



GOV. MSG. NO. **1359**

EXECUTIVE CHAMBERS  
HONOLULU

NEIL ABERCROMBIE  
GOVERNOR

July 06, 2012

The Honorable Shan Tsutsui, President  
and Members of the Senate  
Twenty-Sixth State Legislature  
State Capitol, Room 409  
Honolulu, Hawaii 96813

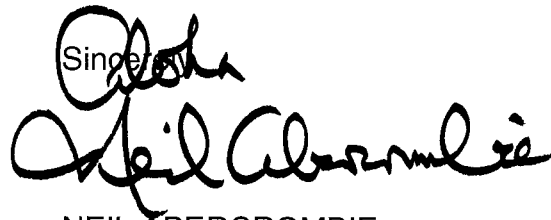
The Honorable Calvin Say, Speaker  
and Members of the House  
Twenty-Sixth State Legislature  
State Capitol, Room 431  
Honolulu, Hawaii 96813

Dear President Tsutsui, Speaker Say and Members of the Legislature:

This is to inform you that on July 06, 2012, the following bill was signed into law:

SB3062 SD1 HD2 CD1

RELATING TO INSURANCE.  
**Act 256 (12)**

Sincerely,  


NEIL ABERCROMBIE  
Governor, State of Hawaii

Approved by the Governor

on         June         6 2012

THE SENATE  
TWENTY-SIXTH LEGISLATURE, 2012  
STATE OF HAWAII

ACT 256

S.B. NO. 3062  
S.D. 1  
H.D. 2  
C.D. 1

**A BILL FOR AN ACT**

RELATING TO INSURANCE.

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

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

"CHAPTER

LIFE SETTLEMENTS

PART I. GENERAL PROVISIONS

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

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

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



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

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

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

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

21 "Chronically ill" means:



- 1           (1) Being unable to perform at least two activities of
- 2                   daily living, such as eating, toileting, transferring,
- 3                   bathing, dressing, or continence;
- 4           (2) Requiring substantial supervision to protect the
- 5                   individual from threats to health and safety due to
- 6                   severe cognitive impairment; or
- 7           (3) Having a level of disability similar to that described
- 8                   in paragraph (1) as determined by the United States
- 9                   Secretary of Health and Human Services.

10           "Commissioner" means the insurance commissioner.

11           "Financing entity" means an underwriter, placement agent,

12 lender, purchaser of securities, purchaser of a policy or

13 certificate from a provider, credit enhancer, or any entity that

14 has a direct ownership in a policy or certificate that is the

15 subject of a life settlement contract, but:

- 16           (1) Whose principal activity related to the transaction is
- 17                   providing funds to effect the life settlement contract
- 18                   or purchase of one or more policies; and
- 19           (2) Who has an agreement in writing with one or more
- 20                   providers to finance the acquisition of life
- 21                   settlement contracts.



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

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

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

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

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

19 "Life settlement contract" means:

20 (a) (1) A written agreement entered into between a  
21 provider and an owner, establishing the terms under  
22 which compensation or any thing of value will be paid,



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

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

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

21          (B)   A premium finance loan made for a policy on or  
22                 before the date of issuance of the policy where:



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

13 "Life settlement contract" does not include:

- 14           (b) (1) A policy loan by a life insurance company
- 15                pursuant to the terms of the policy or accelerated
- 16                death provisions contained in the policy, whether
- 17                issued with the original 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, so long as neither default on such loan
- 21                nor the transfer of the policy in connection with such
- 22                default is pursuant to an agreement or understanding



