to make contacts for the



1 purpose of determining health status. For the
2 purposes of this paragraph, the term "authorized
3 representative" shall not include any person who has
4 or may have any financial interest in the life
5 settlement contract other than a provider, licensed
6 broker, financing entity, related provider trust, or
7 special purpose entity. A provider or broker shall
8 require its authorized representative to agree in
9 writing to adhere to the privacy provisions of this
10 section; or

11 (6) Is required to purchase stop loss coverage.

12 (c) Non-public personal information solicited or obtained
13 in connection with a proposed or actual life settlement contract
14 shall be subject to the provisions applicable to financial
15 institutions under the federal Gramm Leach Bliley Act, P.L. 106-
16 102 (1999), and all other applicable state and federal laws
17 relating to confidentiality of non-public personal information.

18 PART II. EXAMINATIONS

19 § -11 Examination. (a) The commissioner may, when the
20 commissioner deems it reasonably necessary to protect the
21 interests of the public, examine the business and affairs of any
22 licensee or applicant for a license. The commissioner may order



1 any licensee or applicant to produce any records, books, files
2 or other information reasonably necessary to ascertain whether
3 such licensee or applicant is acting or has acted in violation
4 of the law or otherwise contrary to the interests of the public.
5 The expenses incurred in conducting any examination shall be
6 paid by the licensee or applicant.

7 (b) In lieu of an examination under this chapter of any
8 foreign or alien licensee licensed in this state, the
9 commissioner may, at the commissioner's discretion, accept an
10 examination report on the licensee as prepared by the
11 commissioner for the licensee's state of domicile or port-of-
12 entry state.

13 (c) Records of all consummated transactions and life
14 settlement contracts shall be maintained by the provider for
15 three years after the death of the insured and shall be
16 available to the commissioner for inspection during reasonable
17 business hours.

18 **§ -12 Conduct of examinations.** (a) Upon determining
19 that an examination under section -11 should be conducted,
20 the commissioner shall issue an examination warrant appointing
21 one or more examiners to perform the examination and instructing
22 them as to the scope of the examination. In conducting the



1 examination, the examiner shall use methods common to the
2 examination of any life settlement licensee and shall use the
3 guidelines and procedures set forth in an examiners' handbook
4 adopted by a national organization.

5 (b) Every licensee or person from whom information is
6 sought, including its officers, directors and agents, shall
7 provide to the examiners timely, convenient, and free access at
8 all reasonable hours at its offices to all books, records,
9 accounts, papers, documents, assets, and computer or other
10 recordings relating to the property, assets, business, and
11 affairs of the licensee being examined. The officers,
12 directors, employees, and agents of the licensee or person shall
13 facilitate the examination and aid in the examination so far as
14 it is in their power to do so. The refusal of a licensee, by
15 its officers, directors, employees, or agents, to submit to
16 examination or to comply with any reasonable written request of
17 the commissioner shall be grounds for suspension or refusal of,
18 or nonrenewal of any license or authority held by the licensee
19 to engage in the life settlement business or other business
20 subject to the commissioner's jurisdiction. Any proceedings for
21 suspension, revocation, or refusal of any license or authority
22 shall be conducted pursuant to chapter 91.



1 (c) The commissioner shall have the power to issue
2 subpoenas, to administer oaths, and to examine under oath any
3 person as to any matter pertinent to the examination. Upon the
4 failure or refusal of a person to obey a subpoena, the
5 commissioner may petition a court of competent jurisdiction, and
6 upon proper showing, the court may enter an order compelling the
7 witness to appear and testify or produce documentary evidence.

8 (d) When making an examination under this chapter, the
9 commissioner may retain attorneys, appraisers, independent
10 actuaries, independent certified public accountants, or other
11 professionals and specialists as examiners, the reasonable cost
12 of which shall be borne by the licensee that is the subject of
13 the examination.

14 (e) Nothing in this chapter shall be construed to limit
15 the commissioner's authority to terminate or suspend an
16 examination to pursue other legal or regulatory action pursuant
17 to the insurance laws of this state. Findings of fact and
18 conclusions made pursuant to any examination shall be prima
19 facie evidence in any legal or regulatory action.

20 (f) Nothing in this chapter shall be construed to limit
21 the commissioner's authority to use and, if appropriate, to make
22 public any final or preliminary examination report, any examiner



1 or licensee work papers or other documents, or any other
2 information discovered or developed during the course of any
3 examination in the furtherance of any legal or regulatory action
4 that the commissioner may, in the commissioner's sole
5 discretion, deem appropriate.

6 **§ -13 Examination reports.** (a) Examination reports
7 shall be comprised of only facts appearing upon the books, from
8 the testimony of its officers or agents or other persons
9 examined concerning its affairs, and such conclusions and
10 recommendations as the examiners find reasonably warranted from
11 the facts.

12 (b) No later than sixty days following completion of the
13 examination, the examiner in charge shall file with the
14 commissioner a verified written report of examination under
15 oath. Upon receipt of the verified report, the commissioner
16 shall transmit the report to the licensee examined, together
17 with a notice that shall afford the licensee examined a
18 reasonable opportunity of not more than thirty days to make a
19 written submission or rebuttal with respect to any matters
20 contained in the examination report and which shall become part
21 of the report or to request a hearing on any matter in dispute.



1 (c) In the event the commissioner determines that
2 regulatory action is appropriate as a result of an examination,
3 the commissioner may initiate any proceedings or actions
4 provided by law.

5 **§ -14 Confidentiality of examination information.** (a)
6 Names and individual identification data for all owners,
7 purchasers, and insureds shall be considered private and
8 confidential information and shall not be disclosed by the
9 commissioner, unless the disclosure is to another regulator or
10 is required by law.

11 (b) Except as otherwise provided in this chapter, all
12 examination reports, working papers, recorded information,
13 documents and copies thereof produced by, obtained by, or
14 disclosed to the commissioner or any other person in the course
15 of an examination made under this chapter, or in the course of
16 analysis or investigation by the commissioner of the financial
17 condition or market conduct of a licensee, shall be confidential
18 by law and privileged, shall not be subject to chapter 92F,
19 shall not be subject to subpoena, and shall not be subject to
20 discovery or admissible in evidence in any private civil action.
21 The commissioner is authorized to use the documents, materials,
22 or other information in the furtherance of any regulatory or



1 legal action brought as part of the commissioner's official
2 duties. The licensee being examined may have access to all
3 documents used to make the report.

