

JAN 23 2008

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# A BILL FOR AN ACT

RELATING TO INSURANCE.

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

1           SECTION 1. Chapter 431, article 10D, Hawaii Revised  
2 Statutes, is amended by adding a new part to be appropriately  
3 designated and to read as follows:

4                               **"PART     .   LIFE SETTLEMENTS**

5           **§431:10D-A Definitions.** As used in this part:

6           "Advertisement" means any written, electronic or printed  
7 communication or any communication by means of recorded  
8 telephone messages or transmitted on radio, television, the  
9 Internet or similar communications media, including film strips,  
10 motion pictures and videos, published, disseminated, circulated,  
11 or placed directly before the public in this State for the  
12 purpose of creating an interest in or inducing a person to sell,  
13 assign, devise, bequest, or transfer the death benefit or  
14 ownership of a life insurance policy or an interest in a life  
15 insurance policy pursuant to a life settlement contract.

16           "Broker" means a person, including a life insurance  
17 producer under section 431:10D-B, who, on behalf of an owner and



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

12 "Business of life settlements" means an activity involved  
13 in, but not limited to, the offering, soliciting, negotiating,  
14 procuring, effectuating, purchasing, investing, financing,  
15 monitoring, tracking, underwriting, selling, transferring,  
16 assigning, hypothecating, or pledging of life settlement  
17 contracts or purchase agreements.

18 "Chronically ill" means:

- 19 (1) Being unable to perform at least two activities of  
20 daily living (i.e., eating, toileting, transferring,  
21 bathing, dressing, or continence);



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

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

7           "Commissioner" means the insurance commissioner.

8           "Financing entity" means an underwriter, placement agent,  
9           lender, purchaser of securities, purchaser of a policy or  
10          certificate from a provider, credit enhancer, or any entity that  
11          acquires a direct ownership in a policy or certificate that is  
12          the subject of a life settlement contract:

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

16          (2) Who has an agreement in writing with one or more  
17          providers to finance the acquisition of life  
18          settlement contracts,

19          but does not include a non-accredited investor or purchaser.

20          "Financing transaction" means a transaction in which a  
21          licensed provider obtains financing from a financing entity  
22          including, without limitation, any secured or unsecured



1 financing, any securitization transaction, or any securities  
2 offering that either is registered or exempt from registration  
3 under federal and state securities law.

4 "Fraudulent life settlement act" means:

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

10 (A) Presenting, causing to be presented, or preparing  
11 with knowledge and belief that it will be  
12 presented to or by a life settlement provider,  
13 premium finance lender, life settlement broker,  
14 life settlement purchaser, life settlement  
15 investment agent, financing entity, insurer,  
16 insurance producer, or any other person, false  
17 material information, or concealing material  
18 information, as part of, in support of or  
19 concerning a fact material to one or more of the  
20 following:

21 (i) An application for the issuance of a life  
22 settlement contract or insurance policy;



- 1           (ii) The underwriting of a life settlement
- 2                   contract or insurance policy;
- 3           (iii) A claim for payment or benefit pursuant to a
- 4                   life settlement contract or insurance
- 5                   policy;
- 6           (iv) Premiums paid on an insurance policy;
- 7           (v) Payments and changes in ownership or
- 8                   beneficiary made in accordance with the
- 9                   terms of a life settlement contract or
- 10                  insurance policy;
- 11          (vi) The reinstatement or conversion of an
- 12                  insurance policy;
- 13          (vii) The solicitation, offer, effectuation or
- 14                  sale of a life settlement contract or
- 15                  insurance policy;
- 16          (viii) The issuance of written evidence of life
- 17                  settlement contracts or insurance;
- 18          (ix) A financing transaction; or
- 19          (x) Any application for or the existence of or
- 20                  any payments related to a loan secured
- 21                  directly or indirectly by any interest in a
- 22                  life insurance policy;



1 (B) Employing any device, scheme, or artifice to  
2 defraud related to settled policies; and  
3 (C) Entering into, at any time prior to, or at the  
4 time of the application for, or issuance of, a  
5 policy, or during a two-year period commencing  
6 with the date of issuance of the policy, any  
7 transaction, or series of transactions, that  
8 includes one or more contracts, agreements,  
9 commitments, understandings, or arrangements that  
10 facilitate, or are ancillary to a life settlement  
11 contract that establish the terms under which  
12 compensation will be paid in return for the  
13 assignment, transfer, sale, devise, bequest or  
14 surrender of the death benefit or ownership of  
15 any portion of the policy regardless of the date  
16 the compensation is to be provided and regardless  
17 of the date the assignment, transfer, sale,  
18 devise, bequest or surrender is to occur; and  
19 (2) In the furtherance of a fraud or to prevent the  
20 detection of a fraud any person commits or permits its  
21 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; or
- 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, including but not
- 18                  limited to:
- 19                  (i) Embezzlement, theft, misappropriation, or
- 20                         conversion of monies, funds, premiums,
- 21                         credits or other property of a life
- 22                         settlement provider, insurer, insured,



1 owner, insurance, policy owner or any other  
2 person engaged in the business of life  
3 settlements or insurance;

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

15 (iii) Attempting to commit, assisting, aiding or  
16 abetting in the commission of, or conspiracy  
17 to commit the acts or omissions specified in  
18 this subsection.

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

21 "Life expectancy" means the arithmetic mean of the number  
22 of months the individual insured under the life insurance policy





1 to be settled can be expected to live as determined by the life  
2 settlement provider considering medical records and appropriate  
3 experiential data.

4 "Life insurance producer" means any person licensed in the  
5 State as a resident or nonresident insurance producer who has  
6 received qualification or authority for life insurance coverage  
7 or a life line of coverage.

8 "Life settlement contract" means a written agreement  
9 entered into between a provider and an owner, establishing the  
10 terms under which compensation or anything of value will be  
11 paid, which compensation or thing of value is less than the  
12 expected death benefit of the insurance policy or certificate,  
13 in return for the owner's assignment, transfer, sale, devise, or  
14 bequest of the death benefit or any portion of an insurance  
15 policy or certificate of insurance for compensation, provided,  
16 however, that the minimum value for a life settlement contract  
17 shall be greater than a cash surrender value or accelerated  
18 death benefit available at the time of an application for a life  
19 settlement contract.