- 1 with any other person for the purpose of evading  
2 regulation under this chapter;
- 3 (3) A collateral assignment of a policy by an owner;
- 4 (4) A loan made by a lender that does not violate any  
5 insurance premium finance law of this State; provided  
6 that the loan does not qualify as a life settlement  
7 contract;
- 8 (5) An agreement where all the parties:
- 9 (A) Are closely related to the insured by blood or  
10 law; or
- 11 (B) Have a lawful substantial economic interest in  
12 the continued life, health, and bodily safety of  
13 the person insured, or are trusts established  
14 primarily for the benefit of such parties;
- 15 (6) Any designation, consent, or agreement by an insured  
16 who is an employee of an employer in connection with  
17 the purchase by the employer, or trust established by  
18 the employer, of life insurance on the life of the  
19 employee;
- 20 (7) A bona fide business succession planning arrangement:
- 21 (A) Between one or more shareholders in a corporation  
22 or between a corporation and one or more of its





1                   shareholders or one or more trusts established by  
2                   its shareholders;

3           (B)    Between one or more partners in a partnership or  
4                   between a partnership and one or more of its  
5                   partners or one or more trusts established by its  
6                   partners; or

7           (C)    Between one or more members in a limited  
8                   liability company or between a limited liability  
9                   company and one or more of its members or one or  
10                  more trusts established by its members;

11           (8)    An agreement entered into by a service recipient, or a  
12                   trust established by the service recipient, and a  
13                   service provider, or a trust established by the  
14                   service provider, who performs significant services  
15                   for the service recipient's trade or business; or

16           (9)    Any other contract, transaction, or arrangement that  
17                   is a life settlement contract and that the  
18                   commissioner determines is not of the type intended to  
19                   be regulated by this chapter.

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



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

8 "Owner" does not include:

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

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

20 "Person" means any natural person or legal entity,  
21 including but not limited to a partnership, limited liability  
22 company, association, trust, or corporation.



1 "Policy" means an individual or group policy, certificate,  
2 contract, or arrangement of life insurance owned by a resident  
3 of this State, regardless of whether delivered or issued for  
4 delivery in this State.

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

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

10 The term does not include:

11 (1) Any bank, savings bank, savings and loan association,  
12 or credit union;

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

17 (3) The insurer of a policy or rider to the extent of  
18 providing accelerated death benefits, riders, or cash  
19 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 policy or certificate for compensation



1 or anything of value less than the expected death  
2 benefit payable under the policy;

3 (5) A purchaser;

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

8 (7) A financing entity;

9 (8) A special purpose entity;

10 (9) A related provider trust;

11 (10) A broker; or

12 (11) An accredited investor or qualified institutional  
13 buyer as defined respectively in Rule 501 of  
14 Regulation D and Rule 144A of the Securities Act of  
15 1933, as amended, who purchases a life settlement  
16 contract from a provider.

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

20 "Purchaser" means a person who pays compensation or  
21 anything of value as consideration for a beneficial interest in  
22 a trust that is vested with, or for the assignment, transfer, or



1 sale of, an ownership or other interest in a policy or a  
2 certificate that has been the subject of a life settlement  
3 contract.

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

15 "Settled policy" means a policy or certificate that has  
16 been acquired by a provider pursuant to a life settlement  
17 contract.

18 "Special purpose entity" means a corporation, partnership,  
19 trust, limited liability company, or other legal entity formed  
20 solely to provide either directly or indirectly access to  
21 institutional capital markets for a financing entity or provider



1 in connection with a transaction in which the securities in the  
2 special purpose entity:

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

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

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

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



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

3 "Stranger-originated life insurance" does not include those  
4 practices set forth in subsection (b) of the definition of "life  
5 settlement contract".

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

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

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

17 (c) A person, wherever located, may act as a broker with  
18 an owner who is a resident of this State, if the person is a  
19 life insurance producer who has been duly licensed as a resident  
20 insurance producer with a life line of authority in this State  
21 or the producer's home state for at least one year and is issued  
22 a broker license in this State.



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

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

16 (f) A person licensed as an attorney, certified public  
17 accountant, or financial planner accredited by a nationally  
18 recognized accreditation agency, who is retained to represent  
19 the owner in the type of practice customarily performed in the  
20 person's professional capacity, and whose compensation is not  
21 paid directly or indirectly by the provider or purchaser, may





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

3 (g) Licenses are issued and renewed in accordance with  
4 article 9A of chapter 431 upon payment of fees in the amounts  
5 required under section 431:7-101. Failure to pay the fees  
6 within the terms prescribed shall result in the automatic  
7 inactivation of the license.