4 **§ -15 Examiner; conflict of interest.** (a) An examiner
5 may not be appointed by the commissioner if the examiner, either
6 directly or indirectly, has a conflict of interest or is
7 affiliated with the management of or owns a pecuniary interest
8 in any person subject to examination under this chapter. This
9 section shall not be construed to automatically preclude an
10 examiner from being:

- 11 (1) An owner;
- 12 (2) An insured in a policy or life settlement contract; or
- 13 (3) A beneficiary in a policy that is proposed for a life
14 settlement contract.

15 (b) Notwithstanding the requirements of this section, the
16 commissioner may retain from time to time, on an individual
17 basis, qualified actuaries, certified public accountants, or
18 other similar individuals who are independently practicing their
19 professions, even though these persons may from time to time be
20 similarly employed or retained by persons subject to examination
21 under this chapter.



1 **§ -16 Immunity from liability.** (a) No cause of action
2 shall arise nor shall any liability be imposed against the
3 commissioner, the commissioner's authorized representatives, or
4 any examiner appointed by the commissioner for any statements
5 made or conduct performed in good faith while carrying out the
6 provisions of this chapter.

7 (b) No cause of action shall arise, nor shall any
8 liability be imposed against any person for the act of
9 communicating or delivering information or data to the
10 commissioner or the commissioner's authorized representative or
11 examiner pursuant to an examination made under this chapter, if
12 the act of communication or delivery was performed in good faith
13 and without fraudulent intent or the intent to deceive. This
14 subsection does not abrogate or modify in any way any common law
15 or statutory privilege or immunity heretofore enjoyed by any
16 person identified in subsection (a).

17 (c) A person identified in subsection (a) or (b) shall be
18 entitled to an award of attorney's fees and costs if the person
19 is the prevailing party in a civil cause of action for libel,
20 slander, or any other relevant tort arising out of activities in
21 carrying out the provisions of this chapter and the party
22 bringing the action was not substantially justified in doing so.



1 For purposes of this section, a proceeding is "substantially
2 justified" if it had a reasonable basis in law or fact at the
3 time that it was initiated.

4 § -17 Investigative authority of the commissioner. The
5 commissioner may investigate suspected fraudulent life
6 settlement acts and persons engaged in the business of life
7 settlements.

8 PART III. ADVERTISING

9 § -21 Advertising. (a) A broker or provider licensed
10 pursuant to this chapter may conduct or participate in
11 advertisements within this state. Such advertisements shall
12 comply with all advertising and marketing laws or rules adopted
13 by the commissioner that are applicable to life insurers or to
14 brokers and providers licensed pursuant to this chapter.

15 (b) Advertisements shall be accurate, truthful, and not
16 misleading in fact or by implication.

17 (c) No person or trust shall:

- 18 (1) Directly or indirectly market, advertise, solicit, or
- 19 otherwise promote the purchase of a policy for the
- 20 sole purpose of or with an emphasis on settling the
- 21 policy; or



1 (2) Use the words "free", "no cost", or words of similar
2 import in the marketing, advertising, soliciting, or
3 otherwise promoting of the purchase of a policy.

4 **PART IV. DISCLOSURES AND GENERAL PROCEDURES**

5 **§ -31 Disclosures to owners.** (a) The provider shall
6 provide in writing, in a separate document that is signed by the
7 owner and provider, the following information to the owner no
8 later than the date the life settlement contract is signed by
9 all parties:

10 (1) The fact that possible alternatives to life settlement
11 contracts exist, including but not limited to
12 accelerated benefits offered by the issuer of the
13 policy;

14 (2) The fact that some or all of the proceeds of a life
15 settlement contract may be taxable and that assistance
16 should be sought from a professional tax advisor;

17 (3) The fact that the proceeds from a life settlement
18 contract could be subject to the claims of creditors;

19 (4) The fact that receipt of proceeds from a life
20 settlement contract may adversely affect the
21 recipients' eligibility for public assistance or other



1 government benefits or entitlements and that advice
2 should be obtained from the appropriate agencies;

3 (5) The fact that the owner has a right to terminate a
4 life settlement contract within fifteen days of the
5 date it is executed by all parties and the owner has
6 received the disclosures contained herein.
7 Rescission, if exercised by the owner, is effective
8 only if both notice of the rescission is given, and
9 the owner repays all proceeds and any premiums, loans,
10 and loan interest paid on account of the provider
11 within the rescission period. If the insured dies
12 during the rescission period, the contract shall be
13 deemed to have been rescinded subject to repayment by
14 the owner or the owner's estate of all proceeds and
15 any premiums, loans, and loan interest to the
16 provider;

17 (6) The fact that proceeds will be sent to the owner
18 within three business days after the provider has
19 received the insurer or group administrator's
20 acknowledgement that ownership of the policy or
21 interest in the certificate has been transferred and



1 the beneficiary has been designated in accordance with
2 the terms of the life settlement contract;

3 (7) The fact that entering into a life settlement contract
4 may cause other rights or benefits, including
5 conversion rights and waiver of premium benefits that
6 may exist under the policy or certificate, to be
7 forfeited by the owner and that assistance should be
8 sought from a professional financial advisor;

9 (8) The amount and method of calculating the compensation
10 paid or to be paid to the broker, or any other person
11 acting for the owner in connection with the
12 transaction, wherein the term compensation includes
13 anything of value paid or given;

14 (9) The date by which the funds will be available to the
15 owner and the transmitter of the funds;

16 (10) The fact that the commissioner shall require delivery
17 of a *Buyer's Guide* or a similar consumer advisory
18 package in the form prescribed by the commissioner to
19 owners during the solicitation process;

20 (11) The following language:

21 "All medical, financial or personal information
22 solicited or obtained by a provider or broker about an



1 insured, including the insured's identity or the
2 identity of family members, a spouse or a significant
3 other may be disclosed as necessary to effect the life
4 settlement contract between the owner and provider.