20 A life settlement contract includes a premium finance loan  
21 made for a policy on or before the date of issuance of the  
22 policy where:



- 1           (1) The loan proceeds are not used solely to pay the
- 2                 premiums for the policy and the costs of the loan;
- 3           (2) The owner receives on the date of the premium finance
- 4                 loan a guarantee of the future life settlement value
- 5                 of the policy; or
- 6           (3) The owner agrees on the date of the premium finance
- 7                 loan to sell the policy or any portion of its death
- 8                 benefit on any date following the issuance of the
- 9                 policy.

10           A life settlement contract does not include any of the  
11 following:

- 12           (1) A policy loan by a life insurance company pursuant to
- 13                 the terms of the life insurance policy or a loan
- 14                 secured by the cash value of the policy, or
- 15                 accelerated death provisions contained in the life
- 16                 insurance policy, whether issued with the original
- 17                 policy or as a rider;
- 18           (2) A premium finance loan, as defined herein, or any loan
- 19                 made by a bank or other licensed financial
- 20                 institution;
- 21           (3) A collateral assignment of a life insurance policy by
- 22                 an owner;



1           (4) A loan made by a lender that does not violate the  
2           State's insurance premium finance law; provided that  
3           the loan is not described in paragraph (1), and is not  
4           otherwise within the definition of life settlement  
5           contract;

6           (5) An agreement where all the parties are closely related  
7           to the insured by blood or law, or have a lawful  
8           substantial economic interest in the continued life,  
9           health, and bodily safety of the person insured, or  
10          are trusts established primarily for the benefit of  
11          such parties; or

12          (6) Any other contract, transaction, or arrangement from  
13          the definition of life settlement contract that the  
14          commissioner determines is not of the type intended to  
15          be regulated by this part.

16          "Life settlement investment agent" means a person who is an  
17          appointed or contracted agent of a licensed life settlement  
18          provider who solicits or arranges the funding for the purchase  
19          of a life settlement contract by a life settlement purchaser and  
20          who is acting on behalf of a life settlement provider; provided  
21          that:

1 (1) A life settlement investment agent shall not have any  
2 contact directly or indirectly with the owner or  
3 insured; and

4 (2) A life settlement investment agent is deemed to  
5 represent the life settlement provider of whom the  
6 life settlement investment agent is an appointed or  
7 contracted agent.

8 "Net benefit" means the amount of life insurance policy or  
9 certificate to be settled less any outstanding debts or liens.

10 "Owner" means the owner of a life insurance policy or a  
11 certificate holder under a group policy, with or without a  
12 terminal illness, who is a resident of the State and who enters  
13 or seeks to enter into a life settlement contract. For the  
14 purposes of this article, an owner shall not be limited to an  
15 owner of a life insurance policy or a certificate holder under a  
16 group policy that insures the life of an individual with a  
17 terminal or chronic illness or condition except where  
18 specifically addressed. "Owner" does not include:

- 19 (1) Any provider or other licensee under this Act;  
20 (2) A qualified institutional buyer as defined in Rule  
21 144A of the federal Securities Act of 1933, as  
22 amended;



- 1 (3) A financing entity;
- 2 (4) A special purpose entity; or
- 3 (5) A related provider trust.

4 "Patient identifying information" means an insured's  
5 address, telephone number, facsimile number, electronic mail  
6 address, photograph or likeness, employer, employment status,  
7 social security number, or any other information that is likely  
8 to lead to the identification of the insured.

9 "Person" means any natural person or legal entity,  
10 including but not limited to, an individual, partnership,  
11 limited liability company, association, trust, or corporation.

12 "Premium finance loan" means a loan made primarily for the  
13 purposes of making premium payments on a life insurance policy,  
14 which loan is secured by an interest in the life insurance  
15 policy and where the borrower and owner have an insurable  
16 interest in the life of the insured; provided that the lender's  
17 interest in the policy does not exceed the amount due under the  
18 loan, including principal, interest, costs of collection and  
19 other permitted loan costs and fees. A premium finance loan  
20 shall not include any agreement by which the borrower, owner, or  
21 insured receive a guarantee of settlement value or a monetary  
22 inducement to purchase the life insurance policy, or any



1 agreement for future sale or settlement of the life insurance  
2 policy. A premium finance loan shall not include an agreement  
3 for direct or indirect transfer of ownership or control of the  
4 life insurance policy except to the extent of enforcement of the  
5 lender's legitimate security interest in the life insurance  
6 policy.

7 "Provider" means a person, other than an owner, who enters  
8 into a life settlement contract with an owner, but does not  
9 include:

- 10 (1) Any bank, savings bank, savings and loan association,  
11 or credit union;
- 12 (2) A licensed lending institution or creditor or secured  
13 party pursuant to a premium finance loan agreement  
14 which takes an assignment of a life insurance policy  
15 or certificate issued pursuant to a group life  
16 insurance policy as collateral for a loan;
- 17 (3) The insurer of a life insurance policy or rider to the  
18 extent of providing accelerated death benefits or  
19 riders, or cash surrender value;
- 20 (4) Any natural person who enters into or effectuates no  
21 more than one agreement in a calendar year for the  
22 transfer of a life insurance policy or certificate



1 issued pursuant to a group life insurance policy, for  
2 compensation or anything of value less than the  
3 expected death benefit payable under the policy;

4 (5) A purchaser;

5 (6) Any authorized or eligible insurer that provides stop  
6 loss coverage to a provider, purchaser, financing  
7 entity, special purpose entity, or related provider  
8 trust;

9 (7) A financing entity;

10 (8) A special purpose entity;

11 (9) A related provider trust;

12 (10) A broker; or

13 (11) An accredited investor or qualified institutional  
14 buyer as defined in respectively in regulation D, rule  
15 501 or rule 144A of the federal Securities Act of  
16 1933, as amended, who purchases a life settlement  
17 policy from a life settlement provider.

18 "Purchase agreement" means a contract or agreement entered  
19 into by a provider with a purchaser, to which the owner is not a  
20 party, to purchase a policy or an interest in a life insurance  
21 policy, or acquire a beneficial interest, or a certificate  
22 issued pursuant to a group life insurance policy.



1 "Purchase policy" or "settled policy" means a policy or  
2 group certificate that has been acquired by a provider pursuant  
3 to a life settlement contract.