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

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



1 and designated employees to act as a licensee under the license,  
2 if those persons are named in the application and any  
3 supplements to the application. A business entity licensed  
4 pursuant to this subsection shall designate an individual who is  
5 responsible for the actions of the entity and its agents. The  
6 designated individual shall be licensed pursuant to this  
7 chapter.

8 (j) 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 provider or a broker license if  
11 the commissioner finds 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 a legal entity, is formed or organized pursuant to  
20 the laws of this State or is a foreign legal entity  
21 authorized to transact business in this State, or



1 provides a certificate of good standing from the state  
2 of its domicile; and

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

5 (k) Each licensed nonresident broker or provider shall  
6 appoint the commissioner as its agent to receive service of  
7 legal process issued against the broker or provider in this  
8 State upon causes of action arising within this State. Service  
9 upon the commissioner as agent shall constitute effective legal  
10 service upon the broker or provider. The appointment shall be  
11 irrevocable for as long as there could be any cause of action  
12 against the broker or provider arising out of the broker's or  
13 provider's insurance transactions in this State. Service of  
14 process on the commissioner shall be made in accordance with  
15 section 431:2-206.

16 (l) Each licensee shall file with the commissioner on or  
17 before the first day of March of each year an annual statement  
18 containing the information as the commissioner by rule may  
19 prescribe.

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



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

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

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

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



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



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

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

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

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

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



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

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

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



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

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

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

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





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

- 3 (1) Is necessary to effect a life settlement contract  
4 between the owner and a provider, and the owner and  
5 insured have provided prior written consent to the  
6 disclosure;
- 7 (2) Is necessary to effectuate the sale of life settlement  
8 contracts, or interests therein, as investments, so  
9 long as the sale is conducted in accordance with  
10 applicable state and federal securities law and the  
11 owner and the insured have both provided prior written  
12 consent to the disclosure;
- 13 (3) Is provided in response to an investigation or  
14 examination by the commissioner pursuant to the  
15 requirements of section -17 or any other  
16 governmental officer or agency;
- 17 (4) Is a term or condition to the transfer of a policy by  
18 one provider to another provider, in which case the  
19 receiving provider shall be required to comply with  
20 the confidentiality requirements of this section;
- 21 (5) Is necessary to allow the provider or broker or their  
22 authorized representatives to make contacts for the



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

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

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

## 18 PART II. EXAMINATIONS

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



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

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

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

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



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

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



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

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

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

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



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

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

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



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

5 § -14 Confidentiality of examination information. (a)

6 Names and individual identification data for all owners,  
7 purchasers, and insureds shall be considered private and  
8 confidential information and shall not be disclosed by the  
9 commissioner, unless the disclosure is to another regulator or  
10 is required by law.

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



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

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

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

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





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

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

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



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

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

8 **PART III. ADVERTISING**

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

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

17 (c) No person or trust shall:

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



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

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

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

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

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

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

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



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

3 (5) The fact that the owner has a right to terminate a  
4 life settlement contract within fifteen days of the  
5 date it is executed by all parties and the owner has  
6 received the disclosures contained herein.

7 Rescission, if exercised by the owner, is effective  
8 only if both notice of the rescission is given, and  
9 the owner repays all proceeds and any premiums, loans,  
10 and loan interest paid on account of the provider  
11 within the rescission period. If the insured dies  
12 during the rescission period, the contract shall be  
13 deemed to have been rescinded subject to repayment by  
14 the owner or the owner's estate of all proceeds and  
15 any premiums, loans, and loan interest to the  
16 provider;

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



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

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

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

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

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

20 (11) The following language:  
21 "All medical, financial, or personal information  
22 solicited or obtained by a provider or broker about an