5 If you are asked to provide this information, you will
6 be asked to consent to the disclosure. The
7 information may be provided to someone who buys the
8 policy or provides funds for the purchase. You may be
9 asked to renew your permission to share information
10 every two years.";

11 (12) The fact that the commissioner shall require providers
12 and brokers to print separate signed fraud warnings on
13 their applications and on their life settlement
14 contracts as follows:

15 "Any person who knowingly presents false information
16 in an application for insurance or life settlement
17 contract is guilty of a crime and may be subject to
18 fines and confinement in prison.";

19 (13) The fact that the owner may be contacted by either the
20 provider or broker or its authorized representative
21 for the purpose of determining the owner's health
22 status or to verify the owner's address;



- 1 (14) The affiliation, if any, between the provider and the
2 issuer of the policy to be settled;
- 3 (15) That a broker represents exclusively the owner, and
4 not the insurer or the provider or any other person,
5 and owes a fiduciary duty to the owner, including a
6 duty to act according to the owner's instructions and
7 in the best interest of the owner;
- 8 (16) The name, address, and telephone number of the
9 provider;
- 10 (17) The name, business address, and telephone number of
11 the independent third party escrow agent, and the fact
12 that the owner may inspect or receive copies of the
13 relevant escrow or trust agreements or documents; and
- 14 (18) The fact that a change of ownership could in the
15 future limit the insured's ability to purchase future
16 insurance on the insured's life because there is a
17 limit to how much coverage insurers will issue on one
18 life.
- 19 (b) The written disclosures shall be conspicuously
20 displayed in any life settlement contract furnished to the owner
21 by a provider, including any affiliations or contractual
22 arrangements between the provider and the broker.



1 (c) A broker shall provide the owner and the provider with
2 at least the following disclosures no later than the date the
3 life settlement contract is signed by all parties. The
4 disclosures shall be conspicuously displayed in the life
5 settlement contract or in a separate document signed by the
6 owner and provide the following information:

- 7 (1) The name, business address, and telephone number of
8 the broker;
- 9 (2) A full, complete, and accurate description of all the
10 offers, counter-offers, acceptances, and rejections
11 relating to the proposed life settlement contract;
- 12 (3) A written disclosure of any affiliations or
13 contractual arrangements between the broker and any
14 person making an offer in connection with the proposed
15 life settlement contract;
- 16 (4) The name of each broker who receives compensation and
17 the amount of compensation received by that broker,
18 which compensation includes anything of value paid or
19 given to the broker in connection with the life
20 settlement contract;
- 21 (5) A complete reconciliation of the gross offer or bid by
22 the provider to the net amount of proceeds or value to



1 be received by the owner. For the purpose of this
2 paragraph, "gross offer" or "bid" means the total
3 amount or value offered by the provider for the
4 purchase of one or more life insurance policies,
5 inclusive of commissions and fees; and

6 (6) The fact that the failure to provide the disclosures
7 or rights described in this section shall be deemed an
8 unfair trade practice under section 480-2.

9 **§ -32 Disclosure to insurer.** (a) Without limiting the
10 ability of an insurer from assessing the insurability of a
11 policy applicant and determining whether or not to issue the
12 policy, and in addition to other questions an insurance carrier
13 may lawfully pose to a life insurance applicant, insurance
14 carriers may inquire in the application for insurance whether
15 the proposed owner intends to pay premiums with the assistance
16 of financing from a lender that will use the policy as
17 collateral to support the financing.

18 (b) If, as described in subsection (a)(3) of the
19 definition of "life settlement contract" in section -2, the
20 loan provides funds that can be used for a purpose other than
21 paying for the premiums, costs, and expenses associated with
22 obtaining and maintaining the policy and loan, the application



1 shall be rejected as a violation of the prohibited practices in
2 section -41.

3 (c) If the financing does not violate section -41 in
4 this manner, the insurance carrier:

5 (1) May make disclosures to the applicant and the insured,
6 either on the application or an amendment to the
7 application to be completed no later than the delivery
8 of the policy, including the following:

9 "If you have entered into a loan arrangement
10 where the policy is used as collateral, and the
11 policy does change ownership at some point in the
12 future in satisfaction of the loan, the following
13 may be true:

14 (1) A change of ownership could lead to a
15 stranger owning an interest in the insured's
16 life;

17 (2) A change of ownership could in the future
18 limit your ability to purchase future
19 insurance on the insured's life because
20 there is a limit to how much coverage
21 insurers will issue on one life;



1 (3) Should there be a change of ownership and
2 you wish to obtain more insurance coverage
3 on the insured's life in the future, the
4 insured's higher issue age, a change in
5 health status, and/or other factors may
6 reduce the ability to obtain coverage and/or
7 may result in significantly higher premiums;

8 (4) You should consult a professional advisor,
9 since a change in ownership in satisfaction
10 of the loan may result in tax consequences
11 to the owner, depending on the structure of
12 the loan";

13 and

14 (2) May require certifications, such as the following,
15 from the applicant and/or the insured:

16 "(1) I have not entered into any agreement or
17 arrangement providing for the future sale of
18 this life insurance policy;

19 (2) My loan arrangement for this policy provides
20 funds sufficient to pay for some or all of
21 the premiums, costs, and expenses associated
22 with obtaining and maintaining my life



1 insurance policy, but I have not entered
2 into any agreement by which I am to receive
3 consideration in exchange for procuring this
4 policy; and

5 (3) The borrower has an insurable interest in the
6 insured."

7 **§ -33 General rules.** (a) A provider entering into a
8 life settlement contract with any owner of a policy, wherein the
9 insured is terminally or chronically ill, shall first obtain:

10 (1) If the owner is the insured, a written statement from
11 a licensed attending physician that the owner is of
12 sound mind and under no constraint or undue influence
13 to enter into a life settlement contract; and

14 (2) A document in which the insured consents to the
15 release of the insured's medical records to a
16 provider, broker, or insurance producer and, if the
17 policy was issued less than two years from the date of
18 application for a life settlement contract, to the
19 insurance company that issued the policy.

20 The provider, broker, or its authorized representative shall be
21 limited to contact for the purpose of determining the owner's
22 health status or to verify the owner's address, once every three



1 months if the insured has a life expectancy of more than one
2 year, and no more than once per month if the insured has a life
3 expectancy of one year or less.

