

---

---

# A BILL FOR AN ACT

RELATING TO INSURANCE.

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

1           SECTION 1. Section 431E-2, Hawaii Revised Statutes, is  
2 amended by amending the definitions of "advertisement," "life  
3 expectancy," "life settlement contact," and "stranger-originated  
4 life insurance" to read as follows:

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

16           "Life expectancy" means the arithmetic mean of the number  
17 of months the insured under the policy to be settled can be



1 expected to live [~~as determined by a life expectancy company~~]  
2 considering medical records and appropriate experiential data.

3 "Life settlement contract" [~~means~~]:

4 (1) Means:

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

19 [~~(2)~~] (B) The transfer for compensation or value of  
20 ownership or beneficial interest in a trust or  
21 other entity that owns such policy or certificate  
22 if the trust or other entity was formed or



1           availed of for the principal purpose of acquiring  
 2           one or more life insurance contracts, which life  
 3           insurance contract [~~insures the life of a~~] is  
 4           owned by a person residing in this [~~State,~~]  
 5           state; or

6           ~~[(3) (A) A written agreement for a loan or other lending~~  
 7           ~~transaction, secured primarily by an individual~~  
 8           ~~or group policy; or~~

9           ~~(B)]~~ (C) A premium finance loan made for a policy on  
 10           or before the date of issuance of the policy  
 11           where:

12           (i) The loan proceeds are not used solely to pay  
 13           premiums for the policy and any costs or  
 14           expenses incurred by the lender or the  
 15           borrower in connection with the financing;

16           (ii) The owner receives on the date of the  
 17           premium finance loan a guarantee of the  
 18           future life settlement value of the policy;  
 19           or

20           (iii) The owner agrees on the date of the premium  
 21           finance loan to sell the policy or any



- 1                   portion of its death benefit on any date  
2                   following the issuance of the policy~~[=]~~; and  
3     ~~["Life settlement contract" does]~~ (2) Does not include:  
4     ~~[(b)(1)]~~ (A) A policy loan by a life insurance company  
5                   pursuant to the terms of the policy or  
6                   accelerated death provisions contained in the  
7                   policy, whether issued with the original policy  
8                   or as a rider;  
9     ~~[(2)]~~ (B) A premium finance loan, as defined herein,  
10                  or any loan made by a bank or other licensed  
11                  financial institution, so long as neither default  
12                  on such loan nor the transfer of the policy in  
13                  connection with such default is pursuant to an  
14                  agreement or understanding with any other person  
15                  for the purpose of evading regulation under this  
16                  chapter;  
17     ~~[(3)]~~ (C) A collateral assignment of a policy by an owner;  
18     ~~[(4)]~~ (D) A loan made by a lender that does not violate any  
19                  insurance premium finance law of this State;  
20                  provided that the loan does not qualify as a life  
21                  settlement contract;  
22     ~~[(5)]~~ (E) An agreement where all the parties:







1           ~~[(C)]~~ (iii) Between one or more members in a limited  
2                                    liability company or between a limited  
3                                    liability company and one or more of its  
4                                    members or one or more trusts established by  
5                                    its members;

6           ~~[(8)]~~ (H) An agreement entered into by a service recipient,  
7                                    or a trust established by the service recipient,  
8                                    and a service provider, or a trust established by  
9                                    the service provider, who performs significant  
10                                  services for the service recipient's trade or  
11                                  business; or

12          ~~[(9)]~~ (I) Any other contract, transaction, or arrangement  
13                                  ~~[that is a life settlement contract and]~~ that the  
14                                  commissioner determines is not of the type  
15                                  intended to be regulated by this chapter.