4 "Purchaser" means a person who pays compensation or  
5 anything of value as consideration for a beneficial interest in  
6 a trust which is vested with, or for the assignment, transfer,  
7 or sale of, an ownership or other interest in a life insurance  
8 policy or a certificate issued pursuant to a group life  
9 insurance policy which is, has been, or will be the subject of a  
10 life settlement contract. A purchaser does not include a  
11 licensee under this part, any person who is a qualified  
12 institutional buyer or accredited investor (as defined,  
13 respectively, in Rule 144A or Regulation D, Rule 501,  
14 promulgated under the Securities Act of 1933, as amended), a  
15 financing entity, or a special purpose entity, or a related  
16 provider trust.

17 "Related provider trust" means a titling trust or other  
18 trust established by a licensed provider or a financing entity  
19 for the sole purpose of holding the ownership or beneficial  
20 interest in purchased policies in connection with a financing  
21 transaction. In order to qualify as a provider trust, the trust  
22 must have a written agreement with the licensed provider under





1 which the licensed provider is responsible for ensuring  
2 compliance with all statutory and regulatory requirements and  
3 under which the trust agrees to make all records and files  
4 relating to life settlement transactions available to the  
5 insurance division as if those records and files were maintained  
6 directly by the licensed provider.

7 "Settled policy" means a life insurance policy or  
8 certificate that has been acquired by a life settlement provider  
9 pursuant to a life settlement contract.

10 "Special purpose entity" means a corporation, partnership,  
11 trust, limited liability company, or other similar entity formed  
12 solely to provide either directly or indirectly access to  
13 institutional capital markets for a financing entity or  
14 provider.

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

18 **§431:10D-B Licensing requirements.** (a) No person,  
19 wherever located, shall act as a provider or broker with an  
20 owner or multiple owners or purchaser who is a resident of the  
21 State, without first having obtained a license from the  
22 commissioner. If there is more than one owner on a single



1 policy and the owners are residents of different states, the  
2 life settlement contract shall be governed by the law of the  
3 state in which the owner having the largest percentage ownership  
4 resides or, if the owners hold equal ownership, the state of  
5 residence of one owner agreed upon in writing by all owners.

6 (b) Application for a provider, broker, or life settlement  
7 investment agent license shall be made to the commissioner by  
8 the applicant on a form prescribed by the commissioner, and the  
9 application shall be accompanied by a fee in an amount  
10 established by the commissioner; provided that the license and  
11 renewal fees for a provider license shall be reasonable and the  
12 license and renewal fees for a broker license shall not exceed  
13 those established for an insurance producer, as these fees are  
14 otherwise provided for in this chapter.

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

21 (d) No later than thirty days from the first day of  
22 operating as a broker, the life insurance producer shall notify



1 the commissioner that the producer is acting as a broker on a  
2 form prescribed by the commissioner, and shall pay any  
3 applicable fee to be determined by the commissioner.  
4 Notification shall include an acknowledgement by the life  
5 insurance producer that the producer will operate as a broker in  
6 accordance with this part.

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

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

21 (g) Licenses may be renewed every two years on the  
22 anniversary date upon payment of the periodic renewal fee. As



1 specified by subsection (b) of this section, the renewal fee for  
2 a provider shall not exceed a reasonable fee. Failure to pay  
3 the fee within the terms prescribed shall result in the  
4 automatic revocation of the license requiring periodic renewal.

5 (h) The term of a provider license shall be equal to that  
6 of a domestic stock life insurance company and the term of a  
7 broker license shall be equal to that of an insurance producer  
8 license. Licenses requiring periodic renewal may be renewed on  
9 their anniversary date upon payment of the periodic renewal fee  
10 as specified in subsection (b) of this section. Failure to pay  
11 the fees on or before the renewal date shall result in  
12 expiration of the license.

13 (i) The applicant shall provide information as the  
14 commissioner may require on forms prepared by the commissioner.  
15 The commissioner shall have authority, at any time, to require  
16 the applicant to fully disclose the identity of its  
17 stockholders, (except stockholders owning fewer than ten per  
18 cent of the shares of an applicant whose shares are publicly  
19 traded), partners, officers and employees, and the commissioner  
20 may, in the exercise of the commissioner's sole discretion,  
21 refuse to issue a license in the name of any person if not  
22 satisfied that any officer, employee, stockholder, or partner



1    thereof who may materially influence the applicant's conduct  
2    meets the standards of this part.

3           (j)   A license issued to a partnership, corporation or  
4    other entity authorizes all members, officers, and designated  
5    employees to act as a licensee under the license, if those  
6    persons are named in the application and any supplements to the  
7    application.

8           (k)   Upon the filing of an application and the payment of  
9    the license fee, the commissioner shall make an investigation of  
10   each applicant and may issue a license if the commissioner finds  
11   that the applicant:

12           (1)   If a provider has provided a detailed plan of  
13                 operation;

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

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

19           (4)   If the applicant is a corporation, is incorporated  
20                 pursuant to the laws of this State, or is a foreign  
21                 corporation authorized to transact business in this



1 State, or provides a certificate of good corporate  
2 standing from the state of its domicile; and  
3 (5) Has provided to the commissioner an anti-fraud plan  
4 that meets the requirements of this part and includes:  
5 (A) A description of the procedures for detecting and  
6 investigating possible fraudulent acts and  
7 procedures for resolving material inconsistencies  
8 between medical records and insurance  
9 applications;  
10 (B) A description of the procedures for reporting  
11 fraudulent insurance acts to the commissioner;  
12 (C) A description of the plan for anti-fraud  
13 education and training of its underwriters and  
14 other personnel; and  
15 (D) A written description or chart outlining the  
16 arrangement of the anti-fraud personnel who are  
17 responsible for the investigation and reporting  
18 of possible fraudulent insurance acts and  
19 investigating unresolved material inconsistencies  
20 between medical records and insurance  
21 applications.



1           (1) The commissioner shall not issue any license to any  
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           (m) Each licensee shall file with the commissioner on or  
9 before the first day of March of each year an annual statement  
10 containing information as the commissioner by rule may  
11 prescribe.

