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A BILL FOR AN ACT

RELATING TO INSURANCE.

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

1	SECTION 1. The Hawaii Revised Statutes is amended by
2	adding a new chapter to be appropriately designated and to read
3	as follows:
4	"CHAPTER
5	LIFE SETTLEMENTS
6	PART I. GENERAL PROVISIONS
7	§ -1 Short title. This chapter may be cited as the Life
8	Settlements Act.
9	§ -2 Definitions. As used in this chapter, unless the
10	content otherwise requires:
11	"Advertisement" means any written, electronic, or printed
12	communication or any communication by means of recorded
13	telephone messages or transmitted on radio, television, the
14	Internet, or similar communications media, including film
15	strips, motion pictures, and videos, which are published,
16	disseminated, circulated, or placed before the public, directly
17	or indirectly, for the purpose of creating an interest in or
18	inducing a person to purchase or sell, assign, devise, bequest,
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or transfer the death benefit or ownership of a policy or an 1 interest in a policy pursuant to a life settlement contract. 2 3 "Broker" means a person who, on behalf of an owner and for a fee, commission, or other valuable consideration, offers or 4 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, and in the best interest of the owner, notwithstanding the 8 9 manner in which the broker is compensated. "Broker" does not 10 include an attorney, certified public accountant, or financial planner retained in the type of practice customarily performed 11 12 in their professional capacity to represent the owner, whose 13 compensation is not paid directly or indirectly by the provider or any other person, except the owner. 14

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

19 "Certificate" means a certificate issued pursuant to a20 group policy.

21 "Chronically ill" means:

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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	"Com	missioner" means the insurance commissioner.
11	"Fin	ancing entity" means an underwriter, placement agent,
12	lender, p	urchaser of securities, purchaser of a policy or
13	certifica	te from a provider, credit enhancer, or any entity that
14	has a dir	ect ownership in a policy or certificate that is the
15	subject o	f 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.

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

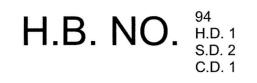
9 "Insured" means the person covered under the policy being10 considered for sale in a life settlement contract.

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

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

20 "Life settlement contract" means:

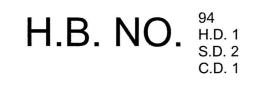
(a) (1) A written agreement entered into between a provider
 and an owner, establishing the terms under which
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compensation or any thing of value will be paid, which 1 2 compensation or thing of value is less than the 3 expected death benefit of the owner's policy or 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 10 or certificate at the time of an application for a 11 life settlement contract;

The transfer for compensation or value of ownership or 12 (2)13 beneficial interest in a trust or other entity that 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 18 life of a person residing in this state; or (3) (A) A written agreement for a loan or other lending 19 20 transaction, secured primarily by an individual 21 or group policy; or



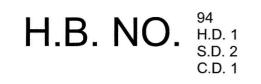


1		(B) A pr	emium finance loan made for a policy on or
2		befo	re the date of issuance of the policy where:
3		(i)	The loan proceeds are not used solely to pay
4			premiums for the policy and any costs or
5			expenses incurred by the lender or the
6			borrower in connection with the financing;
7		(ii)	The owner receives on the date of the
8			premium finance loan a guarantee of the
9			future life settlement value of the policy;
10			or
11		(iii)	The owner agrees on the date of the premium
12			finance loan to sell the policy or any
13			portion of its death benefit on any date
14			following the issuance of the policy.
15	"Lif	e settleme	ent contract" does not include:
16	(b)(1)	A policy	loan by a life insurance company pursuant to
17		the terms	of the policy or accelerated death
18		provision	s contained in the policy, whether issued
19		with the	original policy or as a rider;
20	(2)	A premium	finance loan, as defined herein, or any loan
21		made by a	bank or other licensed financial
22		instituti	on, so long as neither default on such loan
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	nor the transfer of the policy in connection with such
	default is pursuant to an agreement or understanding
	with any other person for the purpose of evading
	regulation under this chapter;
(3)	A collateral assignment of a policy by an owner;
(4)	A loan made by a lender that does not violate any
	insurance premium finance law of this state; provided
	that the loan does not qualify as a life settlement
	contract;
(5)	An agreement where all the parties:
	(A) Are closely related to the insured by blood or
	law; or
	(B) Have a lawful substantial economic interest in
	the continued life, health, and bodily safety of
	the person insured, or are trusts established
	primarily for the benefit of such parties;
(6)	Any designation, consent, or agreement by an insured
	who is an employee of an employer in connection with
	the purchase by the employer, or trust established by
	the employer, of life insurance on the life of the
	employee;
	(4)