1 insured, including the insured's identity or the  
2 identity of family members, a spouse, or a significant  
3 other may be disclosed as necessary to effect the life  
4 settlement contract between the owner and provider.  
5 If you are asked to provide this information, you will  
6 be asked to consent to the disclosure. The  
7 information may be provided to someone who buys the  
8 policy or provides funds for the purchase. You may be  
9 asked to renew your permission to share information  
10 every two years.";

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

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

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



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

3 (15) That a broker represents exclusively the owner, and  
4 not the insurer or the provider or any other person,  
5 and owes a fiduciary duty to the owner, including a  
6 duty to act according to the owner's instructions and  
7 in the best interest of the owner;

8 (16) The name, address, and telephone number of the  
9 provider;

10 (17) The name, business address, and telephone number of  
11 the independent third party escrow agent, and the fact  
12 that the owner may inspect or receive copies of the  
13 relevant escrow or trust agreements or documents; and

14 (18) The fact that a change of ownership could in the  
15 future limit the insured's ability to purchase future  
16 insurance on the insured's life because there is a  
17 limit to how much coverage insurers will issue on one  
18 life.

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



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

7 (1) The name, business address, and telephone number of  
8 the broker;

9 (2) A full, complete, and accurate description of all the  
10 offers, counter-offers, acceptances, and rejections  
11 relating to the proposed life settlement contract;

12 (3) A written disclosure of any affiliations or  
13 contractual arrangements between the broker and any  
14 person making an offer in connection with the proposed  
15 life settlement contract;

16 (4) The name of each broker who receives compensation and  
17 the amount of compensation received by that broker,  
18 which compensation includes anything of value paid or  
19 given to the broker in connection with the life  
20 settlement contract;

21 (5) A complete reconciliation of the gross offer or bid by  
22 the provider to the net amount of proceeds or value to





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

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

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

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



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

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

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

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

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

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



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

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

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

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

18                (2)   My loan arrangement for this policy provides  
19                    funds sufficient to pay for some or all of  
20                    the premiums, costs, and expenses associated  
21                    with obtaining and maintaining my life  
22                    insurance policy, but I have not entered



1                   into any agreement by which I am to receive  
2                   consideration in exchange for procuring this  
3                   policy; and

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

6           §   -33   **General rules.**   (a)  A provider entering into a  
7   life settlement contract with any owner of a policy, wherein the  
8   insured is terminally or chronically ill, shall first obtain:

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

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

19   The provider, broker, or its authorized representative shall be  
20   limited to contact for the purpose of determining the owner's  
21   health status or to verify the owner's address, once every three  
22   months if the insured has a life expectancy of more than one



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

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

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

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



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

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

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

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

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

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



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

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

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



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

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

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

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





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

5 (1) The policy was issued upon the owner's exercise of  
6 conversion rights arising out of a group or individual  
7 policy; provided that the total of the time covered  
8 under the conversion policy plus the time covered  
9 under the prior policy is at least two years. The  
10 time covered under a group policy shall be calculated  
11 without regard to a change in insurance carriers;  
12 provided further that the coverage has been continuous  
13 and under the same group sponsorship; or

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

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

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



- 1 agreement in effect at the time the policy was  
2 initially issued;
- 3 (C) The owner's spouse dies;
- 4 (D) The owner divorces the owner's spouse;
- 5 (E) The owner retires from full-time employment;
- 6 (F) The owner becomes physically or mentally disabled  
7 and a physician determines that the disability  
8 prevents the owner from maintaining full-time  
9 employment; or
- 10 (G) A final order, judgment, or decree is entered by  
11 a court of competent jurisdiction, on the  
12 application of a creditor of the owner,  
13 adjudicating the owner bankrupt or insolvent, or  
14 approving a petition seeking reorganization of  
15 the owner or appointing a receiver, trustee, or  
16 liquidator to all or a substantial part of the  
17 owner's assets.

18 Copies of the independent evidence required by paragraph  
19 (2) shall be submitted to the insurer when the provider submits  
20 a request to the insurer for verification of coverage. The  
21 copies shall be accompanied by a letter of attestation from the  
22 provider that the copies are true and correct copies of the



1 documents received by the provider. Nothing in this section  
2 shall prohibit an insurer from exercising its right to contest  
3 the validity of any policy.