16          "Stranger-originated life insurance" or "STOLI" ~~[means a~~  
17          ~~practice or plan to initiate a policy for the benefit of a third~~  
18          ~~party investor who, at the time of policy origination, has no~~  
19          ~~insurable interest in the insured, and includes:~~

20               ~~(1) Arrangements in which life insurance is purchased with~~  
21                                  ~~resources or guarantees from or through a person or~~  
22                                  ~~entity who at the time of policy inception, could not~~



1 ~~lawfully initiate the policy by oneself or itself, and~~  
2 ~~where, at the time of inception, there is an~~  
3 ~~arrangement or agreement, whether verbal or written,~~  
4 ~~to directly or indirectly transfer the ownership of~~  
5 ~~the policy, the policy benefits, or both, to a third~~  
6 ~~party; and~~

7 ~~(2) Trusts created to give the appearance of insurable~~  
8 ~~interest and used to initiate policies for investors.~~

9 ~~"STOLI" does not include those practices set forth in~~  
10 ~~subsection (b) of the definition of "life settlement~~  
11 ~~contract".]:~~

12 (1) Means the procurement of new life insurance by persons  
13 or entities that lack insurable interest on the  
14 insured and, at policy inception, the person or entity  
15 owns or controls the policy or the majority of the  
16 death benefit in the policy and the insured or  
17 insured's beneficiaries receive little or none of the  
18 proceeds of the death benefits of the policy. Trusts  
19 that are created to give the appearance of insurable  
20 interest and are used to initiate policies for  
21 investors violate insurable interest laws and the  
22 prohibition against wagering on life; and



1        (2) Does not include the lawful assignment of a life  
2        insurance including a life settlement contract as  
3        defined in this chapter, or those practices set forth  
4        in paragraph (2) of the definition of "life settlement  
5        contract"."

6        SECTION 2. Section 431E-3, Hawaii Revised Statutes, is  
7 amended as follows:

8        1. By amending subsections (a) and (b) to read:

9        "(a) No person, wherever located, shall act as a provider  
10 or broker with an owner who is a resident of this [State,  
11 state, without first having obtained a license from the  
12 commissioner~~[-]~~, except as provided for in subsection (c).

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

18        2. By amending subsection (d) to read:

19        "(d) Not later than thirty days from the first day of  
20 operating as a broker, the life insurance producer shall notify  
21 the commissioner that the life insurance producer is acting as a  
22 broker [~~on a form prescribed by the commissioner,~~] and shall pay



1 a fee in the amount provided by section 431:7-101.

2 [~~Notification shall include an~~] The notification shall only  
3 require the following information:

4 (1) The name and address of the life insurance producer;

5 (2) The life insurance producer's Hawaii producer license  
6 number;

7 (3) If applicable, the life insurance producer's resident  
8 license of the life insurance producer's home state;

9 (4) The date of the producer's initial licensing as a  
10 resident life insurance producer in this state or the  
11 life insurance producer's home state;

12 (5) A statement that the life insurance producer has begun  
13 operating as a life settlement broker and the date of  
14 first operating as a life settlement broker, or a  
15 statement that the life insurance producer intends to  
16 operate as a life settlement broker; and

17 (6) An acknowledgment by the life insurance producer that  
18 the life insurance producer will operate as a broker  
19 in accordance with this chapter."

20 SECTION 3. Section 431E-4, Hawaii Revised Statutes, is  
21 amended by amending subsection (a) to read as follows:



1           (a) The commissioner may suspend, revoke, or refuse to  
2 renew the license of any licensee if the commissioner finds  
3 that:

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



1 (6) The provider has entered into any life settlement  
2 contract using a form that has not been approved  
3 pursuant to this chapter;

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

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

14 (9) The licensee or any officer, partner, member, or key  
15 management personnel has violated this chapter."