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

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1	"Net death benefit" means the amount of the policy or
2	certificate to be settled less any outstanding debts or liens.
3	"Owner" means the owner of a policy or a certificate holder
4	under a group policy, with or without a terminal illness, who
5	enters or seeks to enter into a life settlement contract, but
6	shall not be limited to an owner of a policy or a certificate
7	holder under a group policy that insures the life of an
8	individual with a terminal or chronic illness or condition,
9	except where specifically addressed.
10	"Owner" does not include:
11	(1) Any provider or other licensee under this chapter;
12	(2) A qualified institutional buyer as defined in Rule
13	144A of the Securities Act of 1933, as amended;
14	(3) A financing entity;
15	(4) A special purpose entity; or
16	(5) A related provider trust.
17	"Patient identifying information" means an insured's
18	address, telephone number, facsimile number, electronic mail
19	address, photograph or likeness, employer, employment status,
20	social security number, or any other information that is likely
21	to lead to the identification of the insured.

1	"Person" means any natural person or legal entity,
2	including but not limited to a partnership, limited liability
3	company, association, trust, or corporation.
4	"Policy" means an individual or group policy, certificate,
5	contract, or arrangement of life insurance owned by a resident
6	of this state, regardless of whether delivered or issued for
7	delivery in this state.
8	"Premium finance loan" means a loan made primarily for the
9	purposes of making premium payments on a policy, which loan is
10	secured by an interest in such policy.
11	"Provider" means a person, other than an owner, who enters
12	into or effectuates a life settlement contract with an owner.
13	The term does not include:
14	(1) Any bank, savings bank, savings and loan association,
15	or credit union;
16	(2) A licensed lending institution or creditor or secured
17	party pursuant to a premium finance loan agreement
18	that takes an assignment of a policy or certificate as
19	collateral for a loan;
20	(3) The insurer of a policy or rider to the extent of
21	providing accelerated death benefits, riders, or cash
22	surrender value;
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1	(4)	Any natural person who enters into or effectuates no
2		more than one agreement in a calendar year for the
3		transfer of a policy or certificate for compensation
4		or anything of value less than the expected death
5		benefit payable under the policy;
6	(5)	A purchaser;
7	(6)	Any authorized or eligible insurer that provides stop
8		loss coverage to a provider, purchaser, financing
9		entity, special purpose entity, or related provider
10		trust;
11	(7)	A financing entity;
12	(8)	A special purpose entity;
13	(9)	A related provider trust;
14	(10)	A broker; or
15	(11)	An accredited investor or qualified institutional
16		buyer as defined respectively in Rule 501 of
17		Regulation D and Rule 144A of the Securities Act of
18		1933, as amended, who purchases a life settlement
19		contract from a provider.
20	"Pur	chased policy" means a policy or certificate that has
21	been acqu	ired by a provider pursuant to a life settlement
22	contract.	

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

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

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

"Special purpose entity" means a corporation, partnership,
 trust, limited liability company, or other legal entity formed
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solely to provide either directly or indirectly access to 1 2 institutional capital markets for a financing entity or provider in connection with a transaction in which the securities in the 3 4 special purpose entity: Are acquired by the owner or by a "gualified 5 (1)institutional buyer" as defined in Rule 144A of the 6 Securities Act of 1933, as amended; or 7 8 (2) Pay a fixed rate of return commensurate with 9 established asset-backed institutional capital 10 markets. "Stranger-originated life insurance" or "STOLI" means a 11 12 practice or plan to initiate a policy for the benefit of a third 13 party investor who, at the time of policy origination, has no 14 insurable interest in the insured, and includes: 15 Arrangements in which life insurance is purchased with (1)16 resources or guarantees from or through a person or 17 entity who at the time of policy inception, could not 18 lawfully initiate the policy by oneself or itself, and where, at the time of inception, there is an 19 20 arrangement or agreement, whether verbal or written, 21 to directly or indirectly transfer the ownership of

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

3 (2) Trusts created to give the appearance of insurable
4 interest and used to initiate policies for investors.
5 "STOLI" does not include those practices set forth in
6 subsection (b) of the definition of "life settlement contract".
7 "Terminally ill" means having an illness or sickness that
8 can reasonably be expected to result in death in twenty-four

9 months or less.

