
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 Purpose. The purpose of this chapter is to
8 establish consumer protections in life settlement transactions
9 where the owner of a life insurance policy transfers the death
10 benefit or any portion of the policy for compensation that is
11 less than the expected death benefit, but more than the
12 surrender value of the policy.

13 § -2 Definitions. As used in this chapter, unless the
14 content otherwise requires:

15 "Advertisement" means any written, electronic, or printed
16 communication or any communication by means of recorded --
17 telephone messages or transmitted on radio, television, the
18 Internet, or similar communications media, including film



1 strips, motion pictures, and videos, which are published,
2 disseminated, circulated, or placed before the public, directly
3 or indirectly, for the purpose of creating an interest in or
4 inducing a person to purchase or sell, assign, devise, bequest,
5 or transfer the death benefit or ownership of a policy or an
6 interest in a policy pursuant to a life settlement contract.

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

19 "Business of life settlements" means an activity involved
20 in but not limited to offering to enter into, soliciting,
21 negotiating, procuring, effectuating, monitoring, or tracking of
22 life settlement contracts.



1 "Certificate" means a certificate issued pursuant to a
2 group policy.

3 "Chronically ill" means:

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

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

10 (3) Having a level of disability similar to that described
11 in paragraph (1) as determined by the United States
12 Secretary of Health and Human Services.

13 "Commissioner" means the insurance commissioner.

14 "Financing entity" means an underwriter, placement agent,
15 lender, purchaser of securities, purchaser of a policy or
16 certificate from a provider, credit enhancer, or any entity that
17 has a direct ownership in a policy or certificate that is the
18 subject of a life settlement contract, but:

19 (1) Whose principal activity related to the transaction is
20 providing funds to effect the life settlement contract
21 or purchase of one or more policies; and



1 (2) Who has an agreement in writing with one or more
2 providers to finance the acquisition of life
3 settlement contracts.

4 The term shall not include a non-accredited investor or
5 purchaser.

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

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

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

18 "Life insurance producer" means any person licensed in this
19 State as a resident or nonresident insurance producer who has
20 received qualification or authority for life insurance coverage
21 or a life line of coverage pursuant to article 9A.

22 "Life settlement contract" means:



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

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

20 (3) (A) A written agreement for a loan or other lending
21 transaction secured primarily by an individual or
22 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 (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; provided that neither default on the loan



1 nor the transfer of the policy in connection with the
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 the 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;

22 (7) A bona fide business succession planning arrangement:



- 1 (A) Between one or more shareholders in a corporation
2 or between a corporation and one or more of its
3 shareholders or one or more trusts established by
4 its shareholders;
- 5 (B) Between one or more partners in a partnership or
6 between a partnership and one or more of its
7 partners or one or more trusts established by its
8 partners; or
- 9 (C) Between one or more members in a limited
10 liability company or between a limited liability
11 company and one or more of its members or one or
12 more trusts established by its members;
- 13 (8) An agreement entered into by a service recipient, or a
14 trust established by the service recipient, and a
15 service provider, or a trust established by the
16 service provider, who performs significant services
17 for the service recipient's trade or business; or
- 18 (9) Any other contract, transaction, or arrangement that
19 is a life settlement contract and that the
20 commissioner determines is not of the type intended to
21 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 is
10 secured by an interest in the 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-oriented life insurance" or "STOLI" means the
12 procurement of new life insurance by persons or entities that
13 lack insurable interest on the insured and, at policy inception,
14 the person or entity owns or controls the policy or the majority
15 of the death benefit in the policy and the insured or insured's
16 beneficiaries receive little or none of the proceeds of the
17 death benefits of the policy. Trusts that are created to give
18 the appearance of insurable interest and are used to initiate
19 policies for investors violate insurable interest laws and the
20 prohibition against wagering on life. STOLI arrangements do not
21 include the practices that are listed in the definition for



1 "life settlement contract" as practices that do not comprise a
2 "life settlement contract".

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

6 § -3 **Licensing requirements.** (a) No person, wherever
7 located, shall act as a provider or broker with an owner, who is
8 a resident of this State, without first having obtained a
9 license from the commissioner.

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

14 (c) A life insurance producer who has been duly licensed
15 as a resident insurance producer with a life line of authority
16 in this State or the producer's home state for at least one year
17 and is licensed as a nonresident producer in this State shall be
18 deemed to meet the licensing requirements of this section and
19 shall be permitted to operate as a broker.

20 (d) Not later than thirty days from the first day of
21 operating as a broker, the life insurance producer shall notify
22 the commissioner that the life insurance producer is acting as a



1 broker on a form prescribed by the commissioner, and shall pay a
2 fee in the amount under section 431:7-101. Notification shall
3 include an acknowledgement by the life insurance producer that
4 the life insurance producer will operate as a broker in
5 accordance with this chapter.

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

13 (f) A person licensed as an attorney, certified public
14 accountant, or financial planner accredited by a nationally
15 recognized accreditation agency, who is retained to represent
16 the owner, and whose compensation is not paid directly or
17 indirectly by the provider or purchaser, may negotiate life
18 settlement contracts on behalf of the owner without obtaining a
19 license as a broker.

20 (g) Licenses may be renewed every years on their
21 anniversary date upon payment of fees in the amounts required
22 under section 431:7-101. Failure to pay the fees within the



1 terms prescribed shall result in the automatic inactivation of
2 the license.

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

15 (i) A license issued to a partnership, corporation, or
16 other entity authorizes all members, officers, and designated
17 employees to act as a licensee under the license, if those
18 persons are named in the application and any supplements to the
19 application.

20 (j) Upon the filing of an application and the payment of
21 the license fee, the commissioner shall make an investigation of



1 each applicant and may issue a license if the commissioner finds
2 that the applicant:

3 (1) If a provider, has provided a detailed plan of
4 operation;

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

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

10 (4) If a legal entity is formed or organized pursuant to
11 the laws of this State or is a foreign legal entity
12 authorized to transact business in this State, or
13 provides a certificate of good standing from the state
14 of its domicile; and

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

17 (k) The commissioner shall not issue any license to a
18 nonresident applicant unless a written designation of an agent
19 for service of process is filed and maintained with the
20 commissioner, or unless the applicant has filed with the
21 commissioner the applicant's written irrevocable consent that



1 any action against the applicant may be commenced against the
2 applicant by service of process on the commissioner.

3 (l) Each licensee shall file with the commissioner on or
4 before the first day of March of each year an annual statement
5 containing the information as the commissioner by rule may
6 prescribe.

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

10 (n) A broker may not use any person to perform the
11 functions of a provider as defined in this chapter unless the
12 person holds a current, valid license as a provider, and as
13 provided in this section.

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

18 (p) An individual licensed as a broker shall complete on a
19 biennial basis fifteen hours of training related to life
20 settlements and life settlement transactions, as required by the
21 commissioner; provided that a life insurance producer who is
22 operating as a broker pursuant to this section shall not be



1 subject to the requirements of this subsection. Any person
2 failing to meet the requirements of this subsection shall be
3 subject to the penalties imposed by the commissioner.