4 (b) The insurer shall respond to a request for
5 verification of coverage submitted by a provider, broker, or
6 life insurance producer, not later than thirty calendar days of
7 the date the request is received. The request for verification
8 of coverage shall be made on a form approved by the
9 commissioner. The insurer shall complete and issue the
10 verification of coverage or indicate in which respects it is
11 unable to respond. In its response, the insurer shall indicate
12 whether, based on the medical evidence and documents provided,
13 the insurer intends to pursue an investigation at this time
14 regarding the validity of the insurance contract.

15 (c) Before or at the time of execution of the life
16 settlement contract, the provider shall obtain a witnessed
17 document in which the owner:

- 18 (1) Consents to the life settlement contract;
- 19 (2) Represents that the owner has a full and complete
20 understanding of the life settlement contract;
- 21 (3) Represents that the owner has a full and complete
22 understanding of the benefits of the policy;



1 (4) Acknowledges that the owner is entering into the life
2 settlement contract freely and voluntarily; and

3 (5) For persons with a chronic or terminal illness or
4 condition, acknowledges that the insured has a chronic
5 or terminal illness and that the chronic or terminal
6 illness or condition was diagnosed after the policy
7 was issued.

8 (d) An insurer shall not unreasonably delay effecting
9 change of ownership or beneficiary in connection with any life
10 settlement contract lawfully entered into in this state or with
11 a resident of this state.

12 (e) If a broker or life insurance producer performs any of
13 the activities required of the provider under this section, the
14 provider shall be deemed to have fulfilled the requirements of
15 this section.

16 (f) If a broker performs those verification of coverage
17 activities required of the provider, the provider is deemed to
18 have performed those activities.

19 (g) Within twenty days after an owner executes the life
20 settlement contract, the provider shall give written notice to
21 the insurer that issued that policy that the policy has become



1 subject to a life settlement contract. The notice shall be
2 accompanied by the documents required by section -32(c).

3 (h) All life settlement contracts entered into in this
4 state shall provide that the owner may rescind the contract on
5 or before fifteen days after the date it is executed by all
6 parties thereto. Rescission, if exercised by the owner, is
7 effective only if both notice of the rescission is given, and
8 the owner repays all proceeds and any premiums, loans, and loan
9 interest paid on account of the provider within the rescission
10 period. If the insured dies during the rescission period, the
11 contract shall be deemed to have been rescinded subject to
12 repayment by the owner or the owner's estate of all proceeds and
13 any premiums, loans, and loan interest to the provider.

14 (i) Within three business days after receipt from the
15 owner of documents to effect the transfer of the policy, the
16 provider shall pay the proceeds of the settlement to an escrow
17 or trust account managed by a trustee or escrow agent in a state
18 or federally chartered financial institution pending
19 acknowledgement of the transfer by the issuer of the policy.
20 The trustee or escrow agent shall be required to transfer the
21 proceeds due to the owner within three business days of
22 acknowledgement of the transfer from the insurer.



1 (j) Failure to tender the life settlement contract
2 proceeds to the owner by the date disclosed to the owner shall
3 render the contract voidable by the owner for lack of
4 consideration until the time the proceeds are tendered to and
5 accepted by the owner. A failure to give written notice of the
6 right of rescission hereunder shall toll the right of rescission
7 until thirty days after the written notice of the right of
8 rescission has been given.

9 (k) Any fee paid by a provider, party, individual, or an
10 owner to a broker in exchange for services provided to the owner
11 pertaining to a life settlement contract shall be computed as a
12 percentage of the offer obtained, not the face value of the
13 policy. Nothing in this section shall be construed as
14 prohibiting a broker from reducing such broker's fee below this
15 percentage if the broker so chooses.

16 (l) The broker shall disclose to the owner anything of
17 value paid or given to a broker and that relates to a life
18 settlement contract.

19 (m) No person at any time prior to or at the time of the
20 application for, or issuance of, a policy, or during a two-year
21 period commencing with the date of issuance of the policy, shall
22 enter into a life settlement regardless of the date the



1 compensation is to be provided and regardless of the date the
2 assignment, transfer, sale, devise, bequest, or surrender of the
3 policy is to occur. This prohibition shall not apply if the
4 owner certifies to the provider that:

5 (1) The policy was issued upon the owner's exercise of
6 conversion rights arising out of a group or individual
7 policy; provided that the total of the time covered
8 under the conversion policy plus the time covered
9 under the prior policy is at least twenty-four months.

10 The time covered under a group policy shall be
11 calculated without regard to a change in insurance
12 carriers; provided further that the coverage has been
13 continuous and under the same group sponsorship; or

14 (2) The owner submits independent evidence to the provider
15 that one or more of the following conditions have been
16 met within the two-year period:

17 (A) The owner or insured is chronically or terminally
18 ill;

19 (B) The owner or insured disposes of ownership
20 interests in a closely-held corporation, pursuant
21 to the terms of a buyout or other similar



1 agreement in effect at the time the policy was
2 initially issued;

3 (C) The owner's spouse dies;

4 (D) The owner divorces the owner's spouse;

5 (E) The owner retires from full-time employment;

6 (F) The owner becomes physically or mentally disabled
7 and a physician determines that the disability
8 prevents the owner from maintaining full-time
9 employment; or

10 (G) A final order, judgment, or decree is entered by
11 a court of competent jurisdiction, on the
12 application of a creditor of the owner,
13 adjudicating the owner bankrupt or insolvent, or
14 approving a petition seeking reorganization of
15 the owner or appointing a receiver, trustee, or
16 liquidator to all or a substantial part of the
17 owner's assets;

18 (3) Copies of the independent evidence required by
19 subsection (m)(2) shall be submitted to the insurer
20 when the provider submits a request to the insurer for
21 verification of coverage. The copies shall be
22 accompanied by a letter of attestation from the

1 provider that the copies are true and correct copies
2 of the documents received by the provider. Nothing in
3 this section shall prohibit an insurer from exercising
4 its right to contest the validity of any policy;

- 5 (4) If the provider submits to the insurer a copy of
6 independent evidence required by subsection (m)(2)
7 when the provider submits a request to the insurer to
8 effect the transfer of the policy to the provider, the
9 copy shall be deemed to establish that the life
10 settlement contract satisfies the requirements of this
11 section.

12 **§ -34 Buyer's guide.** The commissioner by rule shall
13 require delivery of a *Buyer's Guide* or a similar consumer
14 advisory package to owners during the process of soliciting a
15 life settlement contract.