12           (n) A provider may not use any person to perform the  
13 functions of a life settlement investment agent or broker as  
14 defined in this part unless the person holds a current, valid  
15 license as a life settlement investment agent or broker, and as  
16 provided in this section.

17           (o) A life settlement investment agent or broker may not  
18 use any person to perform the functions of a provider as defined  
19 in this part unless the person holds a current, valid license as  
20 a provider, and as provided in this section.

21           (p) A provider, broker, under the broker license, or life  
22 settlement investment agent shall provide to the commissioner



1 new or revised information about officers, ten per cent or more  
2 stockholders, partners, directors, members, or designated  
3 employees within thirty days of the change.

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

12 **§431:10D-C License suspension, revocation, or refusal to**  
13 **renew.** (a) The commissioner may suspend, revoke or refuse to  
14 renew the license of any licensee if the commissioner finds  
15 that:

- 16 (1) There was any material misrepresentation in the  
17 application for the license;
- 18 (2) The licensee or any officer, partner, member, or  
19 director has been guilty of fraudulent or dishonest  
20 practices, is subject to a final administrative action  
21 or is otherwise shown to be untrustworthy or  
22 incompetent to act as a licensee;





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



1 in Regulation D, Rule 501 or Rule 144A of the federal  
2 Securities Act of 1933, as amended, financing entity,  
3 special purpose entity, or related provider trust; or

4 (9) The licensee or any officer, partner, member, or key  
5 management personnel has violated any of the  
6 provisions of this part.

7 (b) Before the commissioner denies a license application  
8 or suspends, revokes, or refuses to renew the license of any  
9 licensee under this part, the commissioner shall conduct a  
10 hearing in accordance with the State's laws governing  
11 administrative hearings.

12 **§431:10D-D Contract requirements.** (a) No person may use  
13 any form of life settlement contract or purchase agreement in  
14 the State unless it has been filed with and approved, if  
15 required, by the commissioner in a manner that conforms with the  
16 filing procedures and any time restrictions or deeming  
17 provisions, if any, for life insurance forms, policies, and  
18 contracts.

19 (b) No insurer may, as a condition of responding to a  
20 request for verification of coverage or in connection with the  
21 transfer of a policy pursuant to a life settlement contract,  
22 require that the owner, insured, provider, or broker sign any



1 form, disclosure, consent, waiver, or acknowledgment that has  
2 not been expressly approved by the commissioner for use in  
3 connection with life settlement contracts in the State.

4       **§431:10D-E Reporting requirements and privacy.** (a) Each  
5 licensee shall file with the commissioner on or before March 1  
6 of each year an annual statement containing such information as  
7 the commissioner may prescribe by rule. The information shall  
8 be limited to only those transactions where the owner is a  
9 resident of this State and shall not include individual  
10 transaction data regarding the business of life settlements or  
11 data that could compromise the privacy of personal, financial,  
12 and health information of the owner or insured.

13       (b) Except as otherwise allowed or required by law, a life  
14 settlement provider, life settlement broker, life settlement  
15 investment agent, insurance company, insurance producer,  
16 information bureau, rating agency or company, or any other  
17 person with actual knowledge of an insured's identity, shall not  
18 disclose that identity as an insured, or the insured's financial  
19 or medical information to any other person unless the  
20 disclosure:

21       (1) Is necessary to effect a life settlement contract  
22             between the owner and a life settlement provider and



1 the owner and insured have provided prior written  
2 consent to the disclosure;

3 (2) Is provided in response to an investigation or  
4 examination by the commissioner or any other  
5 governmental officer or agency or pursuant to the  
6 requirements of this part;

7 (3) Is a term or condition to the transfer of a policy by  
8 one life settlement provider to another life  
9 settlement provider;

10 (4) Is necessary to permit a financing entity, related  
11 provider trust or special purpose entity to finance  
12 the purchase of policies by a life settlement provider  
13 and the owner and insured have provided prior written  
14 consent to the disclosure;

15 (5) Is necessary to allow the life settlement provider or  
16 their authorized representatives to make contacts for  
17 the purpose of determining health status; or

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

19 **§431:10D-F Examination.** (a) The commissioner may, when  
20 the 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 part 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) Names of and individual identification data, or for  
14 all owners and insureds shall be considered private and  
15 confidential information and shall not be disclosed by the  
16 commissioner unless required by law.

17 (d) Records of all transactions, life settlement contracts  
18 and purchase agreements, shall be maintained by the provider for  
19 three years after the death of the insured and shall be  
20 available to the commissioner for inspection during reasonable  
21 business hours.



1 (e) Conduct of the examinations shall include the  
2 following:

3 (1) Upon determining that an examination should be  
4 conducted, the commissioner shall issue an examination  
5 warrant appointing one or more examiners to perform  
6 the examination and instructing them as to the scope  
7 of the examination. In conducting the examination,  
8 the examiner shall use methods common to the  
9 examination of any life settlement licensee and should  
10 use those guidelines and procedures set forth in an  
11 examiners' handbook adopted by a national  
12 organization.

13 (2) Every licensee or person from whom information is  
14 sought, its officers, directors, and agents shall  
15 provide to the examiners timely, convenient, and free  
16 access at all reasonable hours at its offices to all  
17 books, records, accounts, papers, documents, assets,  
18 and computer or other recordings relating to the  
19 property, assets, business, and affairs of the  
20 licensee being examined. The officers, directors,  
21 employees, and agents of the licensee or person shall  
22 facilitate the examination and aid in the examination



1 so far as it is in their power to do so. The refusal  
2 of a licensee, by its officers, directors, employees,  
3 or agents, to submit to examination or to comply with  
4 any reasonable written request of the commissioner  
5 shall be grounds for suspension or refusal of, or  
6 nonrenewal of any license or authority held by the  
7 licensee to engage in the life settlement business or  
8 other business subject to the commissioner's  
9 jurisdiction.

10 (3) The commissioner shall have the power to issue  
11 subpoenas, to administer oaths, and to examine under  
12 oath any person as to any matter pertinent to the  
13 examination. Upon the failure or refusal of a person  
14 to obey a subpoena, the commissioner may petition a  
15 court of competent jurisdiction, and upon proper  
16 showing, the court may enter an order compelling the  
17 witness to appear and testify or produce documentary  
18 evidence.