4 § -4 License suspension, revocation, or refusal to
5 renew. (a) The commissioner may suspend, revoke, or refuse to
6 renew the license of any licensee if the commissioner finds
7 that:

- 8 (1) There was any material misrepresentation in the
9 application for the license;
- 10 (2) The licensee or any officer, partner, member, or
11 director has been guilty of fraudulent or dishonest
12 practices, is subject to a final administrative
13 action, or is otherwise shown to be untrustworthy or
14 incompetent to act as a licensee;
- 15 (3) The provider demonstrates a pattern of unreasonably
16 withholding payments to policy owners;
- 17 (4) The licensee no longer meets the requirements for
18 initial licensure;
- 19 (5) The licensee or any officer, partner, member, or
20 director has been convicted of a felony, or of any
21 misdemeanor of which criminal fraud is an element; or
22 the licensee has pleaded guilty or nolo contendere



1 with respect to any felony or any misdemeanor of which
2 criminal fraud or moral turpitude is an element,
3 regardless of whether a judgment of conviction has
4 been entered by the court;

5 (6) The provider has entered into any life settlement
6 contract that has not been approved pursuant to this
7 chapter;

8 (7) The provider has failed to honor contractual
9 obligations set out in a life settlement contract;

10 (8) The provider has assigned, transferred, or pledged a
11 settled policy to a person other than a provider
12 licensed in this State, a purchaser, an accredited
13 investor or qualified institutional buyer as defined
14 respectively in rule 501 of Regulation D or rule 144A
15 of the federal Securities Act of 1933, as amended, a
16 financing entity, a special purpose entity, or a
17 related provider trust; or

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

20 (b) Before the commissioner may deny a license application
21 or suspends, revokes, or refuses to renew the license of any



1 licensee under this chapter, the commissioner shall conduct a
2 hearing in accordance with chapter 91.

3 § -5 **Contract requirements.** (a) No person may use any
4 form of a life settlement contract in this State unless it has
5 been filed with and approved, if required, by the commissioner
6 in a manner that conforms with the filing procedures and any
7 time restrictions or deeming provisions, if any, for life
8 insurance forms, policies, and contracts.

9 (b) No insurer may, as a condition of responding to a
10 request for verification of coverage or in connection with the
11 transfer of a policy pursuant to a life settlement contract,
12 require that the owner, insured, provider, or broker sign any
13 form, disclosure, consent, waiver, or acknowledgment that has
14 not been expressly approved by the commissioner for use in
15 connection with life settlement contracts in this State.

16 (c) A person shall not use a life settlement contract form
17 or provide to an owner a disclosure statement form in this State
18 unless first filed with and approved by the commissioner. The
19 commissioner shall disapprove a life settlement contract form or
20 disclosure statement form if, in the commissioner's opinion, the
21 contract or provisions contained therein fail to meet the
22 requirements of sections -21, -31, -33, and -43 or



1 are unreasonable, contrary to the interests of the public, or
2 otherwise misleading or unfair to the owner. At the
3 commissioner's discretion, the commissioner may require the
4 submission of advertising material.

5 § -6 **Reporting requirements and privacy.** (a) For any
6 policy settled within five years of policy issuance, each
7 provider shall file with the commissioner on or before March 1
8 of each year an annual statement containing the information as
9 the commissioner may prescribe by rule. In addition to any
10 other requirements, the annual statement shall:

11 (1) Specify the total number, aggregate face amount, and
12 life settlement proceeds of policies settled during
13 the immediately preceding calendar year, together with
14 a breakdown of the information by policy issue year;
15 and

16 (2) Include the names of the insurance companies whose
17 policies have been settled and the brokers that have
18 settled these policies.

19 The information shall be limited to only those transactions
20 where the insured is a resident of this State and shall not
21 include individual transaction data regarding the business of



1 life settlements or information that there is a reasonable basis
2 to believe could be used to identify the owner or the insured.

3 Every provider that wilfully fails to file an annual
4 statement as required in this section, or wilfully fails to
5 reply within thirty days to a written inquiry by the
6 commissioner in connection with an annual statement shall, in
7 addition to other penalties provided by this chapter, be
8 subject, upon due notice and opportunity to be heard, to a
9 penalty of up to \$250 per day of delay, but not to exceed
10 \$25,000 in the aggregate for each failure.

11 (b) Except as otherwise allowed or required by law, a
12 provider, broker, insurance company, insurance producer,
13 information bureau, rating agency or company, or any other
14 person with actual knowledge of an insured's identity shall not
15 disclose the identity of an insured or information that there is
16 a reasonable basis to believe could be used to identify the
17 insured or the insured's financial or medical information to any
18 other person unless the disclosure:

19 (1) Is necessary to effect a life settlement contract
20 between the owner and a provider, and the owner and
21 insured have provided prior written consent to the
22 disclosure;



- 1 (2) Is necessary to effectuate the sale of life settlement
2 contracts or interests therein as investments as long
3 as the sale is conducted in accordance with applicable
4 state and federal securities law and the owner and the
5 insured have both provided prior written consent to
6 the disclosure;
- 7 (3) Is provided in response to an investigation or
8 examination by the commissioner as authorized under
9 section -17 or any other governmental officer or
10 agency;
- 11 (4) Is a term or condition to the transfer of a policy by
12 one provider to another provider, in which case the
13 receiving provider shall be required to comply with
14 the confidentiality requirements of this section;
- 15 (5) Is necessary to allow the provider or broker or their
16 authorized representatives to make contacts for the
17 purpose of determining health status. For the
18 purposes of this paragraph, "authorized
19 representative" shall not include any person who has
20 or may have any financial interest in the life
21 settlement contract other than a provider, licensed
22 broker, financing entity, related provider trust, or



1 special purpose entity. A provider or broker shall
2 require its authorized representative to agree in
3 writing to adhere to the privacy provisions of this
4 section; or

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

6 (c) Non-public personal information solicited or obtained
7 in connection with a proposed or actual life settlement contract
8 shall be subject to the provisions applicable to financial
9 institutions under the federal Gramm-Leach-Bliley Act, P.L. 106-
10 102 (1999), and all other applicable state and federal laws
11 relating to confidentiality of non-public personal information.

12 **PART II. EXAMINATIONS**

13 § -11 **Examination.** (a) When the commissioner deems it
14 reasonably necessary to protect the interests of the public, the
15 commissioner may examine the business and affairs of any
16 licensee or applicant for a license. The commissioner may order
17 any licensee or applicant to produce any records, books, files
18 or other information reasonably necessary to ascertain whether
19 the licensee or applicant is acting or has acted in violation of
20 the law or otherwise contrary to the interests of the public.
21 The expenses incurred in conducting any examination shall be
22 paid by the licensee or applicant.



1 (b) In lieu of an examination under this chapter of any
 2 foreign or alien licensee licensed in this State, the
 3 commissioner may, at the commissioner's discretion, accept an
 4 examination report on the licensee as prepared by the
 5 commissioner for the licensee's state of domicile or port-of-
 6 entry state.