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

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

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

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

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

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

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

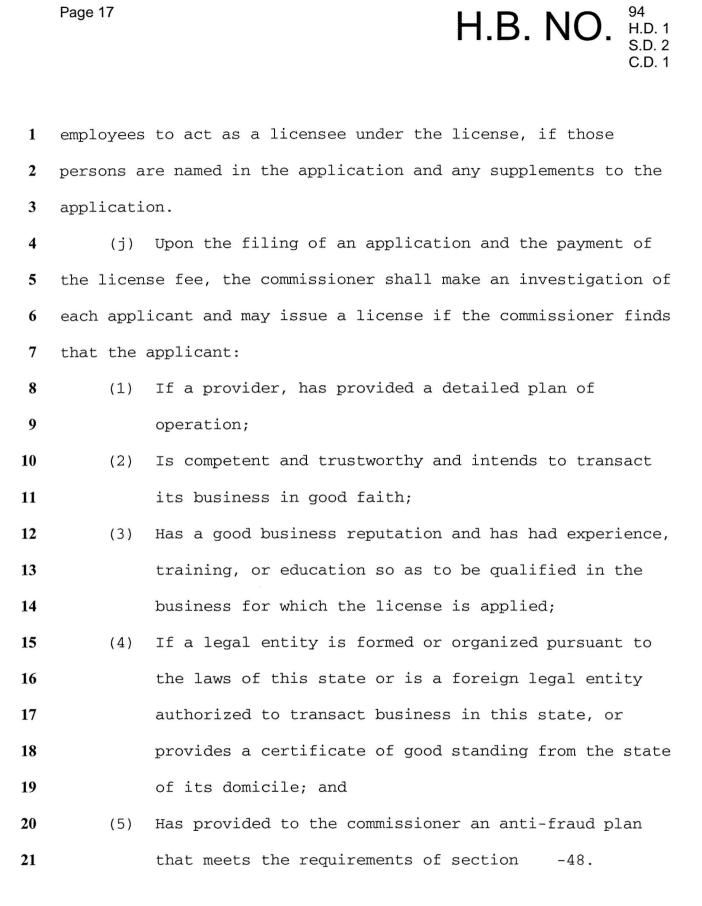
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3 (g) Licenses may be renewed every year on their
4 anniversary date upon payment of fees in the amounts required
5 under section 431:7-101. Failure to pay the fees within the
6 terms prescribed shall result in the automatic inactivation of
7 the license.

8 The applicant shall provide such information as the (h) 9 commissioner may require on forms prepared by the commissioner. 10 The commissioner shall have authority, at any time, to require such applicant to fully disclose the identity of its 11 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 commissioner's sole discretion, refuse to issue such a license 16 17 in the name of any person if not satisfied that any officer, 18 employee, stockholder, or partner thereof who may materially 19 influence the applicant's conduct meets the standards under 20 subsection (j).

(i) A license issued to a partnership, corporation, or
 other entity authorizes all members, officers, and designated HB94 CD1 HMS 2008-4086



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

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

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

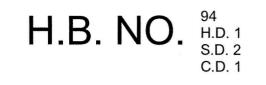
(n) A broker may not use any person to perform the
functions of a provider as defined in this chapter unless such
person holds a current, valid license as a provider, and as
provided in this section.

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



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1	(p)	An individual licensed as a broker shall complete on a
2	biennial b	asis fifteen hours of training related to life
3	settlement	s and life settlement transactions, as required by the
4	commission	er; provided that a life insurance producer who is
5	operating	as a broker pursuant to this section shall not be
6	subject to	the requirements of this subsection. Any person
7	failing to	meet the requirements of this subsection shall be
8	subject to	the penalties imposed by the commissioner.
9	§ -	4 License suspension, revocation, or refusal to
10	renew. (a) The commissioner may suspend, revoke, or refuse to
11	renew the	license of any licensee if the commissioner finds
12	that:	
13	(1)	There was any material misrepresentation in the
14		application for the license;
15	(2)	The licensee or any officer, partner, member, or
16		director has been guilty of fraudulent or dishonest
17		practices, is subject to a final administrative
18		action, or is otherwise shown to be untrustworthy or
19		incompetent to act as a licensee;
20	(3)	The provider demonstrates a pattern of unreasonably
21		withholding payments to policy owners;



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

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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 or suspends, revokes, or refuses to renew the license of any 6 licensee under this chapter, the commissioner shall conduct a 7 8 hearing in accordance with chapter 91. 9 8 -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 insurance forms, policies, and contracts. 14 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.