19 (4) When making an examination under this part, the  
20 commissioner may retain attorneys, appraisers,  
21 independent actuaries, independent certified public  
22 accountants, or other professionals and specialists as



1 examiners, the reasonable cost of which shall be borne  
2 by the licensee that is the subject of the  
3 examination.

4 (5) Nothing contained in this part shall be construed to  
5 limit the commissioner's authority to terminate or  
6 suspend an examination in order to pursue other legal  
7 or regulatory action pursuant to the insurance laws of  
8 this State. Findings of fact and conclusions made  
9 pursuant to any examination shall be prima facie  
10 evidence in any legal or regulatory action.

11 (6) Nothing contained in this part shall be construed to  
12 limit the commissioner's authority to use and, if  
13 appropriate, to make public any final or preliminary  
14 examination report, any examiner or licensee work  
15 papers or other documents, or any other information  
16 discovered or developed during the course of any  
17 examination in the furtherance of any legal or  
18 regulatory action which the commissioner, in the  
19 commissioner's sole discretion, may deem appropriate.

20 (f) Examination reports shall include the following:

21 (1) Examination reports shall be comprised of only facts  
22 appearing upon the books, from the testimony of its





1 officers or agents or other persons examined  
2 concerning its affairs, and any conclusions and  
3 recommendations as the examiners find reasonably  
4 warranted from the facts.

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

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

21 (g) Confidentiality of examination information shall  
22 include the following:



1           (1) Names and individual identification data for all  
2           owners and insureds shall be considered private and  
3           confidential information and shall not be disclosed by  
4           the commissioner, unless required by law; and

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

22          (h) With respect to conflict of interest:



1           (1) An examiner may not be appointed by the commissioner  
2           if the examiner, either directly or indirectly, has a  
3           conflict of interest or is affiliated with the  
4           management of or owns a pecuniary interest in any  
5           person subject to examination under this part. This  
6           section shall not be construed to automatically  
7           preclude an examiner from being:

8           (A) An owner;

9           (B) An insured in a life settlement contract or  
10          insurance policy; or

11          (C) A beneficiary in an insurance policy that is  
12          proposed for a life settlement contract.

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

21          (i) With respect to immunity to liability:



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

7           (2) 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  
11          representative or examiner pursuant to an examination  
12          made under this part, if the act of communication or  
13          delivery was performed in good faith and without  
14          fraudulent intent or the intent to deceive. This  
15          paragraph does not abrogate or modify in any way any  
16          common law or statutory privilege or immunity  
17          heretofore enjoyed by any person identified in  
18          paragraph (1).

19          (3) A person identified in paragraph (1) or (2) shall be  
20          entitled to an award of attorney's fees and costs if  
21          the person is the prevailing party in a civil cause of  
22          action for libel, slander, or any other relevant tort



1 arising out of activities in carrying out the  
2 provisions of this part and the party bringing the  
3 action was not substantially justified in doing so.

4 For purposes of this section a proceeding is  
5 "substantially justified" if it had a reasonable basis  
6 in law or fact at the time that it was initiated.

7 (j) The commissioner may investigate suspected fraudulent  
8 list settlement acts and person engaged in the business of life  
9 settlements.

10 (k) The commissioner shall establish examination fees by  
11 rule pursuant to chapter 91.

12 **§431:10D-G Advertising.** (a) A broker or provider  
13 licensed pursuant to this part may conduct or participate in  
14 advertisements within the State. Advertisements shall comply  
15 with all advertising and marketing laws of the State or rules  
16 adopted by the commissioner that are applicable to life insurers  
17 or to brokers and providers licensed pursuant to this part.

18 (b) Advertising shall be accurate, truthful, and not  
19 misleading in fact or by implication.

20 (c) No person or trust shall:

21 (1) Directly or indirectly, market, advertise, solicit, or  
22 otherwise promote the purchase of a policy for the



1           sole purpose of or with an emphasis on settling the  
2           policy; or

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

6           **431:10D-H Disclosures to owners.** (a) The provider shall  
7 provide in writing, in a separate document that is signed by the  
8 owner and provider, the following information to the owner no  
9 later than the date the life settlement contract is signed by  
10 all parties:

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

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

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

20           (4) The fact that receipt of proceeds from a life  
21           settlement contract may adversely affect the  
22           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 rescind a life  
4 settlement contract within fifteen days of the date it  
5 is executed by all parties and the owner has received  
6 the disclosures contained herein. Rescission, if  
7 exercised by the owner, is effective only if both  
8 notice of the rescission is given, and the owner  
9 repays all proceeds and any premiums, loans, and loan  
10 interest paid on account of the life settlement  
11 provider within the rescission period. If the insured  
12 dies during the rescission period, the contract shall  
13 be deemed to have been rescinded subject to repayment  
14 by 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 written  
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 of a group  
7 policy to be forfeited by the owner and that  
8 assistance should be sought from a professional  
9 financial advisor;

10 (8) In the case of a life settlement contract in which the  
11 insured is terminally or chronically ill the amount  
12 and method of calculating the broker's compensation,  
13 wherein the term compensation includes anything of  
14 value paid or given to a broker for the placement of a  
15 policy;

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

18 (10) The fact that the commissioner shall require delivery  
19 of a buyer's guide or a similar consumer advisory  
20 package in the form prescribed by the commissioner to  
21 owners during the solicitation process;





1           (11) The disclosure document shall contain the following  
2           language:

3                   "All medical, financial, or personal information  
4                   solicited or obtained by a life settlement  
5                   provider or life settlement broker about an  
6                   insured, including the insured's identity or the  
7                   identity of family members, a spouse, or a  
8                   significant other may be disclosed as necessary  
9                   to effect the life settlement contract between  
10                  the owner and provider. If you are asked to  
11                  provide this information, you will be asked to  
12                  consent to the disclosure. The information may  
13                  be provided to someone who buys the policy or  
14                  provides funds for the purchase. You may be  
15                  asked to renew your permission to share  
16                  information every two years";

17           (12) The fact that the commissioner shall require providers  
18           and brokers to print separate signed fraud warnings on  
19           their applications and on their life settlement  
20           contracts is as follows:

21                   "Any person who knowingly presents false  
22                   information in an application for insurance or



1           life settlement contract is guilty of a crime and  
2           may be subject to fines and confinement in  
3           prison."