16 SECTION 4. Section 431E-6, Hawaii Revised Statutes, is  
17 amended by amending subsection (a) to read as follows:

18 "(a) For any policy settled within five years of policy  
19 issuance, each provider shall file with the commissioner on or  
20 before March 1 of each year an annual statement containing the  
21 information as the commissioner may prescribe by rule. In  
22 addition to any other requirements, the annual statement shall[+]



1       ~~(1) Specify~~ specify the total number, aggregate face  
2           amount, and life settlement proceeds of policies  
3           settled during the immediately preceding calendar  
4           year, together with a breakdown of the information by  
5           policy issue year [~~and~~

6       ~~(2) Include the names of the insurance companies whose~~  
7           ~~policies have been settled and the brokers that have~~  
8           ~~settled said policies].~~

9       The information shall be limited to only those transactions  
10       where the [~~insured~~] owner is a resident of this [~~State~~] state  
11       and shall not include individual transaction data regarding the  
12       business of life settlements or information that there is a  
13       reasonable basis to believe could be used to identify the owner  
14       or the insured.

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





1 SECTION 5. Section 431E-21, Hawaii Revised Statutes, is  
2 amended by amending subsection (c) to read as follows:

3 "(c) No person or trust shall:

4 (1) Directly or indirectly market, advertise, or solicit [~~7~~  
5 ~~or otherwise promote~~] the purchase of a new policy for  
6 the sole purpose of [~~or with an emphasis on~~] settling  
7 the policy; or

8 (2) Use the words [~~"free", "no cost",~~] "free," "no cost,"  
9 or words of similar import in the marketing,  
10 advertising, soliciting, or otherwise promoting of the  
11 purchase of a policy."

12 SECTION 6. Section 431E-31, Hawaii Revised Statutes, is  
13 amended to read as follows:

14 "[~~+~~] **§431E-31** [~~+~~] **Disclosures to owners.** (a) The provider  
15 or broker shall provide in writing, in a separate document that  
16 is signed by the owner [~~and provider~~], the following information  
17 to the owner no later than the date [~~the life settlement~~  
18 ~~contract is signed by all parties~~] of application for a life  
19 settlement contract:

20 (1) The fact that possible alternatives to life settlement  
21 contracts exist, including [~~but not limited to~~]



- 1           accelerated benefits offered by the issuer of the  
2           policy;
- 3           (2) The fact that some or all of the proceeds of a life  
4           settlement contract may be taxable and that assistance  
5           should be sought from a professional tax advisor;
- 6           (3) The fact that the proceeds from a life settlement  
7           contract could be subject to the claims of creditors;
- 8           (4) The fact that receipt of proceeds from a life  
9           settlement contract may adversely affect the  
10          recipients' eligibility for public assistance or other  
11          government benefits or entitlements and that advice  
12          should be obtained from the appropriate agencies;
- 13          (5) The fact that the owner has a right to terminate a  
14          life settlement contract within fifteen days of the  
15          date it is executed by all parties and the owner has  
16          received the disclosures contained herein.
- 17          Rescission, if exercised by the owner, is effective  
18          only if both notice of the rescission is given, and  
19          the owner repays all proceeds and any premiums, loans,  
20          and loan interest paid on account of the provider  
21          within the rescission period. If the insured dies  
22          during the rescission period, the contract shall be



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

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

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

18 ~~[(8) The amount and method of calculating the compensation~~  
19 ~~paid or to be paid to the broker, or any other person~~  
20 ~~acting for the owner in connection with the~~  
21 ~~transaction, wherein the term compensation includes~~  
22 ~~anything of value paid or given;~~



1       ~~(9)~~ (8) The date by which the funds will be available to  
2           the owner and the transmitter of the funds;

3       ~~(10)~~ (9) The fact that the commissioner shall require  
4           delivery of a Buyer's Guide or a similar consumer  
5           advisory package in the form prescribed by the  
6           commissioner to owners during the solicitation  
7           process;

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

21       ~~(12)~~ (11) The fact that the commissioner shall require  
22          providers and brokers to print separate signed fraud



1 warnings on their applications and on their life  
2 settlement contracts as follows:

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

7 [~~(13)~~] (12) The fact that the owner may be contacted by  
8 either the provider or broker or its authorized  
9 representative for the purpose of determining the  
10 owner's health status or to verify the owner's  
11 address;