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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 unless first filed with and approved by the commissioner. The 3 4 commissioner shall disapprove a life settlement contract form or 5 disclosure statement form if, in the commissioner's opinion, the contract or provisions contained therein fail to meet the 6 requirements of sections -21, -31, -33, and 7 -43 of 8 this chapter or are unreasonable, contrary to the interests of 9 the public, or otherwise misleading or unfair to the owner. At the commissioner's discretion, the commissioner may require the 10 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



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(2) Include the names of the insurance companies whose
 policies have been settled and the brokers that have
 settled said policies.
 The information shall be limited to only those transactions
 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 statement as required in this section, or wilfully fails to 10 11 reply within thirty days to a written inquiry by the 12 commissioner in connection therewith, shall, in addition to 13 other penalties provided by this chapter, be subject, upon due 14 notice and opportunity to be heard, to a penalty of up to \$250 15 per day of delay, not to exceed \$25,000 in the aggregate, for 16 each such failure.

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

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1 insured or the insured's financial or medical information to any 2 other person unless the disclosure: Is necessary to effect a life settlement contract 3 (1)between the owner and a provider, and the owner and 4 5 insured have provided prior written consent to the disclosure; 6 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 consent to the disclosure; 12 Is provided in response to an investigation or 13 (3)14 examination by the commissioner pursuant to the 15 requirements of section -17 or any other 16 governmental officer or agency; (4)17 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

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purpose of determining health status. For the 1 purposes of this paragraph, the term "authorized 2 representative" shall not include any person who has 3 or may have any financial interest in the life 4 5 settlement contract other than a provider, licensed broker, financing entity, related provider trust, or 6 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.

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

18

PART II. EXAMINATIONS

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

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

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

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

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

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5 (b) Every licensee or person from whom information is 6 sought, including its officers, directors and agents, shall provide to the examiners timely, convenient, and free access at 7 8 all reasonable hours at its offices to all books, records, 9 accounts, papers, documents, assets, and computer or other 10 recordings relating to the property, assets, business, and 11 affairs of the licensee being examined. The officers, directors, employees, and agents of the licensee or person shall 12 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 examination or to comply with any reasonable written request of 16 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.

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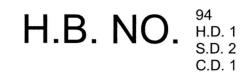
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1 (C)The commissioner shall have the power to issue 2 subpoenas, to administer oaths, and to examine under oath any 3 person as to any matter pertinent to the examination. Upon the 4 failure or refusal of a person to obey a subpoena, the 5 commissioner may petition a court of competent jurisdiction, and 6 upon proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. 7 8 When making an examination under this chapter, the (d) 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
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or licensee work papers or other documents, or any other
 information discovered or developed during the course of any
 examination in the furtherance of any legal or regulatory action
 that the commissioner may, in the commissioner's sole
 discretion, deem appropriate.

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

12 (b) No later than sixty days following completion of the 13 examination, the examiner in charge shall file with the 14 commissioner a verified written report of examination under oath. Upon receipt of the verified report, the commissioner 15 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 contained in the examination report and which shall become part 20 21 of the report or to request a hearing on any matter in dispute.

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

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

11 Except as otherwise provided in this chapter, all (b) examination reports, working papers, recorded information, 12 documents and copies thereof produced by, obtained by, or 13 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



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

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

11 (1) An owner;