7 (c) Records of all consummated transactions and life
 8 settlement contracts shall be maintained by the provider for
 9 three years after the death of the insured and shall be
 10 available to the commissioner for inspection during reasonable
 11 business hours.

12 § -12 **Conduct of examinations.** (a) Upon determining
 13 that an examination under section -11 should be conducted,
 14 the commissioner shall issue an examination warrant appointing
 15 one or more examiners to perform the examination and instructing
 16 them as to the scope of the examination. In conducting the
 17 examination, the examiner shall use methods common to the
 18 examination of any life settlement licensee and shall use the
 19 guidelines and procedures set forth in an examiners' handbook
 20 adopted by a national organization.

21 (b) Every licensee or person from whom information is
 22 sought, including its officers, directors and agents, shall



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

17 (c) The commissioner may issue subpoenas, to administer
18 oaths, and to examine under oath any person as to any matter
19 pertinent to the examination. Upon the failure or refusal of a
20 person to obey a subpoena, the commissioner may petition a court
21 of competent jurisdiction, and upon proper showing, the court



1 may enter an order compelling the witness to appear and testify
2 or produce documentary evidence.

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

9 (e) Nothing in this chapter shall be construed to limit
10 the commissioner's authority to terminate or suspend an
11 examination to pursue other legal or regulatory action pursuant
12 to the insurance laws of this State. Findings of fact and
13 conclusions made pursuant to any examination shall be prima
14 facie evidence in any legal or regulatory action.

15 (f) Nothing in this chapter shall be construed to limit
16 the commissioner's authority to use and, if appropriate, to make
17 public any final or preliminary examination report, any examiner
18 or licensee work papers or other documents, or any other
19 information discovered or developed during the course of any
20 examination in the furtherance of any legal or regulatory action
21 that the commissioner may, in the commissioner's sole
22 discretion, deem appropriate.



1 § -13 **Examination reports.** (a) Examination reports
2 shall be comprised of only facts appearing upon the books, from
3 the testimony of its officers or agents or other persons
4 examined concerning its affairs, and any conclusions and
5 recommendations as the examiners find reasonably warranted from
6 the facts.

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

17 (c) If the commissioner determines that regulatory action
18 is appropriate as a result of an examination, the commissioner
19 may initiate any proceedings or actions provided by law.

20 § -14 **Confidentiality of examination information.** (a)

21 Names and individual identification data for all owners,
22 purchasers, and insureds shall be considered private and



1 confidential information, and shall not be disclosed by the
2 commissioner, unless the disclosure is to another regulator or
3 is required by law.

4 (b) Except as otherwise provided in this chapter, all
5 examination reports, working papers, recorded information,
6 documents and copies thereof produced by, obtained by, or
7 disclosed to the commissioner or any other person in the course
8 of an examination made under this chapter; or in the course of
9 analysis or investigation by the commissioner of the financial
10 condition or market conduct of a licensee shall be confidential
11 by law and privileged, shall not be subject to chapter 92F,
12 shall not be subject to subpoena, and shall not be subject to
13 discovery or admissible in evidence in any private civil action.
14 The commissioner is authorized to use the documents, materials,
15 or other information in the furtherance of any regulatory or
16 legal action brought as part of the commissioner's official
17 duties. The licensee being examined may have access to all
18 documents used to make the report.

19 § -15 **Examiner; conflict of interest.** (a) An examiner
20 may not be appointed by the commissioner if the examiner, either
21 directly or indirectly, has a conflict of interest or is
22 affiliated with the management of or owns a pecuniary interest



1 in any person subject to examination under this chapter. This
2 section shall not be construed to automatically preclude an
3 examiner from being:

4 (1) An owner;

5 (2) An insured in a policy or life settlement contract; or

6 (3) A beneficiary in a policy that is proposed for a life
7 settlement contract.

8 (b) Notwithstanding the requirements of this section, the
9 commissioner may retain, from time to time on an individual
10 basis, qualified actuaries, certified public accountants, or
11 other similar individuals who are independently practicing their
12 professions, even though these persons may from time to time be
13 similarly employed or retained by persons subject to examination
14 under this chapter.

15 § -16 **Immunity from liability.** (a) No cause of action
16 shall arise nor shall any liability be imposed against the
17 commissioner, the commissioner's authorized representatives, or
18 any examiner appointed by the commissioner for any statements
19 made or conduct performed in good faith while carrying out the
20 provisions of this chapter.

21 (b) No cause of action shall arise nor shall any liability
22 be imposed against any person for the act of communicating or



1 delivering information or data to the commissioner or the
2 commissioner's authorized representative or examiner pursuant to
3 an examination made under this chapter, if the act of
4 communication or delivery was performed in good faith and
5 without fraudulent intent or the intent to deceive. This
6 subsection does not abrogate or modify in any way any common law
7 or statutory privilege or immunity heretofore enjoyed by any
8 person identified in subsection (a).

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

18 § -17 **Investigative authority of the commissioner.** The
19 commissioner may investigate suspected fraudulent life
20 settlement acts and persons engaged in the business of life
21 settlements.

22 **PART III. ADVERTISING**



1 § -21 **Advertising.** (a) A broker or provider licensed
2 pursuant to this chapter may conduct or participate in
3 advertisements within this State. Advertisements shall comply
4 with all advertising and marketing laws or rules adopted by the
5 commissioner that are applicable to life insurers or to brokers
6 and providers licensed pursuant to this chapter.

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

9 (c) No person or trust shall:

10 (1) Directly or indirectly market, advertise, solicit, or
11 otherwise promote the purchase of a policy for the
12 sole purpose of or with an emphasis on settling the
13 policy; or

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

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

18 § -31 **Disclosures to owners.** (a) The provider shall
19 provide in writing, in a separate document that is signed by the
20 owner and provider, the following information to the owner no
21 later than the date the life settlement contract is signed by
22 all parties:



- 1 (1) The fact that possible alternatives to life settlement
2 contracts exist, including but not limited to
3 accelerated benefits offered by the issuer of the
4 policy;
- 5 (2) The fact that some or all of the proceeds of a life
6 settlement contract may be taxable and that assistance
7 should be sought from a professional tax advisor;
- 8 (3) The fact that the proceeds from a life settlement
9 contract could be subject to the claims of creditors;
- 10 (4) The fact that receipt of proceeds from a life
11 settlement contract may adversely affect the
12 recipients' eligibility for public assistance or other
13 government benefits or entitlements and that advice
14 should be obtained from the appropriate agencies;
- 15 (5) The fact that the owner has a right to terminate a
16 life settlement contract within fifteen days of the
17 date it is executed by all parties and the owner has
18 received the disclosures contained herein.
19 Rescission, if exercised by the owner, is effective
20 only if both notice of the rescission is given, and
21 the owner repays all proceeds and any premiums, loans,
22 and loan interest paid on account of the provider



1 within the rescission period. If the insured dies
2 during the rescission period, the contract shall be
3 deemed to have been rescinded subject to repayment by
4 the owner or the owner's estate of all proceeds and
5 any premiums, loans, and loan interest to the
6 provider;