12 [~~(14)~~] (13) The affiliation, if any, between the provider  
13 and the issuer of the policy to be settled;

14 [~~(15)~~] (14) That a broker represents exclusively the owner,  
15 and not the insurer or the provider or any other  
16 person, and owes a fiduciary duty to the owner,  
17 including a duty to act according to the owner's  
18 instructions and in the best interest of the owner;

19 [~~(16)~~] (15) The name, address, and telephone number of the  
20 provider;

21 [~~(17)~~] (16) The name, business address, and telephone number  
22 of the independent third party escrow agent, and the



1 fact that the owner may inspect or receive copies of  
2 the relevant escrow or trust agreements or documents;  
3 and

4 [~~(18)~~] (17) The fact that a change of ownership could in the  
5 future limit the insured's ability to purchase future  
6 insurance on the insured's life because there is a  
7 limit to how much coverage insurers will issue on one  
8 life.

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

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

19 (1) The name, business address, and telephone number of  
20 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)]~~ (4) A complete reconciliation of the gross offer or  
14 bid by the provider to the net amount of proceeds or  
15 value to be received by the owner. For the purpose of  
16 this 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)]~~ (5) The fact that the failure to provide the  
21 disclosures or rights described in this section shall



1           be deemed an unfair trade practice under section 480-  
2           2."

3           SECTION 7. Section 431E-32, Hawaii Revised Statutes, is  
4 amended to read as follows:

5           "~~[+] §431E-32 [+] Disclosure to insurer. (a) [Without~~  
6 ~~limiting the ability of an insurer from assessing the~~  
7 ~~insurability of a policy applicant and determining whether or~~  
8 ~~not to issue the policy, and in] In addition to other questions~~  
9 an insurance carrier may lawfully pose to a life insurance  
10 applicant, insurance carriers may inquire in the application for  
11 insurance whether the proposed owner intends to pay premiums  
12 with the assistance of financing from a lender that will use the  
13 policy as collateral to support the financing.

14           (b) If, as described in subsection (a)(3) of the  
15 definition of "life settlement contract" in section 431E-2, the  
16 premium finance loan provides funds that can be used for a  
17 purpose other than paying for the premiums, costs, and expenses  
18 associated with obtaining and maintaining the policy and loan,  
19 the application shall be rejected as a violation of the  
20 prohibited practices in section 431E-41.

21           (c) If the premium financing does not violate section  
22 431E-41 in this manner, the insurance carrier~~[+]~~ may not reject





1 the life insurance application solely because the premiums will  
2 be financed, and the insurance carrier:

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

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

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

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

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



- 1           obtain coverage and/or may result in  
2           significantly higher premiums; and
- 3           (4) You should consult a professional advisor, since  
4           a change in ownership in satisfaction of the loan  
5           may result in tax consequences to the owner,  
6           depending on the structure of the loan";
- 7           and
- 8           (2) May require certifications, such as the following,  
9           from the applicant [~~and/or~~] or the insured[+], or  
10          both:
- 11          "(1) I have not entered into any agreement or  
12          arrangement providing for the future sale of this  
13          life insurance policy;
- 14          (2) My loan arrangement for this policy provides  
15          funds sufficient to pay for some or all of the  
16          premiums, costs, and expenses associated with  
17          obtaining and maintaining my life insurance  
18          policy, but I have not entered into any agreement  
19          by which I am to receive consideration in  
20          exchange for procuring this policy; and
- 21          (3) The borrower has an insurable interest in the  
22          insured."