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

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

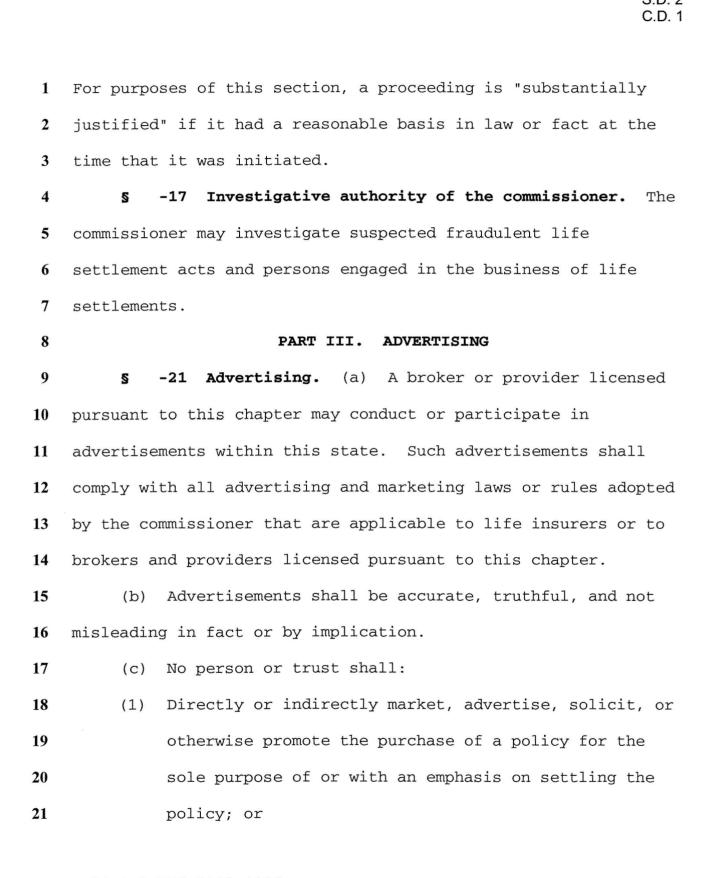
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S -16 Immunity from liability. (a) No cause of action
 shall arise nor shall any liability be imposed against the
 commissioner, the commissioner's authorized representatives, or
 any examiner appointed by the commissioner for any statements
 made or conduct performed in good faith while carrying out the
 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).

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







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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 i	n writing, in a separate document that is signed by the
7	owner and	provider, the following information to the owner no
8	later tha	n the date the life settlement contract is signed by
9	all parti	es:
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



H.B. NO. ⁹⁴ H.D. 1 S.D. 2 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 life settlement contract within fifteen days of the 4 date it is executed by all parties and the owner has 5 received the disclosures contained herein. 6 7 Rescission, if exercised by the owner, is effective only if both notice of the rescission is given, and 8 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 during the rescission period, the contract shall be 12 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;

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

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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

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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;



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



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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 sett	lement contract is signed by all parties. The
4	disclosur	es shall be conspicuously displayed in the life
5	settlemen	t 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

the provider to the net amount of proceeds or value to



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1 be received by the owner. For the purpose of this paragraph, "gross offer" or "bid" means the total 2 3 amount or value offered by the provider for the purchase of one or more life insurance policies, 4 5 inclusive of commissions and fees; and (6) The fact that the failure to provide the disclosures 6 7 or rights described in this section shall be deemed an 8 unfair trade practice under section 480-2. 9 8 -32 Disclosure to insurer. (a) Without limiting the 10 ability of an insurer from assessing the insurability of a policy applicant and determining whether or not to issue the 11 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 the proposed owner intends to pay premiums with the assistance 15 of financing from a lender that will use the policy as 16 collateral to support the financing. 17 18 (b) If, as described in subsection (a)(3) of the

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

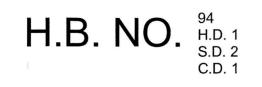


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1	shall be	rejected a	s a violation of the prohibited practices in
2	section	-41.	
3	(c)	If the fi	nancing does not violate section -41 in
4	this mann	ner, the in	surance carrier:
5	(1)	May make	disclosures to the applicant and the insured,
6		either on	the application or an amendment to the
7		applicati	on to be completed no later than the delivery
8		of the po	licy, including the following:
9		"If	you have entered into a loan arrangement
10		wher	e the policy is used as collateral, and the
11		poli	cy does change ownership at some point in the
12		futu	re 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;