7 (6) The fact that proceeds will be sent to the owner
8 within three business days after the provider has
9 received the insurer or group administrator's
10 acknowledgement that ownership of the policy or
11 interest in the certificate has been transferred and
12 the beneficiary has been designated in accordance with
13 the terms of the life settlement contract;

14 (7) The fact that entering into a life settlement contract
15 may cause other rights or benefits, including
16 conversion rights and waiver of premium benefits, that
17 may exist under the policy or certificate to be
18 forfeited by the owner and that assistance should be
19 sought from a professional financial advisor;

20 (8) The amount and method of calculating the compensation
21 paid or to be paid to the broker, or any other person
22 acting for the owner in connection with the



- 1 transaction wherein the term compensation includes
2 anything of value paid or given;
- 3 (9) The date by which the funds will be available to the
4 owner and the transmitter of the funds;
- 5 (10) The fact that the commissioner shall require delivery
6 of a *Buyer's Guide* or a similar consumer advisory
7 package in the form prescribed by the commissioner to
8 owners during the solicitation process;
- 9 (11) The following language:
- 10 "All medical, financial or personal information
11 solicited or obtained by a provider or broker
12 about an insured, including the insured's
13 identity or the identity of family members, a
14 spouse or a significant other may be disclosed as
15 necessary to effect the life settlement contract
16 between the owner and provider. If you are asked
17 to provide this information, you will be asked to
18 consent to the disclosure. The information may
19 be provided to someone who buys the policy or
20 provides funds for the purchase. You may be
21 asked to renew your permission to share
22 information every two years.";



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

5 "Any person who knowingly presents false
6 information in an application for insurance or
7 life settlement contract is guilty of a crime and
8 may be subject to fines and confinement in
9 prison.";

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

14 (14) The affiliation, if any, between the provider and the
15 issuer of the policy to be settled;

16 (15) That a broker represents exclusively the owner, and
17 not the insurer or the provider or any other person,
18 and owes a fiduciary duty to the owner, including a
19 duty to act according to the owner's instructions and
20 in the best interest of the owner;

21 (16) The name, address, and telephone number of the
22 provider;



1 (17) The name, business address, and telephone number of
2 the independent third party escrow agent, and the fact
3 that the owner may inspect or receive copies of the
4 relevant escrow or trust agreements or documents; and

5 (18) The fact that a change of ownership could in the
6 future limit the insured's ability to purchase future
7 insurance on the insured's life because there is a
8 limit to how much coverage insurers will issue on one
9 life.

10 (b) The written disclosures shall be conspicuously
11 displayed in any life settlement contract furnished to the owner
12 by a provider, including any affiliations or contractual
13 arrangements between the provider and the broker.

14 (c) A broker shall provide the owner and the provider with
15 at least the following disclosures no later than the date the
16 life settlement contract is signed by all parties. The
17 disclosures shall be conspicuously displayed in the life
18 settlement contract or in a separate document signed by the
19 owner and provide the following information:

20 (1) The name, business address, and telephone number of
21 the broker;



- 1 (2) A full, complete, and accurate description of all the
2 offers, counter-offers, acceptances, and rejections
3 relating to the proposed life settlement contract;
- 4 (3) A written disclosure of any affiliations or
5 contractual arrangements between the broker and any
6 person making an offer in connection with the proposed
7 life settlement contract;
- 8 (4) The name of each broker who receives compensation and
9 the amount of compensation received by that broker,
10 which compensation includes anything of value paid or
11 given to the broker in connection with the life
12 settlement contract;
- 13 (5) A complete reconciliation of the gross offer or bid by
14 the provider to the net amount of proceeds or value to
15 be received by the owner. For the purpose of this
16 paragraph, "gross offer" or "bid" means the total
17 amount or value offered by the provider for the
18 purchase of one or more life insurance policies,
19 inclusive of commissions and fees; and
- 20 (6) The fact that the failure to provide the disclosures
21 or rights described in this section shall be deemed an
22 unfair trade practice under section 480-2.



1 § -32 **Disclosure to insurer.** (a) Without limiting the
2 ability of an insurer from assessing the insurability of a
3 policy applicant and determining whether or not to issue the
4 policy, and in addition to other questions an insurance carrier
5 may lawfully pose to a life insurance applicant, insurance
6 carriers may inquire in the application for insurance whether
7 the proposed owner intends to pay premiums with the assistance
8 of financing from a lender that will use the policy as
9 collateral to support the financing.

10 (b) If a life settlement contract is a written agreement
11 for a loan or a premium finance loan, and the loan provides
12 funds that can be used for a purpose other than paying for the
13 premiums, costs, and expenses associated with obtaining and
14 maintaining the policy and loan, the application shall be
15 rejected as a violation of the prohibited practices in
16 section -41.

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

19 (1) May make disclosures to the applicant and the insured,
20 either on the application or an amendment to the
21 application to be completed no later than the delivery
22 of the policy, including the following:



1 "If you have entered into a loan arrangement
2 where the policy is used as collateral, and the
3 policy does change ownership at some point in the
4 future in satisfaction of the loan, the following
5 may be true:

6 (1) A change of ownership could lead to a
7 stranger owning an interest in the insured's
8 life;

9 (2) A change of ownership could in the future
10 limit your ability to purchase future
11 insurance on the insured's life because
12 there is a limit to how much coverage
13 insurers will issue on one life;

14 (3) Should there be a change of ownership and
15 you wish to obtain more insurance coverage
16 on the insured's life in the future, the
17 insured's higher issue age, a change in
18 health status, and/or other factors may
19 reduce the ability to obtain coverage and/or
20 may result in significantly higher premiums;

21 (4) You should consult a professional advisor,
22 since a change in ownership in satisfaction



1 of the loan may result in tax consequences
2 to the owner, depending on the structure of
3 the loan;"

4 and

5 (2) May require certifications, such as the following,
6 from the applicant or the insured:

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

10 (2) My loan arrangement for this policy provides
11 funds sufficient to pay for some or all of the
12 premiums, costs, and expenses associated with
13 obtaining and maintaining my life insurance
14 policy, but I have not entered into any agreement
15 by which I am to receive consideration in
16 exchange for procuring this policy; and

17 (3) The borrower has an insurable interest in the
18 insured."

19 § -33 **General rules.** (a) A provider entering into a
20 life settlement contract with any owner of a policy wherein the
21 insured is terminally or chronically ill shall first obtain:



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

5 (2) A document in which the insured consents to the
6 release of the insured's medical records to a
7 provider, broker, or insurance producer and, if the
8 policy was issued less than two years from the date of
9 application for a life settlement contract, to the
10 insurance company that issued the policy.

11 The provider, broker, or its authorized representative shall be
12 limited to contact for the purpose of determining the owner's
13 health status or to verify the owner's address, once every three
14 months if the insured has a life expectancy of more than one
15 year, and no more than once per month if the insured has a life
16 expectancy of one year or less.