1        (d) With respect to each policy issued by an insurance  
2 company, the insurance company shall send written notice to the  
3 owner of an individual life insurance policy, or a certificate  
4 holder under a group life insurance policy, where the insured  
5 person under the policy is age sixty or older or is known to be  
6 terminally ill or chronically ill, that a life settlement is an  
7 alternative transaction available to the owner at the time of  
8 each of the following:

9        (1) When a life insurance company receives from the owner  
10 a request to surrender, in whole or in part, an  
11 individual life insurance policy, or a certificate  
12 under a group life insurance policy;

13        (2) When a life insurance company receives from the owner  
14 a request to receive an accelerated death benefit  
15 under an individual life insurance policy, or a  
16 certificate under a group life insurance policy;

17        (3) When a life insurance company receives from the owner  
18 a request to collaterally assign an individual life  
19 insurance policy, or a certificate under a group life  
20 insurance policy as security for a loan;

21        (4) When a life insurance company sends to the owner a  
22 notice of lapse of an individual life insurance



- 1           policy, or a certificate under a group life insurance  
2           policy; or  
3           (5) At any other time that the commissioner may require by  
4           rule or regulation."

5           SECTION 8. Section 431E-41, Hawaii Revised Statutes, is  
6 amended by amending subsection (a) to read as follows:

7           "(a) It is unlawful for any 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 such 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,]~~ 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 such policy that are in~~  
9       ~~addition 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 such 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 [is] not living~~  
19       ~~at the time of the determination of the overpayment;]~~  
20       (4) If providing premium financing, receive any proceeds,  
21       fees, or other consideration from the policy or owner  
22       of the policy that are in addition to the amounts



1           required to pay principal, interest, and any  
 2           reasonable costs or expenses incurred by the lender or  
 3           borrower in connection with the premium finance  
 4           agreement, except in the event of a default, unless  
 5           either the default on the loan or transfer of the  
 6           policy occurs pursuant to an agreement or  
 7           understanding with any other person for the purpose of  
 8           evading regulation under this chapter;

9           ~~[(6)]~~ (5) With respect to any policy or life settlement  
 10           contract and a broker, knowingly solicit an offer  
 11           from, effectuate a life settlement contract with or  
 12           make a sale to any provider, financing entity, or  
 13           related provider trust that is controlling, controlled  
 14           by, or under common control with ~~[such]~~ the broker~~[+]~~  
 15           unless the relationship is disclosed to the owner;

16           ~~[(7)]~~ (6) With respect to any policy or life settlement  
 17           contract and a provider, knowingly enter into a life  
 18           settlement contract with an owner, if, in connection  
 19           with such life settlement contract, anything of value  
 20           will be paid to a broker that is controlling,  
 21           controlled by, or under common control with such  
 22           provider or the financing entity or related provider



1 trust that is involved in such life settlement  
2 contract ~~[7]~~ unless the relationship is disclosed to  
3 the owner;

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

15 ~~[-9]~~ (8) With respect to any life insurance producer,  
16 insurance company, broker, or provider, make any  
17 statement or representation to the applicant or  
18 policyholder in connection with the sale or financing  
19 of a policy to the effect that the insurance is free  
20 or without cost to the policyholder for any period of  
21 time unless provided in the policy;



1       ~~[(10)]~~ (9) Knowingly and intentionally interfere with the  
2                   enforcement of the provisions of this chapter or  
3                   investigations of suspected or actual violations of  
4                   this chapter; ~~[and]~~

5       ~~[(11)]~~ (10) With respect to a person in the business of life  
6                   settlements, knowingly or intentionally permit any  
7                   person convicted of a felony involving dishonesty or  
8                   breach of trust to participate in the business of life  
9                   settlements ~~[-]~~; and

10       (11) If an insurer, to:

11               (A) Prohibit, restrict, limit, or impair a life  
12                   insurance producer from lawfully negotiating a  
13                   life settlement contract on behalf of an owner,  
14                   aiding and assisting an owner with a life  
15                   settlement contract, or otherwise participating  
16                   in a life settlement transaction under this  
17                   chapter;

18               (B) Engage in or permit any discrimination between  
19                   individuals of the same class, same policy  
20                   amount, and equal expectation of life in the  
21                   rates charged for any life insurance policy or  
22                   annuity contract based upon an individual's





1 having entered into a life settlement contract or  
2 being insured under a settled policy;

3 (C) Make any false or misleading statement as to the  
4 business of life settlements or financing  
5 premiums due for a policy or to any owner or  
6 insured for the purpose of inducing or tending to  
7 induce the owner or insured not to enter into a  
8 life settlement contract; or

9 (D) Engage in any transaction, act, practice or  
10 course of business or dealing which restricts,  
11 limits, or impairs in any way the lawful transfer  
12 of ownership, change of beneficiary, or  
13 assignment of a policy."