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

10 § -34 **Buyer's guide.** The commissioner by rule shall  
11 require delivery of a buyer's guide or a similar consumer  
12 advisory package to owners during the process of soliciting a  
13 life settlement contract.

14 **PART V. MISCELLANEOUS PROVISIONS**

15 § -41 **Prohibited practices.** (a) It is unlawful for any  
16 person to:

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

21 (2) Engage in any transaction, practice, or course of  
22 business if the person knows or reasonably should have



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



1 to the amounts required to pay the principal,  
2 interest, and service charges related to policy  
3 premiums paid under the premium finance agreement  
4 shall be remitted to the original owner of the policy  
5 or to the owner's estate if the owner is not living at  
6 the time of the determination of the overpayment;

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

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

21 (8) With respect to a provider, enter into a life  
22 settlement contract unless the life settlement



1 contract promotional, advertising, and marketing  
2 materials, as may be prescribed by rule, have been  
3 filed with the commissioner. In no event shall any  
4 marketing materials expressly reference that the  
5 insurance is free for any period of time. The  
6 inclusion of any reference in the marketing materials  
7 that would cause an owner to reasonably believe that  
8 the insurance is free for any period of time shall be  
9 considered a violation of this chapter;

10 (9) With respect to any life insurance producer, insurance  
11 company, broker, or provider, make any statement or  
12 representation to the applicant or policyholder in  
13 connection with the sale or financing of a policy to  
14 the effect that the insurance is free or without cost  
15 to the policyholder for any period of time unless  
16 provided in the policy;

17 (10) Knowingly and intentionally interfere with the  
18 enforcement of the provisions of this chapter or  
19 investigations of suspected or actual violations of  
20 this chapter; and

21 (11) With respect to a person in the business of life  
22 settlements, knowingly or intentionally permit any



1 person convicted of a felony involving dishonesty or  
2 breach of trust to participate in the business of life  
3 settlements.

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

6 § -42 **Fraudulent life settlement acts prohibited.** It is  
7 a violation of this chapter for any person, provider, broker, or  
8 any other party related to the business of life settlements, to  
9 commit a fraudulent life settlement act.

10 For the purposes of this part, "fraudulent life settlement  
11 act" includes:

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

17 (A) Presenting, causing to be presented, or preparing  
18 with knowledge and belief that it will be  
19 presented to or by a provider, premium finance  
20 lender, broker, insurer, insurance producer, or  
21 any other person, false material information, or  
22 concealing material information, as part of, in



- 1 support of, or concerning a fact material to one  
2 or more of the following:
- 3 (i) An application for the issuance of a policy  
4 or life settlement contract;
  - 5 (ii) The underwriting of a policy or life  
6 settlement contract;
  - 7 (iii) A claim for payment or benefit pursuant to a  
8 policy or life settlement contract;
  - 9 (iv) Premiums paid on a policy;
  - 10 (v) Payments and changes in ownership or  
11 beneficiary made in accordance with the  
12 terms of a policy or life settlement  
13 contract;
  - 14 (vi) The reinstatement or conversion of a policy;
  - 15 (vii) The solicitation, offer to enter into, or  
16 effectuation of a policy or life settlement  
17 contract;
  - 18 (viii) The issuance of written evidence of a policy  
19 or life settlement contract;
  - 20 (ix) Any application for or the existence of or  
21 any payments related to a loan secured





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



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



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

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

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

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

20 § -43 **Fraud warning required.** (a) Life settlement  
21 contracts and applications for life settlement contracts,  
22 regardless of the form of transmission, shall contain the

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

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

9 § -44 **Mandatory reporting of fraudulent life settlement**  
10 **acts.** (a) Any person engaged in the business of life  
11 settlements having knowledge or a reasonable belief that a  
12 fraudulent life settlement act is being, will be, or has been  
13 committed shall provide to the commissioner the information  
14 required by, and in a manner prescribed by, the commissioner.