4       (13) The fact that the insured may be contacted by either  
5           the life settlement provider or its authorized  
6           representative for the purpose of determining the  
7           insured's health status. This contact is limited to  
8           once every three months if the insured has a life  
9           expectancy of more than one year, and no more than  
10          once per month if the insured has a life expectancy of  
11          one year or less;

12       (14) State the affiliation, if any, between the life  
13          settlement provider and the issuer of the insurance  
14          policy to be settled;

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

20       (16) The document shall include the name, address, and  
21          telephone number of the life settlement provider;



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

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

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

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

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



- 1           (2) A full, complete, and accurate description of all  
2           offers, counter-offers, acceptances, and rejections  
3           relating to the proposed life settlement contract; and  
4           (3) A written disclosure of any affiliations or  
5           contractual arrangements between the life settlement  
6           broker and any person making an offer in connection  
7           with the proposed life settlement contracts.

8           **§431:10D-I Disclosure to insurer.** Insurance carriers may  
9 determine in the application for insurance if the proposed owner  
10 intends to pay premiums with the assistance of a loan by a  
11 lending institution which uses the policy as collateral for the  
12 loan as follows:

13           (1) If the loan provides funds, which can be used for a  
14           purpose other than paying for the premiums, costs, and  
15           expenses associated with obtaining and maintaining the  
16           life insurance policy and loan, the application shall  
17           be rejected as a violation of the prohibited practices  
18           in this part.

19           (2) If the loan does not violate a prohibited practice in  
20           this manner, the insurance carrier:

21           (A) May make disclosures to the applicant and the  
22           insured, either on the application or an



1                   amendment to the application to be completed no  
2                   later than the delivery of the policy; or  
3                   (B) May require certifications from the applicant or  
4                   the insured.

5                   **§431:10D-J General rules.** (a) A provider entering into a  
6 life settlement contract with any owner of a policy, wherein the  
7 insured is terminally or chronically ill, shall first obtain:

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

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

19                   (b) The insurer shall respond to a request for  
20 verification of coverage submitted by a settlement provider,  
21 settlement broker, or life insurance producer not later than  
22 thirty calendar days of the date the request is received. The

1 request for verification of coverage shall be made on a form  
2 approved by the commissioner. The insurer shall complete and  
3 issue the verification of coverage or indicate in which respects  
4 it is unable to respond. In its response, the insurer shall  
5 indicate whether, based on the medical evidence and documents  
6 provided, the insurer intends to pursue an investigation at this  
7 time regarding the validity of the insurance contract.

8 (c) Before or at the time of execution of the settlement  
9 contract, the settlement provider shall obtain a witnessed  
10 document in which the seller consents to the settlement  
11 contract, represents that the seller has a full and complete  
12 understanding of the settlement contract, that the seller has a  
13 full and complete understanding of the benefits of the policy,  
14 acknowledges that the seller is entering into the settlement  
15 contract freely and voluntarily, and, for persons with a  
16 terminal or chronic illness or condition, acknowledges that the  
17 insured has a terminal or chronic illness and that the terminal  
18 or chronic illness or condition was diagnosed after the policy  
19 was issued.

20 (d) The insurer shall not unreasonably delay effecting  
21 change of ownership or beneficiary with any life settlement



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

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

7 (f) If a life settlement broker performs those  
8 verification of coverage activities required of the life  
9 settlement provider, the provider is deemed to have fulfilled  
10 the requirements of section 431:10D-H(a).

11 (g) Within twenty days after an owner executes the life  
12 settlement contract, the life settlement provider shall give  
13 written notice to the insurer that issued that insurance policy  
14 that the policy has become subject to a life settlements  
15 contract. The notice shall be accompanied by the documents  
16 required by section 431:10C-I.

17 (h) All medical information solicited or obtained by any  
18 licensee shall be subject to the applicable provision of state  
19 law relating to confidentiality of medical information, if not  
20 otherwise provided in this part.

21 (i) All life settlement contracts and purchase agreements  
22 entered into in the State shall provide that the owner may



1 rescind the contract on or before fifteen days after the date it  
2 is executed by all parties thereto. Rescission, if exercised by  
3 the owner, is effective only if both notice of the rescission is  
4 given, and the owner repays all proceeds and any premiums,  
5 loans, and loan interest paid on account of the life settlement  
6 provider within the rescission period. If the insured dies  
7 during the rescission period, the contract shall be deemed to  
8 have been rescinded subject to repayment by the owner or the  
9 owner's estate of all proceeds and any premiums, loans, and loan  
10 interest to the provider.

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

20 (k) Failure to tender the life settlement contract  
21 proceeds to the owner by the date disclosed to the owner renders  
22 the contract voidable by the owner for lack of consideration





1 until the time the proceeds are tendered to and accepted by the  
2 owner. A failure to give written notice of the right of  
3 rescission hereunder shall toll the right of rescission until  
4 thirty days after the written notice of the right of rescission  
5 has been given.

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

13 (m) The broker shall disclose to the owner anything of  
14 value paid or given to the broker, which relate to a life  
15 settlement contract with an owner who has a terminal or life  
16 threatening illness.

17 (n) No person at any time prior to, or at the time of, the  
18 application for, or issuance of, a policy, or during a two-year  
19 period commencing with the date of issuance of the policy, shall  
20 enter into any transaction, or series of transactions that  
21 establish the terms under which compensation will be paid in  
22 return for the assignment, transfer, sale, devise, bequest, or



1 surrender of the death benefit or ownership of any portion of  
2 the policy regardless of the date the compensation is to be  
3 provided and regardless of the date the assignment, transfer,  
4 sale, devise, bequest or surrender is to occur. This  
5 prohibition shall not apply if the owner certifies to the  
6 settlement provider that one or more of the following conditions  
7 have been met within the two-year period:

8 (1) The policy was issued upon the seller's exercise of  
9 conversion rights arising out of a group or individual  
10 policy, provided the total of the time covered under  
11 the conversion policy plus the time covered under the  
12 prior policy is at least twenty-four months. The time  
13 covered under a group policy must be calculated  
14 without regard to a change in insurance carriers,  
15 provided the coverage has been continuous and under  
16 the same group sponsorship; or

17 (2) The seller submits independent evidence to the  
18 settlement provider that one or more of the following  
19 conditions have been met within the two-year period:

20 (A) The seller or insured is terminally or  
21 chronically ill; or



- 1           (B) The seller or insured disposes of the seller's or  
2           insured's ownership interests in a closely held  
3           corporation, pursuant to the terms of a buyout or  
4           other similar agreement in effect at the time the  
5           insurance policy was initially issued;
- 6           (C) Copies of the independent evidence described in  
7           paragraph (2) and documents required by this  
8           section shall be submitted to the insurer when  
9           the settlement provider submits a request to the  
10          insurer for verification of coverage. The copies  
11          shall be accompanied by a letter of attestation  
12          from the settlement provider that the copies are  
13          true and correct copies of the documents received  
14          by the settlement provider; or
- 15          (D) If the settlement provider submits to the insurer  
16          a copy of independent evidence provided for in  
17          subparagraph (A) when the settlement provider  
18          submits a request to the insurer to effect the  
19          transfer of the policy to the settlement  
20          provider, the copy is deemed to establish that  
21          the settlement contract satisfies the  
22          requirements of this section.



1 (o) Copies of the independent evidence under this section  
2 shall be submitted to the insurer when the provider submits a  
3 request for verification of coverage. These copies shall be  
4 accompanied by a letter of attestation from the provider that  
5 the copies are true and correct copies of the documents received  
6 by the provider. Nothing in this section shall prohibit an  
7 insurer from exercising its right to contest the validity of any  
8 policy.

9 **§431:10D-K Authority to adopt rules; conflict of laws.**

10 (a) The commissioner may adopt rules implementing this part and  
11 regulating the activities and relationships of providers,  
12 brokers, and life settlement investment agents, insurers and  
13 their agents, subject to statutory limitations on administrative  
14 rulemaking.

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

21 (c) A provider from the State who enters into a life  
22 settlement contract with an owner who is a resident of another



1 state that has enacted statutes or adopted rules or regulations  
2 governing life settlement contracts, shall be governed in the  
3 effectuation of that life settlement contract by the statutes,  
4 rules, and regulations of the owner's state of residence. If  
5 the state in which the owner is a resident has not enacted  
6 statutes, rules, or regulations governing life settlement  
7 contracts, the provider shall give the owner notice that neither  
8 state regulates the transaction upon which the owner is  
9 entering. For transactions in those states, however, the  
10 provider is to maintain all records required if the transactions  
11 were executed in the state of residence. The forms used in  
12 those states need not be approved by the commissioner.

13 (d) If there is a conflict in the laws that apply to an  
14 owner and a purchaser in any individual transaction, the laws of  
15 the state that apply to the owner shall take precedence and the  
16 provider shall comply with those laws.

17 **§431:10D-L Prohibited practices.** 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 life  
21 insurance policy was obtained by means of a false,  
22 deceptive, or misleading application for the 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 section;

5           (3) Engage in any fraudulent act or practice in connection  
6           with any transaction relating to any settlement  
7           involving an owner or purchaser who is a resident of  
8           the State.

9           (4) With respect to any settlement contract or insurance  
10          policy and a broker, knowingly solicit an offer from,  
11          effectuate a settlement with, or make a sale to any  
12          provider, purchaser, life settlement investment agent,  
13          financing entity or related provider that is  
14          controlling, controlled by, or under common control  
15          with the broker.

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

1 investment agent, financing entity, or related  
2 provider trust that is involved in such settlement  
3 contract.

4 (6) With respect to a provider, enter into a life  
5 settlement contract unless the life settlement  
6 promotional, advertising and marketing materials, as  
7 may be prescribed by rule, have been filed with the  
8 commissioner. In no event shall any marketing  
9 materials expressly reference that the insurance is  
10 "free" for any period of time. The inclusion of any  
11 reference in the marketing materials that would cause  
12 an owner to reasonably believe that the insurance is  
13 free for any period of time shall be considered a  
14 violation of this part.

15 (7) With respect to any life insurance producer, insurance  
16 company, broker, provider or life settlement  
17 investment agent, make any statement or representation  
18 to the applicant or policyholder in connection with  
19 the sale or financing of a life insurance policy to  
20 the effect that the insurance is free or without cost  
21 to the policyholder for any period of time unless  
22 provided in the policy.



1           (8) A violation of this section shall be deemed a  
2           fraudulent life settlement act.

3           §431:10D-M False representation; deceptive words. (a) It  
4 is unlawful for a person in the advertisement, offer, or sale of  
5 a purchase agreement to misrepresent that such an agreement has  
6 been guaranteed, sponsored, recommended, or approved by the  
7 State, or any agency or officer of the State, or by the United  
8 States or any agency or officer of the United States. An  
9 advertisement shall not use the name or title of a life  
10 insurance company or insurance policy unless prior written  
11 approval has been obtained from the life insurance company.

12           (b) It is unlawful for a person in conjunction with the  
13 sale of a purchase agreement to directly or indirectly  
14 misrepresent that the person has been sponsored, recommended, or  
15 approved, or that the person's abilities or qualifications have  
16 in any respect been passed upon, by this State or any other  
17 state, or any agency or officer thereof, or by the United States  
18 or any agency or officer thereof.

19           (c) It is unlawful for a person in the offer or sale of a  
20 purchase agreement to obtain money or property by:

21           (1) A misrepresentation that the purchase agreement  
22           purchased, offered, or sold is guaranteed, sponsored,





1 recommended, or approved by the State or any other  
2 state, or any agency or officer thereof, or by the  
3 United States or any agency or officer thereof;

4 (2) A misrepresentation that the person is sponsored,  
5 recommended, or approved, or that the person's  
6 abilities or qualifications have in any respect been  
7 passed upon, by the State or any other state, or any  
8 agency or officer thereof, or by the United States or  
9 any agency or officer thereof;

10 (3) A misrepresentation that a purchase agreement is  
11 guaranteed by any insurance guaranty fund; or

12 (4) A misrepresentation that a purchase agreement is  
13 "guaranteed", that the principal is "safe", or that  
14 the purchase agreement is free of risk.

15 (d) This section may not be construed to prohibit a  
16 statement that the person is licensed or appointed under this  
17 part if such a statement is required by this part or rules  
18 adopted under this part, if the statement is true in fact, and  
19 if the effect of the statement is not misrepresented.