16 **PART V. MISCELLANEOUS PROVISIONS**

17 **§ -41 Prohibited practices.** (a) It is unlawful for any
18 person to:

- 19 (1) Enter into a life settlement contract if the person
20 knows or reasonably should have known that the policy
21 was obtained by means of a false, deceptive, or
22 misleading application for such policy;



- 1 (2) Engage in any transaction, practice, or course of
2 business if the person knows or reasonably should have
3 known that the intent was to avoid the notice
4 requirements of this chapter;
- 5 (3) Engage in any fraudulent act or practice in connection
6 with any transaction relating to any life settlement
7 contract involving an owner who is a resident of this
8 state;
- 9 (4) Issue, solicit, market, or otherwise promote the
10 purchase of a policy for the purpose of or with an
11 emphasis on settling the policy;
- 12 (5) Enter into a premium finance agreement with any person
13 or agency, or any person affiliated with the person or
14 agency, pursuant to which the person shall receive any
15 proceeds, fees, or other consideration, directly or
16 indirectly, from the policy or owner of the policy or
17 any other person with respect to the premium finance
18 agreement or any life settlement contract or other
19 transaction related to such policy that are in
20 addition to the amounts required to pay the principal,
21 interest, and service charges related to policy
22 premiums pursuant to the premium finance agreement or



1 subsequent sale of such agreement; provided that any
2 payments, charges, fees or other amounts in addition
3 to the amounts required to pay the principal,
4 interest, and service charges related to policy
5 premiums paid under the premium finance agreement
6 shall be remitted to the original owner of the policy
7 or to the owner's estate if the owner not living at
8 the time of the determination of the overpayment;

9 (6) With respect to any policy or life settlement contract
10 and a broker, knowingly solicit an offer from,
11 effectuate a life settlement contract with or make a
12 sale to any provider, financing entity, or related
13 provider trust that is controlling, controlled by, or
14 under common control with such broker;

15 (7) With respect to any policy or life settlement contract
16 and a provider, knowingly enter into a life settlement
17 contract with an owner, if, in connection with such
18 life settlement contract, anything of value will be
19 paid to a broker that is controlling, controlled by,
20 or under common control with such provider or the
21 financing entity or related provider trust that is
22 involved in such life settlement contract;



- 1 (8) With respect to a provider, enter into a life
2 settlement contract unless the life settlement
3 contract promotional, advertising, and marketing
4 materials, as may be prescribed by rule, have been
5 filed with the commissioner. In no event shall any
6 marketing materials expressly reference that the
7 insurance is "free" for any period of time. The
8 inclusion of any reference in the marketing materials
9 that would cause an owner to reasonably believe that
10 the insurance is free for any period of time shall be
11 considered a violation of this chapter;
- 12 (9) With respect to any life insurance producer, insurance
13 company, broker, or provider, make any statement or
14 representation to the applicant or policyholder in
15 connection with the sale or financing of a policy to
16 the effect that the insurance is free or without cost
17 to the policyholder for any period of time unless
18 provided in the policy;
- 19 (10) Knowingly and intentionally interfere with the
20 enforcement of the provisions of this chapter or
21 investigations of suspected or actual violations of
22 this chapter; and



1 (11) With respect to a person in the business of life
2 settlements, knowingly or intentionally permit any
3 person convicted of a felony involving dishonesty or
4 breach of trust to participate in the business of life
5 settlements.

6 (b) A violation of this section shall be deemed a
7 fraudulent life settlement act.

8 **§ -42 Fraudulent life settlement acts prohibited.** It is
9 a violation of this chapter for any person, provider, broker, or
10 any other party related to the business of life settlements, to
11 commit a fraudulent life settlement act.

12 For the purposes of this section, "fraudulent life
13 settlement act" includes:

14 (1) Acts or omissions committed by any person who,
15 knowingly and with intent to defraud, for the purpose
16 of depriving another of property or for pecuniary
17 gain, commits, or permits its employees or agents to
18 engage in acts including but not limited to:

19 (A) Presenting, causing to be presented, or preparing
20 with knowledge and belief that it will be
21 presented to or by a provider, premium finance
22 lender, broker, insurer, insurance producer, or



1 any other person, false material information, or
2 concealing material information, as part of, in
3 support of, or concerning a fact material to one
4 or more of the following:

- 5 (i) An application for the issuance of a policy
6 or life settlement contract;
- 7 (ii) The underwriting of a policy or life
8 settlement contract;
- 9 (iii) A claim for payment or benefit pursuant to a
10 policy or life settlement contract;
- 11 (iv) Premiums paid on a policy;
- 12 (v) Payments and changes in ownership or
13 beneficiary made in accordance with the
14 terms of a policy or life settlement
15 contract;
- 16 (vi) The reinstatement or conversion of a policy;
- 17 (vii) In the solicitation, offer to enter into, or
18 effectuation of a policy or life settlement
19 contract;
- 20 (viii) The issuance of written evidence of a policy
21 or life settlement contract;



- 1 (ix) Any application for or the existence of or
2 any payments related to a loan secured
3 directly or indirectly by any interest in a
4 policy; or
- 5 (x) Entering into any practice or plan that
6 involves stranger-originated life insurance;
- 7 (B) Failing to disclose to the insurer, where the
8 insurer requests such disclosure, that the
9 prospective insured has undergone a life
10 expectancy evaluation by any person or entity
11 other than the insurer or its authorized
12 representatives in connection with the issuance
13 of the policy;
- 14 (C) Employing any device, scheme, or artifice to
15 defraud in the business of life settlements; or
- 16 (D) In the solicitation, application, or issuance of
17 a policy, employing any device, scheme, or
18 artifice in violation of state insurable interest
19 laws;
- 20 (2) In the furtherance of a fraud or to prevent the
21 detection of a fraud, any person commits or permits
22 its employees or its agents to:



- 1 (A) Remove, conceal, alter, destroy, or sequester
2 from the commissioner the assets or records of a
3 licensee or other person engaged in the business
4 of life settlements;
- 5 (B) Misrepresent or conceal the financial condition
6 of a licensee, financing entity, insurer, or
7 other person;
- 8 (C) Transact the business of life settlements in
9 violation of laws requiring a license,
10 certificate of authority, or other legal
11 authority for the transaction of the business of
12 life settlements;
- 13 (D) File with the commissioner or the chief insurance
14 regulatory official of another jurisdiction a
15 document containing false information or
16 otherwise concealing information about a material
17 fact from the commissioner;
- 18 (E) Engage in embezzlement, theft, misappropriation,
19 or conversion of moneys, funds, premiums,
20 credits, or other property of a provider,
21 insurer, insured, owner, insurance, policy owner,



1 or any other person engaged in the business of
 2 life settlements or insurance;

3 (F) Knowingly and with intent to defraud, enter into,
 4 broker, or otherwise deal in a life settlement
 5 contract, the subject of which is a policy that
 6 was obtained by presenting false information
 7 concerning any fact material to the policy or by
 8 concealing, for the purpose of misleading
 9 another, information concerning any fact material
 10 to the policy, where the owner or the owner's
 11 agent intended to defraud the policy's issuer;

12 (G) Attempt to commit, assist, aid, or abet in the
 13 commission of, or conspire to commit the acts or
 14 omissions specified in this definition; or

15 (H) Misrepresent the state of residence of an owner
 16 to be a state or jurisdiction that does not have
 17 a law substantially similar to this chapter for
 18 the purpose of evading or avoiding the provisions
 19 of this chapter.

20 **§ -43 Fraud warning required.** (a) Life settlement
 21 contracts and applications for life settlement contracts,



1 regardless of the form of transmission, shall contain the
2 following statement or a substantially similar statement:
3 "Any person who knowingly presents false information in an
4 application for insurance or life settlement contract is guilty
5 of a crime and may be subject to fines and confinement in
6 prison."

7 (b) The lack of a statement as required in subsection (a)
8 shall not constitute a defense in any prosecution for a
9 fraudulent life settlement act.

10 **§ -44 Mandatory reporting of fraudulent life settlement**

11 **acts.** (a) Any person engaged in the business of life
12 settlements having knowledge or a reasonable belief that a
13 fraudulent life settlement act is being, will be, or has been
14 committed shall provide to the commissioner the information
15 required by, and in a manner prescribed by, the commissioner.

16 (b) Any other person having knowledge or a reasonable
17 belief that a fraudulent life settlement act is being, will be,
18 or has been committed may provide to the commissioner the
19 information required by, and in a manner prescribed by, the
20 commissioner.

21 **§ -45 Immunity from liability.** (a) No civil liability
22 shall be imposed on and no cause of action shall arise from a



1 person's furnishing information concerning suspected,
2 anticipated, or completed fraudulent life settlement acts or
3 suspected or completed fraudulent insurance acts, if the
4 information is provided to or received from:

- 5 (1) The commissioner or the commissioner's employees,
6 agents or representatives;
- 7 (2) Federal, state, or local law enforcement or regulatory
8 officials or their employees, agents, or
9 representatives;
- 10 (3) A person involved in the prevention and detection of
11 fraudulent life settlement acts or that person's
12 agents, employees, or representatives;
- 13 (4) Any regulatory body or their employees, agents, or
14 representatives, overseeing life insurance, life
15 settlements, securities, or investment fraud;
- 16 (5) The life insurer that issued the policy covering the
17 life of the insured; or
- 18 (6) The licensee and any agents, employees, or
19 representatives.
- 20 (b) Subsection (a) shall not apply to statements made with
21 actual malice. In an action brought against a person for filing
22 a report or furnishing other information concerning a fraudulent



1 life settlement act or a fraudulent insurance act, the party
2 bringing the action shall plead specifically any allegation that
3 subsection (a) does not apply because the person filing the
4 report or furnishing the information did so with actual malice.

5 (c) A person identified in subsection (a) shall be
6 entitled to an award of attorney's fees and costs if the person
7 is the prevailing party in a civil cause of action for libel,
8 slander, or any other relevant tort arising out of activities in
9 carrying out the provisions of this chapter and the party
10 bringing the action was not substantially justified in doing so.
11 For purposes of this section, a proceeding is "substantially
12 justified" if it had a reasonable basis in law or fact at the
13 time that it was initiated.

14 (d) This section does not abrogate or modify common law or
15 statutory privileges or immunities enjoyed by a person described
16 in subsection (a).

17 **§ -46 Confidentiality.** (a) The documents and evidence
18 provided pursuant to section -45 or obtained by the
19 commissioner in an investigation of suspected or actual
20 fraudulent life settlement acts shall be privileged and
21 confidential and shall not be a public record and shall not be
22 subject to discovery or subpoena in a civil or criminal action.



1 (b) Subsection (a) does not prohibit release by the
2 commissioner of documents and evidence obtained in an
3 investigation of suspected or actual fraudulent life settlement
4 acts:

5 (1) In administrative or judicial proceedings to enforce
6 laws administered by the commissioner;

7 (2) To federal, state, or local law enforcement or
8 regulatory agencies, to an organization established
9 for the purpose of detecting and preventing fraudulent
10 life settlement acts or to the National Association of
11 Insurance Commissioners; or

12 (3) At the discretion of the commissioner, to a person in
13 the business of life settlements that is aggrieved by
14 a fraudulent life settlement act.

15 (c) Release of documents and evidence under subsection (b)
16 does not abrogate or modify the privilege granted in subsection
17 (a).

18 **§ -47 Other law enforcement or regulatory authority.**

19 This chapter shall not:

20 (1) Preempt the authority or relieve the duty of other law
21 enforcement or regulatory agencies to investigate,
22 examine, and prosecute suspected violations of law;



- 1 (2) Preempt, supersede, or limit any provision of any
2 state securities law or any rule, order, or notice
3 issued thereunder;
- 4 (3) Prevent or prohibit a person from disclosing
5 voluntarily information concerning life settlement
6 fraud to a law enforcement or regulatory agency other
7 than the insurance division; or
- 8 (4) Limit the powers granted elsewhere by the laws of this
9 state to the commissioner or the insurance fraud
10 investigations unit to investigate and examine
11 possible violations of law and to take appropriate
12 action against wrongdoers.