14 SECTION 9. Section 431E-42, Hawaii Revised Statutes, is  
15 amended to read as follows:

16 " ~~[+]~~ §431E-42 ~~[+]~~ **Fraudulent life settlement acts**  
17 **prohibited.** It is a violation of this chapter for any person,  
18 provider, broker, or any other party related to the business of  
19 life settlements, to commit a fraudulent life settlement act.

20 For the purposes of this section, "fraudulent life  
21 settlement act" includes:



- 1 (1) Acts or omissions committed by any person who,  
2 knowingly and with intent to defraud, for the purpose  
3 of depriving another of property or for pecuniary  
4 gain, commits, or permits its employees or agents to  
5 engage in acts including [~~but not limited to~~]:
- 6 (A) Presenting, causing to be presented, or preparing  
7 with knowledge and belief that it will be  
8 presented to or by a provider, premium finance  
9 lender, broker, insurer, insurance producer, or  
10 any other person, false material information, or  
11 concealing material information, as part of, in  
12 support of, or concerning a fact material to one  
13 or more of the following:
- 14 (i) An application for the issuance of a policy  
15 or life settlement contract;
- 16 (ii) The underwriting of a policy or life  
17 settlement contract;
- 18 (iii) A claim for payment or benefit pursuant to a  
19 policy or life settlement contract;
- 20 (iv) Premiums paid on a policy;
- 21 (v) Payments and changes in ownership or  
22 beneficiary made in accordance with the



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



1                    or  
2            [~~(C)~~] (B) Employing any device, scheme, or artifice to  
3                    defraud in the business of life settlements; [~~or~~  
4            ~~(D)~~ ~~In the solicitation, application, or issuance of~~  
5                    ~~a policy, employing any device, scheme, or~~  
6                    ~~artifice in violation of state insurable interest~~  
7                    ~~laws,~~]

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

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

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

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



- 1 (D) File with the commissioner or the chief insurance  
2 regulatory official of another jurisdiction a  
3 document containing false information or  
4 otherwise concealing information about a material  
5 fact from the commissioner;
- 6 (E) Engage in embezzlement, theft, misappropriation,  
7 or conversion of moneys, funds, premiums,  
8 credits, or other property of a provider,  
9 insurer, insured, owner, insurance, policy owner,  
10 or any other person engaged in the business of  
11 life settlements or insurance;
- 12 (F) Knowingly and with intent to defraud, enter into,  
13 broker, or otherwise deal in a life settlement  
14 contract, the subject of which is a policy that  
15 was obtained by presenting false information  
16 concerning any fact material to the policy or by  
17 concealing, for the purpose of misleading  
18 another, information concerning any fact material  
19 to the policy, where the owner or the owner's  
20 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 definition; 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 SECTION 10. This Act does not affect rights and duties  
10 that matured, penalties that were incurred, and proceedings that  
11 were begun, before its effective date.

12 SECTION 11. Statutory material to be repealed is bracketed  
13 and stricken. New statutory material is underscored.

14 SECTION 12. This Act shall take effect on January 1, 2020.



**Report Title:**

Life Settlements Model Act; Stranger-Originated Life Insurance

**Description:**

Makes various clarifying and technical amendments, and corrects inadvertent errors, in the Life Settlements Model Act, chapter 431E, HRS, which establishes consumer protections in life settlement transactions. Effective 01/01/2020. (SB53 HD1)