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

20 § -45 **Immunity from liability.** (a) No civil liability  
21 shall be imposed on and no cause of action shall arise from a  
22 person's furnishing information concerning suspected,



1 anticipated, or completed fraudulent life settlement acts or  
2 suspected or completed fraudulent insurance acts, if the  
3 information is provided to or received from:

- 4 (1) The commissioner or the commissioner's employees,  
5 agents, or representatives;
- 6 (2) Federal, state, or local law enforcement or regulatory  
7 officials or their employees, agents, or  
8 representatives;
- 9 (3) A person involved in the prevention and detection of  
10 fraudulent life settlement acts or that person's  
11 agents, employees, or representatives;
- 12 (4) Any regulatory body or their employees, agents, or  
13 representatives, overseeing life insurance, life  
14 settlements, securities, or investment fraud;
- 15 (5) The life insurer that issued the policy covering the  
16 life of the insured; or
- 17 (6) The licensee and any agents, employees, or  
18 representatives.

19 (b) Subsection (a) shall not apply to statements made with  
20 actual malice. In an action brought against a person for filing  
21 a report or furnishing other information concerning a fraudulent  
22 life settlement act or a fraudulent insurance act, the party



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

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

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

16 **§ -46 Confidentiality.** (a) The documents and evidence  
17 provided pursuant to section -45 or obtained by the  
18 commissioner in an investigation of suspected or actual  
19 fraudulent life settlement acts shall be privileged and  
20 confidential and shall not be a public record and shall not be  
21 subject to discovery or subpoena in a civil or criminal action.



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

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

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

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

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

18 § -47 Other law enforcement or regulatory authority.

19 This chapter shall not:

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



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

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

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

13 § -48 Life settlement anti-fraud initiatives. (a)

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





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

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

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

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

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

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

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



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

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

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

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

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

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



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

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



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

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

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

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

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



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

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

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



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

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

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

7 (1) Certificate of authority: Issuance .....\$1,800

8 (2) Organization of domestic insurers and affiliated  
9 corporations:

10 (A) Application and all other papers required for  
11 issuance of solicitation permit, filing ...\$3,000

12 (B) Issuance of solicitation permit .....\$300

13 (3) Producer's license:

14 (A) Issuance, regular license .....\$100

15 (B) Issuance, temporary license .....\$100

16 (4) Nonresident producer's license: Issuance .....\$150

17 (5) Independent adjuster's license: Issuance .....\$150

18 (6) Public adjuster's license: Issuance .....\$150

19 (7) Claims adjuster's limited license: Issuance .....\$150

20 (8) Independent bill reviewer's license:

21 Issuance .....\$160

22 (9) Limited producer's license: Issuance .....\$120



- 1 (10) Managing general agent's license: Issuance .....\$150
- 2 (11) Reinsurance intermediary's license:
- 3 Issuance .....\$150
- 4 (12) Surplus lines broker's license: Issuance .....\$300
- 5 (13) Service contract provider's registration:
- 6 Issuance .....\$150
- 7 (14) Approved course provider certificate:
- 8 Issuance .....\$200
- 9 (15) Approved continuing education course certificate:
- 10 Issuance .....\$60
- 11 (16) Vehicle protection product warrantor's registration:
- 12 Issuance .....\$150
- 13 (17) Criminal history record check; fingerprinting: For
- 14 each criminal history record check and fingerprinting
- 15 check, a fee to be established by the commissioner.
- 16 (18) Limited line motor vehicle rental company producer's
- 17 license: Issuance .....\$2,000
- 18 (19) Legal service plan certificate of authority:
- 19 Issuance before July 1, 2014 .....\$1,000
- 20 Issuance on or after July 1, 2014 .....\$500
- 21 (20) Life settlement provider's license:
- 22 Issuance before July 1, 2014 .....\$150



1           Issuance on or after July 1, 2014 .....\$75

2       (21) Life settlement broker's license:

3           Issuance before July 1, 2014 .....\$150

4           Issuance on or after July 1, 2014 .....\$75

5       ~~(20)~~ (22) Examination for license: For each examination,  
6           a fee to be established by the commissioner.