13 **§ -48 Life settlement anti-fraud initiatives.** (a)
14 Providers and brokers shall have in place anti-fraud initiatives
15 reasonably calculated to detect, prosecute, and prevent
16 fraudulent life settlement acts. At the discretion of the
17 commissioner, the commissioner may order, or a licensee may
18 request and the commissioner may grant, such modifications of
19 the following required initiatives as necessary to ensure an
20 effective anti-fraud program. The modifications may be more or
21 less restrictive than the required initiatives so long as the



1 modifications may reasonably be expected to accomplish the
2 purpose of this section. Anti-fraud initiatives shall include:

3 (1) Fraud investigators, who may be provider or broker
4 employees or independent contractors; and

5 (2) An anti-fraud plan that shall be submitted to the
6 commissioner. The anti-fraud plan shall include but
7 not be limited to:

8 (A) A description of the procedures for detecting and
9 investigating possible fraudulent life settlement
10 acts and procedures for resolving material
11 inconsistencies between medical records and
12 insurance applications;

13 (B) A description of the procedures for reporting
14 possible fraudulent life settlement acts to the
15 commissioner;

16 (C) A description of the plan for anti-fraud
17 education and training of underwriters and other
18 personnel; and

19 (D) A description or chart outlining the
20 organizational arrangement of the anti-fraud
21 personnel who are responsible for the
22 investigation and reporting of possible



1 fraudulent life settlement acts and investigating
2 unresolved material inconsistencies between
3 medical records and insurance applications.

4 (b) Anti-fraud plans submitted to the commissioner shall
5 be privileged and confidential and shall not be a public record
6 and shall not be subject to discovery or subpoena in a civil or
7 criminal action.

8 **§ -49 Injunctions; civil remedies; cease and desist.**

9 (a) In addition to the penalties and other enforcement
10 provisions of this chapter, if any person violates this chapter
11 or any rule implementing this chapter, the commissioner may seek
12 an injunction in a court of competent jurisdiction in the county
13 where the person resides or has a principal place of business
14 and may apply for temporary and permanent orders that the
15 commissioner determines necessary to restrain the person from
16 further committing the violation.

17 (b) Any person damaged by the acts of another person in
18 violation of this chapter or any rule implementing this chapter,
19 may bring a civil action for damages against the person
20 committing the violation in a court of competent jurisdiction.

21 (c) The commissioner may issue a cease and desist order
22 upon a person who violates any provision of this chapter, any



1 rule or order adopted by the commissioner, or any written
2 agreement entered into with the commissioner, in accordance with
3 chapter 91.

4 (d) When the commissioner finds that such an action
5 presents an immediate danger to the public and requires an
6 immediate final order, the commissioner may issue an emergency
7 cease and desist order reciting with particularity the facts
8 underlying such findings. The emergency cease and desist order
9 shall be effective immediately upon service of a copy of the
10 order on the respondent and shall remain effective for ninety
11 days. If the insurance division begins non-emergency cease and
12 desist proceedings under subsection (a), the emergency cease and
13 desist order shall remain effective, absent an order by an
14 appellate court of competent jurisdiction pursuant to chapter
15 91. In the event of a wilful violation of this chapter, the
16 trial court may award statutory damages in addition to actual
17 damages in an additional amount up to three times the actual
18 damage award. The provisions of this chapter may not be waived
19 by agreement. No choice of law provision may be used to prevent
20 the application of this chapter to any life settlement contract
21 in which a party to the settlement is a resident of this state.



1 **§ -50 Penalties.** (a) The commissioner may levy a civil
2 penalty not exceeding \$10,000 and the amount of the claim for
3 each violation upon any person, including those persons and
4 their employees licensed pursuant to this chapter, who is found
5 to have committed a fraudulent life settlement act or violated
6 any other provision of this chapter.

7 (b) The license of a person licensed under this chapter
8 who commits a fraudulent life settlement act shall be revoked
9 for a period of at least one year.

10 (c) The penalties under this chapter are cumulative and
11 may be imposed in addition to any other penalties authorized by
12 law.

13 **§ -51 Unfair trade practices.** A violation of this
14 chapter shall be considered an unfair trade practice pursuant to
15 section 480-2 and subject to the penalties under chapter 480.

16 **§ -52 Conflict of laws.** (a) If there is more than one
17 owner on a single policy, and the owners are residents of
18 different states, the life settlement contract shall be governed
19 by the law of the state in which the owner having the largest
20 percentage ownership resides or, if the owners hold equal
21 ownership, the state of residence of one owner agreed upon in
22 writing by all of the owners. The law of the state of the



1 insured shall govern in the event that equal owners fail to
2 agree in writing upon a state of residence for jurisdictional
3 purposes.

4 (b) A provider from this state who enters into a life
5 settlement contract with an owner who is a resident of another
6 state that has enacted statutes or adopted regulations governing
7 life settlement contracts, shall be governed in the effectuation
8 of that life settlement contract by the statutes and regulations
9 of the owner's state of residence. If the state in which the
10 owner is a resident has not enacted statutes or regulations
11 governing life settlement contracts, the provider shall give the
12 owner notice that neither that state nor this State regulates
13 the transaction upon which the owner is entering. For
14 transactions in those states, however, the provider shall
15 maintain all records required if the transactions were executed
16 in the state of residence. The forms used in those states need
17 not be approved by the insurance division.

18 (c) If there is a conflict in the laws that apply to an
19 owner and a purchaser in any individual transaction, the laws of
20 the state that apply to the owner shall take precedence and the
21 provider shall comply with those laws.



1 **§ -53 Authority to adopt rules.** The commissioner may
2 adopt rules to implement this chapter pursuant to chapter 91."