17 (b) The insurer shall respond to a request for
18 verification of coverage submitted by a provider, broker, or
19 life insurance producer not later than thirty calendar days of
20 the date the request is received. The request for verification
21 of coverage shall be made on a form approved by the
22 commissioner. The insurer shall complete and issue the



1 verification of coverage or indicate in which respects it is
2 unable to respond. In its response, the insurer shall indicate
3 whether, based on the medical evidence and documents provided,
4 the insurer intends to pursue an investigation at this time
5 regarding the validity of the insurance contract.

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

- 9 (1) Consents to the life settlement contract;
- 10 (2) Represents that the owner has a full and complete
11 understanding of the life settlement contract;
- 12 (3) Represents that the owner has a full and complete
13 understanding of the benefits of the policy;
- 14 (4) Acknowledges that the owner is entering into the life
15 settlement contract freely and voluntarily; and
- 16 (5) For persons with a chronic or terminal illness or
17 condition, acknowledges that the insured has a chronic
18 or terminal illness and that the chronic or terminal
19 illness or condition was diagnosed after the policy
20 was issued.

21 (d) An insurer shall not unreasonably delay effecting
22 change of ownership or beneficiary in connection with any life



1 settlement contract lawfully entered into in this State or with
2 a resident of this State.

3 (e) If a broker or life insurance producer performs any of
4 the activities required of the provider under this section, the
5 provider shall be deemed to have fulfilled the requirements of
6 this section.

7 (f) If a broker performs those verification of coverage
8 activities required of the provider, the provider is deemed to
9 have performed those activities.

10 (g) Within twenty days after an owner executes the life
11 settlement contract, the provider shall give written notice to
12 the insurer that issued that policy that the policy has become
13 subject to a life settlement contract. The notice shall be
14 accompanied by the documents required under section -32(c).

15 (h) All life settlement contracts entered into in this
16 State shall provide that the owner may rescind the contract on
17 or before fifteen days after the date it is executed by all
18 parties thereto. Rescission, if exercised by the owner, is
19 effective only if both notice of the rescission is given, and
20 the owner repays all proceeds and any premiums, loans, and loan
21 interest paid on account of the provider within the rescission
22 period. If the insured dies during the rescission period, the



1 contract shall be deemed to have been rescinded subject to
2 repayment by the owner or the owner's estate of all proceeds and
3 any premiums, loans, and loan interest to the provider.

4 (i) Within three business days after receipt from the
5 owner of documents to effect the transfer of the policy, the
6 provider shall pay the proceeds of the settlement to an escrow
7 or trust account managed by a trustee or escrow agent in a state
8 or federally chartered financial institution pending
9 acknowledgement of the transfer by the issuer of the policy.
10 The trustee or escrow agent shall be required to transfer the
11 proceeds due to the owner within three business days of
12 acknowledgement of the transfer from the insurer.

13 (j) Failure to tender the life settlement contract
14 proceeds to the owner by the date disclosed to the owner shall
15 render the contract voidable by the owner for lack of
16 consideration until the time the proceeds are tendered to and
17 accepted by the owner. A failure to give written notice of the
18 right of rescission hereunder shall toll the right of rescission
19 until thirty days after the written notice of the right of
20 rescission has been given.

21 (k) Any fee paid by a provider, party, individual, or an
22 owner to a broker in exchange for services provided to the owner



1 pertaining to a life settlement contract shall be computed as a
2 percentage of the offer obtained, not the face value of the
3 policy. Nothing in this section shall be construed as
4 prohibiting a broker from reducing the broker's fee below this
5 percentage if the broker so chooses.

6 (l) The broker shall disclose to the owner anything of
7 value paid or given to a broker, which relates to a life
8 settlement contract.

9 (m) No person at any time prior to or at the time of the
10 application for, or issuance of, a policy, or during a two-year
11 period commencing with the date of issuance of the policy shall
12 enter into a life settlement regardless of the date the
13 compensation is to be provided and regardless of the date the
14 assignment, transfer, sale, devise, bequest, or surrender of the
15 policy is to occur. This prohibition shall not apply if the
16 owner certifies to the provider that:

17 (1) The policy was issued upon the owner's exercise of
18 conversion rights arising out of a group or individual
19 policy; provided that the total of the time covered
20 under the conversion policy plus the time covered
21 under the prior policy is at least twenty-four months.

22 The time covered under a group policy shall be



1 calculated without regard to a change in insurance
2 carriers; provided further that the coverage has been
3 continuous and under the same group sponsorship; or

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

7 (A) The owner or insured is chronically or terminally
8 ill;

9 (B) The owner or insured disposes of ownership
10 interests in a closely-held corporation pursuant
11 to the terms of a buyout or other similar
12 agreement in effect at the time the policy was
13 initially issued;

14 (C) The owner's spouse dies;

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

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

17 (F) The owner becomes physically or mentally disabled
18 and a physician determines that the disability
19 prevents the owner from maintaining full-time
20 employment; or

21 (G) A final order, judgment, or decree is entered by
22 a court of competent jurisdiction on the



1 application of a creditor of the owner
2 adjudicating the owner bankrupt or insolvent, or
3 approving a petition seeking reorganization of
4 the owner or appointing a receiver, trustee, or
5 liquidator to all or a substantial part of the
6 owner's assets;

7 (3) Copies of the independent evidence required under
8 paragraph (m)(2) shall be submitted to the insurer
9 when the provider submits a request to the insurer for
10 verification of coverage. The copies shall be
11 accompanied by a letter of attestation from the
12 provider that the copies are true and correct copies
13 of the documents received by the provider. Nothing in
14 this section shall prohibit an insurer from exercising
15 its right to contest the validity of any policy;

16 (4) If the provider submits to the insurer a copy of
17 independent evidence required by paragraph (m)(2) when
18 the provider submits a request to the insurer to
19 effect the transfer of the policy to the provider, the
20 copy shall be deemed to establish that the life
21 settlement contract satisfies the requirements of this
22 section.



1 § **-34 Buyer's guide.** The commissioner by rule shall
2 require delivery of a *Buyer's Guide* or a similar consumer
3 advisory package to owners during the process of soliciting a
4 life settlement contract.