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

10       (1) \$1,200 per year for all services (including extension  
11           of the certificate of authority) for an authorized  
12           insurer;

13       (2) \$100 per year for all services (including extension of  
14           the license) for a regularly licensed producer;

15       (3) \$150 per year for all services (including extension of  
16           the license) for a regularly licensed nonresident  
17           producer;

18       (4) \$90 per year for all services (including extension of  
19           the license) for a regularly licensed independent  
20           adjuster;

21       (5) \$90 per year for all services (including extension of  
22           the license) for a regularly licensed public adjuster;





- 1           (6)   \$90 per year for all services (including extension of
- 2           the license) for a claims adjuster's limited license;
- 3           (7)   \$120 per year for all services (including extension of
- 4           the license) for a regularly licensed independent bill
- 5           reviewer;
- 6           (8)   \$90 per year for all services (including extension of
- 7           the license) for a producer's limited license;
- 8           (9)   \$150 per year for all services (including extension of
- 9           the license) for a regularly licensed managing general
- 10          agent;
- 11          (10)  \$150 per year for all services (including extension of
- 12          the license) for a regularly licensed reinsurance
- 13          intermediary;
- 14          (11)  \$90 per year for all services (including extension of
- 15          the license) for a licensed surplus lines broker;
- 16          (12)  \$150 per year for all services (including renewal of
- 17          registration) for a service contract provider;
- 18          (13)  \$130 per year for all services (including extension of
- 19          the certificate) for an approved course provider;
- 20          (14)  \$40 per year for all services (including extension of
- 21          the certificate) for an approved continuing education
- 22          course;



- 1 (15) \$150 per year for all services (including renewal of
- 2 registration) for a vehicle protection product
- 3 warrantor;
- 4 (16) A fee to be established by the commissioner for each
- 5 criminal history record check and fingerprinting;
- 6 (17) \$1,200 per year for all services (including extension
- 7 of the license) for a regularly licensed limited line
- 8 motor vehicle rental company producer;
- 9 (18) \$1,000 per year for all services provided before July
- 10 1, 2014, (including extension of the certificate) for
- 11 an authorized legal service plan; [~~and~~]
- 12 (19) \$500 per year for all services provided on or after
- 13 July 1, 2014, (including extension of the certificate)
- 14 for an authorized legal service plan[-];
- 15 (20) \$1,200 per year for all services (including extension
- 16 of the license) for a regularly licensed life
- 17 settlement provider; and
- 18 (21) \$150 per year for all services (including extension of
- 19 the license) for a regularly licensed life settlement
- 20 broker.

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

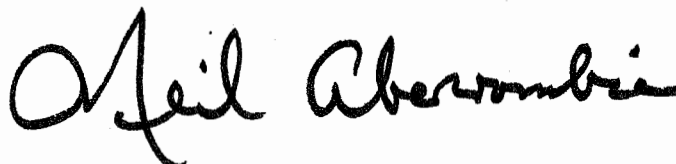


1 investigations, hearings, appeals, and deposits with a  
2 depository other than the department of commerce and consumer  
3 affairs."

4 SECTION 3. Statutory material to be repealed is bracketed  
5 and stricken. New statutory material is underscored.

6 SECTION 4. This Act shall take effect on July 1, 2012;  
7 provided that the amendments made to section 431:7-101, Hawaii  
8 Revised Statutes, shall not be repealed when that section is  
9 reenacted on July 1, 2014, pursuant to section 7 of Act 59,  
10 Session Laws of Hawaii 2010, and the amendments relating to life  
11 settlement contracts made by section 4 of Act 81, Session Laws  
12 of Hawaii 2011, and section 8 of Act 186, Session Laws of Hawaii  
13 2011, shall not apply.

APPROVED this 6 day of JUL, 2012



GOVERNOR OF THE STATE OF HAWAII