20 (e) The commissioner may allow exceptions to this section,  
21 by rule.



1           §431:10D-N Fraud prevention and control. (a) With  
2 respect to fraudulent life settlement acts, interference and  
3 participation of convicted felons are prohibited as follows:

4           (1) A person shall not commit a fraudulent life settlement  
5 act;

6           (2) A person shall not knowingly and intentionally  
7 interfere with the enforcement of the provisions of  
8 this part or investigations of suspected or actual  
9 violations of this part; and

10          (3) A person in the business of life settlements shall not  
11 knowingly or intentionally permit any person convicted  
12 of a felony involving dishonesty or breach of trust to  
13 participate in the business of life settlements.

14          (b) With respect to the requirement for fraud warning:

15          (1) Life settlement contracts and purchase agreement  
16 forms, and applications for life settlement contracts,  
17 regardless of the form of transmission, shall contain  
18 the following statement or a substantially similar  
19 statement:

20                        "Any person who knowingly presents false  
21 information in an application for insurance or  
22 life settlement contract or a life settlement



1 purchase agreement is guilty of a crime and may  
2 be subject to fines and confinement in prison."

3 (2) The lack of a statement as required in this section  
4 does not constitute a defense in any prosecution for a  
5 fraudulent life settlement act.

6 (c) With respect to mandatory reporting to fraudulent life  
7 settlement acts:

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

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

19 (d) With respect to immunity from liability:

20 (1) No civil liability shall be imposed on and no cause of  
21 action shall arise from a person's furnishing  
22 information concerning suspected, anticipated, or



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



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

6           (3) A person identified in paragraph (1) shall be entitled  
7           to an award of attorney's fees and costs if the person  
8           is the prevailing party in a civil cause of action for  
9           libel, slander, or any other relevant tort arising out  
10          of activities in carrying out the provisions of this  
11          chapter where the party bringing the action was not  
12          substantially justified in doing so. For purposes of  
13          this section, a proceeding is "substantially  
14          justified" if it had a reasonable basis in law or fact  
15          at the time that it was initiated.

16          (4) This subsection does not abrogate or modify common law  
17          or statutory privileges or immunities enjoyed by a  
18          person described in paragraph (1).

19          (e) With respect to confidentiality:

20          (1) The documents and evidence submitted pursuant to this  
21          part or obtained by the commissioner in an  
22          investigation of suspected or actual fraudulent life



1 settlement acts shall be privileged and confidential,  
2 shall not be a public record, and shall not be subject  
3 to discovery or subpoena in a civil or criminal  
4 action.

5 (2) Paragraph (1) of this subsection does not prohibit  
6 release by the commissioner of documents and evidence  
7 obtained in an investigation of suspected or actual  
8 fraudulent life settlement acts:

9 (A) In administrative or judicial proceedings to  
10 enforce laws administered by the commissioner;

11 (B) To federal, state, or local law enforcement or  
12 regulatory agencies, to an organization  
13 established for the purpose of detecting and  
14 preventing fraudulent life settlement acts or to  
15 the National Association of Insurance  
16 Commissioners; or

17 (C) At the discretion of the commissioner, to a  
18 person in the business of life settlements that  
19 is aggrieved by a fraudulent life settlement act.

20 (3) Release of documents and evidence under paragraph (2)  
21 of this section does not abrogate or modify the  
22 privilege granted in paragraph (1).



1           (f) With respect to other law enforcement or regulatory  
2 authority, this part shall not:

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

6           (2) Prevent or prohibit a person from disclosing  
7 voluntarily information concerning life settlement  
8 fraud to a law enforcement or regulatory agency other  
9 than the insurance division; or

10          (3) Limit the powers granted elsewhere by the laws of the  
11 State to the commissioner or an insurance fraud unit  
12 to investigate and examine possible violations of law  
13 and to take appropriate action against wrongdoers.

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



1 expected to accomplish the purpose of this section. Antifraud  
2 initiatives shall include:

3 (1) Fraud investigators, who may be life settlement  
4 providers, life settlement broker employees, or  
5 independent contractors; and

6 (2) An antifraud plan, which shall be submitted to the  
7 commissioner. The antifraud plan shall include, but  
8 not be limited to:

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

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

17 (C) A description of the plan for antifraud education  
18 and training of underwriters and other personnel;  
19 and

20 (D) A description or chart outlining the  
21 organizational arrangement of the antifraud  
22 personnel who are responsible for the





1 investigation and reporting of possible  
2 fraudulent life settlement acts and investigating  
3 unresolved material inconsistencies between  
4 medical records and insurance applications.

5 (3) Antifraud plans submitted to the commissioner shall be  
6 privileged and confidential and shall not be a public  
7 record and shall not be subject to discovery or  
8 subpoena in a civil or criminal action.

9 **§431:10D-O Injunctions; civil remedies; cease and desist.**

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

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



1           (c) The commissioner may issue a cease and desist order  
2 upon a person who violates any provision of this part, any rule  
3 or order adopted by the commissioner, or any written agreement  
4 entered into with the commissioner, in accordance with the  
5 State's laws governing administrative procedures.

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



1           **§431:10D-P Penalties.** (a) It is a violation of this part  
 2 for any person, provider, broker, purchaser, or any other party  
 3 related to the business of life settlements, to commit a  
 4 fraudulent life settlement act.

5           (b) For criminal liability purposes, a person that commits  
 6 a fraudulent life settlement act is guilty of committing  
 7 insurance fraud.

8           (c) The commissioner shall be empowered to levy a civil  
 9 penalty and the amount of the claim for each violation upon any  
 10 person, including those persons and their employees licensed  
 11 pursuant to this part, who is found to have committed a  
 12 fraudulent life settlement act.

13           (d) The license of a person licensed under this part that  
 14 commits a fraudulent life settlement act shall be revoked for a  
 15 period to be determined by the commissioner.

16           **§431:10D-Q Unfair trade practices.** A violation of this  
 17 part shall be considered an unfair trade practice pursuant to  
 18 state law and subject to the penalties provided by state law."

19           SECTION 2. This Act shall take effect upon its approval.

20

INTRODUCED BY: Russell Kelly B/R



**Report Title:**

Life Settlements

**Description:**

Provides regulations, licensing, and examination requirements relating to life settlement contracts.