5 **PART V. MISCELLANEOUS PROVISIONS**

6 § **-41 Prohibited practices.** (a) It is unlawful for any
7 person to:

- 8 (1) Enter into a life settlement contract if the person
9 knows or reasonably should have known that the policy
10 was obtained by means of a false, deceptive, or
11 misleading application for the policy;
- 12 (2) Engage in any transaction, practice, or course of
13 business if the person knows or reasonably should have
14 known that the intent was to avoid the notice
15 requirements of this chapter;
- 16 (3) Engage in any fraudulent act or practice in connection
17 with any transaction relating to any life settlement
18 contract involving an owner who is a resident of this
19 State;
- 20 (4) Issue, solicit, market, or otherwise promote the
21 purchase of a policy for the purpose of or with an
22 emphasis on settling the policy;



- 1 (5) Enter into a premium finance agreement with any person
2 or agency, or any person affiliated with the person or
3 agency, pursuant to which the person shall receive any
4 proceeds, fees, or other consideration, directly or
5 indirectly, from the policy or owner of the policy or
6 any other person with respect to the premium finance
7 agreement or any life settlement contract or other
8 transaction related to the policy that are in addition
9 to the amounts required to pay the principal,
10 interest, and service charges related to policy
11 premiums pursuant to the premium finance agreement or
12 subsequent sale of the agreement; provided that any
13 payments, charges, fees or other amounts in addition
14 to the amounts required to pay the principal,
15 interest, and service charges related to policy
16 premiums paid under the premium finance agreement
17 shall be remitted to the original owner of the policy
18 or to the owner's estate if the owner not living at
19 the time of the determination of the overpayment;
- 20 (6) With respect to any policy or life settlement contract
21 and a broker, knowingly solicit an offer from,
22 effectuate a life settlement contract with or make a



1 sale to any provider, financing entity, or related
2 provider trust that is controlling, controlled by, or
3 under common control with the broker;

4 (7) With respect to any policy or life settlement contract
5 and a provider, knowingly enter into a life settlement
6 contract with an owner, if, in connection with the
7 life settlement contract, anything of value will be
8 paid to a broker that is controlling, controlled by,
9 or under common control with the provider or the
10 financing entity or related provider trust that is
11 involved in the life settlement contract;

12 (8) With respect to a provider, enter into a life
13 settlement contract unless the life settlement
14 contract promotional, advertising, and marketing
15 materials, as may be prescribed by rule, have been
16 filed with the commissioner. In no event shall any
17 marketing materials expressly reference that the
18 insurance is "free" for any period of time. The
19 inclusion of any reference in the marketing materials
20 that would cause an owner to reasonably believe that
21 the insurance is free for any period of time shall be
22 considered a violation of this chapter;



1 (9) With respect to any life insurance producer, insurance
2 company, broker, or provider, make any statement or
3 representation to the applicant or policyholder in
4 connection with the sale or financing of a policy to
5 the effect that the insurance is free or without cost
6 to the policyholder for any period of time unless
7 provided in the policy;

8 (10) Knowingly and intentionally interfere with the
9 enforcement of the provisions of this chapter or
10 investigations of suspected or actual violations of
11 this chapter; and

12 (11) With respect to a person in the business of life
13 settlements, knowingly or intentionally permit any
14 person convicted of a felony involving dishonesty or
15 breach of trust to participate in the business of life
16 settlements.

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

19 § -42 **Fraudulent life settlement acts prohibited.** It is
20 a violation of this chapter for any person, provider, broker, or
21 any other party related to the business of life settlements to
22 commit a fraudulent life settlement act.



1 For the purposes of this section, "fraudulent life
2 settlement act" includes:

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

8 (A) Presenting, causing to be presented, or preparing
9 with knowledge and belief that it will be
10 presented to or by a provider, premium finance
11 lender, broker, insurer, insurance producer, or
12 any other person, false material information, or
13 concealing material information as part of, in
14 support of, or concerning a fact material to one
15 or more of the following:

16 (i) An application for the issuance of a policy
17 or life settlement contract;

18 (ii) The underwriting of a policy or life
19 settlement contract;

20 (iii) A claim for payment or benefit pursuant to a
21 policy or life settlement contract;

22 (iv) Premiums paid on a policy;



- 1 (v) Payments and changes in ownership or
2 beneficiary made in accordance with the
3 terms of a policy or life settlement
4 contract;
- 5 (vi) The reinstatement or conversion of a policy;
- 6 (vii) In the solicitation, offer to enter into, or
7 effectuation of a policy or life settlement
8 contract;
- 9 (viii) The issuance of written evidence of a policy
10 or life settlement contract;
- 11 (ix) Any application for or the existence of or
12 any payments related to a loan secured,
13 directly or indirectly, by any interest in a
14 policy; or
- 15 (x) Entering into any practice or plan that
16 involves stranger-oriented life insurance;
- 17 (B) Failing to disclose to the insurer, where the
18 insurer requests a disclosure, that the
19 prospective insured has undergone a life
20 expectancy evaluation by any person or entity
21 other than the insurer or its authorized



1 representatives in connection with the issuance
2 of the policy;

3 (C) Employing any device, scheme, or artifice to
4 defraud in the business of life settlements; or

5 (D) In the solicitation, application, or issuance of
6 a policy, employing any device, scheme, or
7 artifice in violation of state insurable interest
8 laws;

9 (2) In the furtherance of a fraud or to prevent the
10 detection of a fraud, any person commits or permits
11 its employees or its agents to:

12 (A) Remove, conceal, alter, destroy, or sequester
13 from the commissioner the assets or records of a
14 licensee or other person engaged in the business
15 of life settlements;

16 (B) Misrepresent or conceal the financial condition
17 of a licensee, financing entity, insurer, or
18 other person;

19 (C) Transact the business of life settlements in
20 violation of laws requiring a license,
21 certificate of authority, or other legal



1 authority for the transaction of the business of
2 life settlements;

3 (D) File with the commissioner or the chief insurance
4 regulatory official of another jurisdiction a
5 document containing false information or
6 otherwise concealing information about a material
7 fact from the commissioner;

8 (E) Engage in embezzlement, theft, misappropriation,
9 or conversion of moneys, funds, premiums,
10 credits, or other property of a provider,
11 insurer, insured, owner, insurance, policy owner,
12 or any other person engaged in the business of
13 life settlements or insurance;

14 (F) Knowingly and with intent to defraud, enter into,
15 broker, or otherwise deal in a life settlement
16 contract, the subject of which is a policy that
17 was obtained by presenting false information
18 concerning any fact material to the policy or by
19 concealing, for the purpose of misleading
20 another, information concerning any fact material
21 to the policy where the owner or the owner's
22 agent intended to defraud the policy's issuer;



1 (G) Attempt to commit, assist, aid, or abet in the
2 commission of, or conspire to commit the acts or
3 omissions specified in this section; or

4 (H) Misrepresent the state of residence of an owner
5 to be a state or jurisdiction that does not have
6 a law substantially similar to this chapter for
7 the purpose of evading or avoiding the provisions
8 of this chapter.

9 § -43 **Fraud warning required.** (a) Life settlement
10 contracts and applications for life settlement contracts,
11 regardless of the form of transmission, shall contain the
12 following statement or a substantially similar statement:

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

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

20 § -44 **Mandatory reporting of fraudulent life settlement**
21 **acts.** (a) Any person engaged in the business of life
22 settlements having knowledge or a reasonable belief that a



1 fraudulent life settlement act is being, will be, or has been
2 committed shall provide to the commissioner the information
3 required by and in a manner prescribed by the commissioner.

4 (b) Any other person having knowledge or a reasonable
5 belief that a fraudulent life settlement act is being, will be,
6 or has been committed may provide to the commissioner the
7 information required by and in a manner prescribed by the
8 commissioner.