3 SECTION 2. Section 431:7-101, Hawaii Revised Statutes, is
4 amended by amending subsections (a) and (b) to read as follows:

5 "(a) The commissioner shall collect in advance the
6 following fees:

- 7 (1) Certificate of authority: Issuance\$900
- 8 (2) Organization of domestic insurers and affiliated
9 corporations:
 - 10 (A) Application and all other papers required
11 for issuance of solicitation permit,
12 filing\$1,500
 - 13 (B) Issuance of solicitation permit\$150
- 14 (3) Producer's license:
 - 15 (A) Issuance, regular license\$50
 - 16 (B) Issuance, temporary license\$50
- 17 (4) Nonresident producer's license: Issuance\$75
- 18 (5) Independent adjuster's license: Issuance\$75
- 19 (6) Public adjuster's license: Issuance\$75
- 20 (7) Workers' compensation claim adjuster's limited
21 license: Issuance\$75
- 22 (8) Independent bill reviewer's license: Issuance\$80



- 1 (9) Limited producer's license: Issuance\$60
- 2 (10) Managing general agent's license: Issuance\$75
- 3 (11) Reinsurance intermediary's license: Issuance\$75
- 4 (12) Surplus lines broker's license: Issuance\$150
- 5 (13) Service contract provider's registration:
- 6 Issuance\$75
- 7 (14) Approved course provider certificate: Issuance ...\$100
- 8 (15) Approved continuing education course
- 9 certificate: Issuance\$30
- 10 (16) Vehicle protection product warrantor's
- 11 registration: Issuance\$75
- 12 (17) Criminal history record check\$20
- 13 (18) Limited line motor vehicle rental company
- 14 producer's license: Issuance\$1,000
- 15 (19) Life settlement contract provider's license:
- 16 Issuance\$75
- 17 (20) Life settlement contract broker's license:
- 18 Issuance\$75
- 19 ~~(19)~~ (21) Examination for license: For each
- 20 examination, a fee to be established by the
- 21 commissioner.



1 (b) The fees for services of the department of commerce
2 and consumer affairs subsequent to the issuance of a certificate
3 of authority, license, or other certificate are as follows:

4 (1) \$600 per year for all services (including extension of
5 the certificate of authority) for an authorized
6 insurer;

7 (2) \$50 per year for all services (including extension of
8 the license) for a regularly licensed producer;

9 (3) \$75 per year for all services (including extension of
10 the license) for a regularly licensed nonresident
11 producer;

12 (4) \$45 per year for all services (including extension of
13 the license) for a regularly licensed independent
14 adjuster;

15 (5) \$45 per year for all services (including extension of
16 the license) for a regularly licensed public adjuster;

17 (6) \$45 per year for all services (including extension of
18 the license) for a workers' compensation claims
19 adjuster's limited license;

20 (7) \$60 per year for all services (including extension of
21 the license) for a regularly licensed independent bill
22 reviewer;



- 1 (8) \$45 per year for all services (including extension of
- 2 the license) for a producer's limited license;
- 3 (9) \$75 per year for all services (including extension of
- 4 the license) for a regularly licensed managing general
- 5 agent;
- 6 (10) \$75 per year for all services (including extension of
- 7 the license) for a regularly licensed reinsurance
- 8 intermediary;
- 9 (11) \$45 per year for all services (including extension of
- 10 the license) for a licensed surplus lines broker;
- 11 (12) \$75 per year for all services (including renewal of
- 12 registration) for a service contract provider;
- 13 (13) \$65 per year for all services (including extension of
- 14 the certificate) for an approved course provider;
- 15 (14) \$20 per year for all services (including extension of
- 16 the certificate) for an approved continuing education
- 17 course;
- 18 (15) \$75 per year for all services (including renewal of
- 19 registration) for a vehicle protection product
- 20 warrantor;
- 21 (16) \$20 for a criminal history record check; [and]



1 (17) \$600 per year for all services (including extension of
2 the license) for a regularly licensed limited line
3 motor vehicle rental company producer[-];

4 (18) \$75 per year for all services (including extension of
5 the license) for a regularly licensed life settlement
6 contract provider; and

7 (19) \$75 per year for all services (including extension of
8 the license) for a regularly licensed life settlement
9 contract broker.

10 The services referred to in paragraphs (1) to [~~+17+~~] (19)
11 shall not include services in connection with examinations,
12 investigations, hearings, appeals, and deposits with a
13 depository other than the department of commerce and consumer
14 affairs."

15 SECTION 3. (a) A provider as defined in section 1 of this
16 Act lawfully transacting business in this state prior to the
17 effective date of this Act may continue to do so pending
18 approval or disapproval of that person's application for a
19 license as long as the application is filed with the insurance
20 commissioner not later than thirty days after publication by the
21 commissioner of an application form and instructions for
22 licensure of providers. If the publication of the application



1 form and instructions is prior to the effective date of this
2 Act, then the filing of the application shall not be later than
3 thirty days after the effective date of this Act. During the
4 time that such an application is pending with the commissioner,
5 the applicant may use any form of life settlement contract that
6 has been filed with the commissioner pending approval thereof;
7 provided that such form is otherwise in compliance with the
8 provisions of this Act. Any person transacting business in this
9 state under this provision shall be obligated to comply with all
10 other requirements of this Act.

11 (b) A person who has lawfully negotiated life settlement
12 contracts between any owner residing in this state and one or
13 more providers as defined in section 1 of this Act for at least
14 one year immediately prior to the effective date of this Act may
15 continue to do so pending approval or disapproval of that
16 person's application for a license as long as the application is
17 filed with the commissioner not later than thirty days after
18 publication by the commissioner of an application form and
19 instructions for licensure of brokers. If the publication of
20 the application form and instructions is prior to the effective
21 date of this Act, then the filing of the application shall not
22 be later than thirty days after the effective date of this Act.



1 Any person transacting business in this state under this
2 provision shall be obligated to comply with all other
3 requirements of this Act.

4 SECTION 4. The insurance commissioner shall submit annual
5 reports to the legislature at least twenty days prior to the
6 convening of the regular sessions of 2009 and 2010. The annual
7 report shall include:

8 (1) Any issues and concerns relating to the implementation
9 and effects of this Act;

10 (2) The total number and disposition of life settlement
11 cases investigated by the insurance commissioner under
12 this Act;

13 (3) An evaluation by the insurance commissioner of the
14 effectiveness of this Act in regulating life
15 settlement contracts; and

16 (4) Any recommendations, including proposed legislation,
17 to improve the provisions of this Act.

18 SECTION 5. This Act does not affect rights and duties that
19 matured, penalties that were incurred, and proceedings that were
20 begun, before its effective date.

21 SECTION 6. Statutory material to be repealed is bracketed
22 and stricken. New statutory material is underscored.



1 SECTION 7. This Act shall take effect upon its approval,
2 and shall be repealed two years from the date of its approval.

APPROVED this 16 day of JUN , 2008



GOVERNOR OF THE STATE OF HAWAII