9 § -45 **Immunity from liability.** (a) No civil liability
10 shall be imposed on and no cause of action shall arise from a
11 person's furnishing information concerning suspected,
12 anticipated, or completed fraudulent life settlement acts or
13 suspected or completed fraudulent insurance acts, if the
14 information is provided to or received from:

15 (1) The commissioner or the commissioner's employees,
16 agents or representatives;

17 (2) Federal, state, or local law enforcement or regulatory
18 officials or their employees, agents, or
19 representatives;

20 (3) A person involved in the prevention and detection of
21 fraudulent life settlement acts or that person's
22 agents, employees, or representatives;



1 (4) Any regulatory body or their employees, agents, or
2 representatives, overseeing life insurance, life
3 settlements, securities, or investment fraud;

4 (5) The life insurer that issued the policy covering the
5 life of the insured; or

6 (6) The licensee and any agents, employees, or
7 representatives.

8 (b) Subsection (a) shall not apply to statements made with
9 actual malice. In an action brought against a person for filing
10 a report or furnishing other information concerning a fraudulent
11 life settlement act or a fraudulent insurance act, the party
12 bringing the action shall plead specifically any allegation that
13 subsection (a) does not apply because the person filing the
14 report or furnishing the information did so with actual malice.

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



1 justified" if it had a reasonable basis in law or fact at the
2 time that it was initiated.

3 (d) This section does not abrogate or modify common law or
4 statutory privileges or immunities enjoyed by a person described
5 in subsection (a).

6 § -46 Confidentiality. (a) The documents and evidence
7 provided pursuant to section -45 or obtained by the
8 commissioner in an investigation of suspected or actual
9 fraudulent life settlement acts shall be privileged and
10 confidential and shall not be a public record and shall not be
11 subject to discovery or subpoena in a civil or criminal action.

12 (b) Subsection (a) does not prohibit release by the
13 commissioner of documents and evidence obtained in an
14 investigation of suspected or actual fraudulent life settlement
15 acts:

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

18 (2) To federal, state, or local law enforcement or
19 regulatory agencies, to an organization established
20 for the purpose of detecting and preventing fraudulent
21 life settlement acts, or to the National Association
22 of Insurance Commissioners; or



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

4 (c) Release of documents and evidence under subsection (b)
5 does not abrogate or modify the privilege granted in subsection
6 (a).

7 § -47 Other law enforcement or regulatory authority.

8 This chapter shall not:

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

12 (2) Preempt, supersede, or limit any provision of any
13 state securities law or any rule, order, or notice
14 issued thereunder;

15 (3) Prevent or prohibit a person from disclosing
16 voluntarily information concerning life settlement
17 fraud to a law enforcement or regulatory agency other
18 than the insurance division; or

19 (4) Limit the powers granted elsewhere by the laws of this
20 State to the commissioner or the insurance fraud
21 investigations unit to investigate and examine



1 possible violations of law and to take appropriate
2 action against wrongdoers.

3 § -48 **Life settlement anti-fraud initiatives.** (a)

4 Providers and brokers shall have in place anti-fraud initiatives
5 reasonably calculated to detect, prosecute, and prevent
6 fraudulent life settlement acts. At the discretion of the
7 commissioner, the commissioner may order, or a licensee may
8 request and the commissioner may grant, any modifications of the
9 following required initiatives as necessary to ensure an
10 effective anti-fraud program. The modifications may be more or
11 less restrictive than the required initiatives as long as the
12 modifications may reasonably be expected to accomplish the
13 purpose of this section. Anti-fraud initiatives shall include:

14 (1) Fraud investigators who may be provider or broker
15 employees or independent contractors; and

16 (2) An anti-fraud plan that shall be submitted to the
17 commissioner. The anti-fraud plan shall include but
18 not be limited to:

19 (A) A description of the procedures for detecting and
20 investigating possible fraudulent life settlement
21 acts and procedures for resolving material



- 1 inconsistencies between medical records and
- 2 insurance applications;
- 3 (B) A description of the procedures for reporting
- 4 possible fraudulent life settlement acts to the
- 5 commissioner;
- 6 (C) A description of the plan for anti-fraud
- 7 education and training of underwriters and other
- 8 personnel; and
- 9 (D) A description or chart outlining the
- 10 organizational arrangement of the anti-fraud
- 11 personnel who are responsible for the
- 12 investigation and reporting of possible
- 13 fraudulent life settlement acts and investigating
- 14 unresolved material inconsistencies between
- 15 medical records and insurance applications.

16 (b) Anti-fraud plans submitted to the commissioner shall
 17 be privileged and confidential and shall not be a public record
 18 and shall not be subject to discovery or subpoena in a civil or
 19 criminal action.

20 § -49 **Injunctions; civil remedies; cease and desist.**

21 (a) In addition to the penalties and other enforcement
 22 provisions of this chapter, if any person violates this chapter

1 or any rule implementing this chapter, the commissioner may seek
2 an injunction in a court of competent jurisdiction in the county
3 where the person resides or has a principal place of business
4 and may apply for temporary and permanent orders that the
5 commissioner determines necessary to restrain the person from
6 further committing the violation.

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

11 (c) The commissioner may issue a cease and desist order
12 upon a person who violates any provision of this chapter, any
13 rule or order adopted by the commissioner, or any written
14 agreement entered into with the commissioner in accordance with
15 chapter 91.

16 (d) When the commissioner finds that such an action
17 presents an immediate danger to the public and requires an
18 immediate final order, the commissioner may issue an emergency
19 cease and desist order reciting with particularity the facts
20 underlying the findings. The emergency cease and desist order
21 shall be effective immediately upon service of a copy of the
22 order on the respondent and shall remain effective for ninety



1 days. If the insurance division begins non-emergency cease and
2 desist proceedings under subsection (a), the emergency cease and
3 desist order shall remain effective, absent an order by an
4 appellate court of competent jurisdiction pursuant to chapter
5 91. In the event of a wilful violation of this chapter, the
6 trial court may award statutory damages in addition to actual
7 damages in an additional amount up to three times the actual
8 damage award. This chapter may not be waived by agreement. No
9 choice of law provision may be used to prevent the application
10 of this chapter to any life settlement contract in which a party
11 to the settlement is a resident of this State.

12 § -50 **Penalties.** (a) The commissioner may levy a civil
13 penalty not exceeding \$ and the amount of the claim
14 for each violation upon any person, including those persons and
15 their employees licensed pursuant to this chapter who is found
16 to have committed a fraudulent life settlement act or violated
17 this chapter.

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



1 (c) The penalties under this chapter are cumulative and
2 may be imposed in addition to any other penalties authorized by
3 law.

4 § -51 **Unfair trade practices.** A violation of this
5 chapter shall be considered an unfair trade practice pursuant to
6 section 480-2 and subject to the penalties under chapter 480.

7 § -52 **Conflict of laws.** (a) If there is more than one
8 owner on a single policy, and the owners are residents of
9 different states, the life settlement contract shall be governed
10 by the law of the state in which the owner having the largest
11 percentage ownership resides or, if the owners hold equal
12 ownership, the state of residence of one owner agreed upon in
13 writing by all of the owners. The law of the state of the
14 insured shall govern if equal owners fail to agree in writing
15 upon a state of residence for jurisdictional purposes.

16 (b) A provider from this State who enters into a life
17 settlement contract with an owner who is a resident of another
18 state that has enacted statutes or adopted regulations governing
19 life settlement contracts shall be governed in the effectuation
20 of that life settlement contract by the statutes and regulations
21 of the owner's state of residence. If the state in which the
22 owner is a resident has not enacted statutes or regulations



1 governing life settlement contracts, the provider shall give the
2 owner notice that neither that state nor this State regulates
3 the transaction upon which the owner is entering. For
4 transactions in those states, however, the provider shall
5 maintain all records required if the transactions were executed
6 in the state of residence. The forms used in those states need
7 not be approved by the insurance division.

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

12 § -53 Authority to adopt rules. The commissioner may
13 adopt rules to implement this chapter pursuant to chapter 91."

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

16 "(a) The commissioner shall collect in advance the following
17 fees:

18 (1) Certificate of authority: Issuance \$900

19 (2) Organization of domestic insurers and affiliated
20 corporations:

21 (A) Application and all other papers required
22 for issuance of solicitation permit,



1	filing	\$1,500
2	(B) Issuance of solicitation permit	\$150
3	(3) Producer's license:	
4	(A) Issuance, regular license	\$50
5	(B) Issuance, temporary license	\$50
6	(4) Nonresident producer's license: Issuance	\$75
7	(5) Independent adjuster's license: Issuance	\$75
8	(6) Public adjuster's license: Issuance	\$75
9	(7) Workers' compensation claim adjuster's limited	
10	license: Issuance	\$75
11	(8) Independent bill reviewer's license: Issuance	\$80
12	(9) Limited producer's license: Issuance	\$60
13	(10) Managing general agent's license: Issuance	\$75
14	(11) Reinsurance intermediary's license: Issuance	\$75
15	(12) Surplus lines broker's license: Issuance	\$150
16	(13) Service contract provider's registration:	
17	Issuance	\$75
18	(14) Approved course provider certificate: Issuance ...	\$100
19	(15) Approved continuing education course	
20	certificate: Issuance	\$30
21	(16) Vehicle protection product warrantor's	
22	registration: Issuance	\$75



1 (17) Criminal history record check \$20

2 (18) Limited line motor vehicle rental company
3 producer's license: Issuance \$1,000

4 (19) Life settlement contract provider's license:
5 Issuance \$

6 (20) Life settlement contract broker's license:
7 Issuance \$

8 [~~19~~] (21) Examination for license: For each
9 examination, a fee to be established by the
10 commissioner.

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

14 (1) \$600 per year for all services (including extension of
15 the certificate of authority) for an authorized
16 insurer;

17 (2) \$50 per year for all services (including extension of
18 the license) for a regularly licensed producer;

19 (3) \$75 per year for all services (including extension of
20 the license) for a regularly licensed nonresident
21 producer;



- 1 (4) \$45 per year for all services (including extension of
2 the license) for a regularly licensed independent
3 adjuster;
- 4 (5) \$45 per year for all services (including extension of
5 the license) for a regularly licensed public adjuster;
- 6 (6) \$45 per year for all services (including extension of
7 the license) for a workers' compensation claims
8 adjuster's limited license;
- 9 (7) \$60 per year for all services (including extension of
10 the license) for a regularly licensed independent bill
11 reviewer;
- 12 (8) \$45 per year for all services (including extension of
13 the license) for a producer's limited license;
- 14 (9) \$75 per year for all services (including extension of
15 the license) for a regularly licensed managing general
16 agent;
- 17 (10) \$75 per year for all services (including extension of
18 the license) for a regularly licensed reinsurance
19 intermediary;
- 20 (11) \$45 per year for all services (including extension of
21 the license) for a licensed surplus lines broker;



1 (12) \$75 per year for all services (including renewal of
2 registration) for a service contract provider;

3 (13) \$65 per year for all services (including extension of
4 the certificate) for an approved course provider;

5 (14) \$20 per year for all services (including extension of
6 the certificate) for an approved continuing education
7 course;

8 (15) \$75 per year for all services (including renewal of
9 registration) for a vehicle protection product
10 warrantor;

11 (16) \$20 for a criminal history record check; [~~and~~]

12 (17) \$600 per year for all services (including extension of
13 the license) for a regularly licensed limited line
14 motor vehicle rental company producer[~~+~~];

15 (18) \$ _____ per year for all services (including
16 extension of the license) for a regularly licensed
17 life settlement contract provider; and

18 (19) \$ _____ per year for all services (including extension of
19 the license) for a regularly licensed life settlement
20 contract broker.

21 The services referred to in paragraphs (1) to [~~17~~] (19)
22 shall not include services in connection with examinations,



1 investigations, hearings, appeals, and deposits with a
2 depository other than the department of commerce and consumer
3 affairs."

4 SECTION 3. (a) A provider as defined in section 1 of this
5 Act lawfully transacting business in this State prior to the
6 effective date of this Act may continue to do so pending
7 approval or disapproval of that person's application for a
8 license as long as the application is filed with the insurance
9 commissioner not later than thirty days after publication by the
10 commissioner of an application form and instructions for
11 licensure of providers. If the publication of the application
12 form and instructions is prior to the effective date of this
13 Act, then the filing of the application shall not be later than
14 thirty days after the effective date of this Act. During the
15 time an application is pending with the commissioner, the
16 applicant may use any form of life settlement contract that has
17 been filed with the commissioner pending approval thereof;
18 provided that the form is otherwise in compliance with the
19 provisions of this Act. Any person transacting business in this
20 State under this provision shall be obligated to comply with all
21 other requirements of this Act.



1 (b) A person who has lawfully negotiated life settlement
2 contracts between any owner residing in this State and one or
3 more providers as defined in section 1 of this Act for at least
4 one year immediately prior to the effective date of this Act may
5 continue to do so pending approval or disapproval of that
6 person's application for a license as long as the application is
7 filed with the commissioner not later than thirty days after
8 publication by the commissioner of an application form and
9 instructions for licensure of brokers. If the publication of
10 the application form and instructions is prior to the effective
11 date of this Act, then the filing of the application shall not
12 be later than thirty days after the effective date of this Act.
13 Any person transacting business in this State under this
14 provision shall be obligated to comply with all other
15 requirements of this Act.

16 SECTION 4. This Act does not affect rights and duties that
17 matured, penalties that were incurred, and proceedings that were
18 begun, before its effective date.

19 SECTION 5. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.

21 SECTION 6. This Act shall take effect on July 1, 2050.



Report Title:

Life Settlements Model Act; Stranger-Oriented Life Insurance

Description:

Enacts the Life Settlements Model Act, which establishes consumer protections in life settlement transactions where the owner of a life insurance policy transfers the death benefit for compensation that is less than the expected death benefit, but more than the surrender value of the policy. Effective 7/1/2050. (SD2)