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1	(3)	Should there be a change of ownership and
2		you wish to obtain more insurance coverage
3		on the insured's life in the future, the
4		insured's higher issue age, a change in
5		health status, and/or other factors may
6		reduce the ability to obtain coverage and/or
7		may result in significantly higher premiums;
8	(4)	You should consult a professional advisor,
9		since a change in ownership in satisfaction
10		of the loan may result in tax consequences
11		to the owner, depending on the structure of
12		the loan";
13	and	
14	(2) May requi	re certifications, such as the following,
15	from the	applicant and/or the insured:
16	"(1)	I have not entered into any agreement or
17		arrangement providing for the future sale of
18		this life insurance policy;
19	(2)	My loan arrangement for this policy provides
20		funds sufficient to pay for some or all of
21		the premiums, costs, and expenses associated
22		with obtaining and maintaining my life
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insurance policy, but I have not entered 1 2 into any agreement by which I am to receive 3 consideration in exchange for procuring this policy; and 4 5 (3) The borrower has an insurable interest in the 6 insured." 7 -33 General rules. (a) A provider entering into a S 8 life settlement contract with any owner of a policy, wherein the 9 insured is terminally or chronically ill, shall first obtain: 10 (1)If the owner is the insured, a written statement from 11 a licensed attending physician that the owner is of sound mind and under no constraint or undue influence 12 to enter into a life settlement contract; and 13 14 (2)A document in which the insured consents to the release of the insured's medical records to a 15 provider, broker, or insurance producer and, if the 16 17 policy was issued less than two years from the date of 18 application for a life settlement contract, to the 19 insurance company that issued the policy. The provider, broker, or its authorized representative shall be 20 limited to contact for the purpose of determining the owner's 21 22 health status or to verify the owner's address, once every three HB94 CD1 HMS 2008-4086 43

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

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

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

18 (1) Consents to the life settlement contract;

19 (2) Represents that the owner has a full and complete20 understanding of the life settlement contract;

21 (3) Represents that the owner has a full and complete
22 understanding of the benefits of the policy;



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Acknowledges that the owner is entering into the life 1 (4)settlement contract freely and voluntarily; and 2 3 (5)For persons with a chronic or terminal illness or condition, acknowledges that the insured has a chronic 4 or terminal illness and that the chronic or terminal 5 illness or condition was diagnosed after the policy 6 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.

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

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

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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 state shall provide that the owner may rescind the contract on 4 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 period. If the insured dies during the rescission period, the 10 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 owner of documents to effect the transfer of the policy, the 15 16 provider shall pay the proceeds of the settlement to an escrow 17 or trust account managed by a trustee or escrow agent in a state 18 or federally chartered financial institution pending 19 acknowledgement of the transfer by the issuer of the policy. 20 The trustee or escrow agent shall be required to transfer the 21 proceeds due to the owner within three business days of 22 acknowledgement of the transfer from the insurer.



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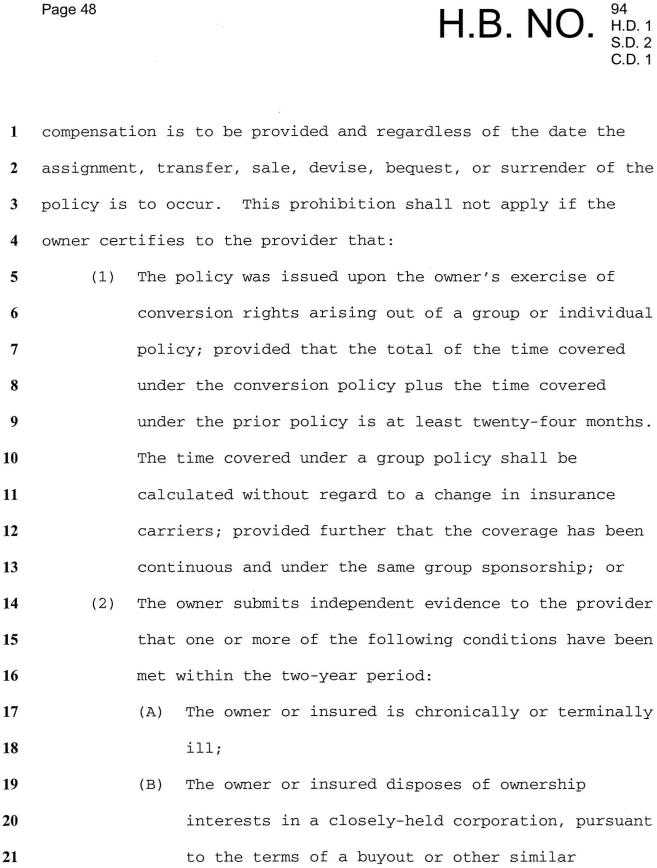
1 (j) Failure to tender the life settlement contract 2 proceeds to the owner by the date disclosed to the owner shall 3 render the contract voidable by the owner for lack of consideration until the time the proceeds are tendered to and 4 5 accepted by the owner. A failure to give written notice of the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

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



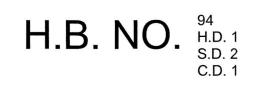




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1			agreement in effect at the time the policy was
2			initially issued;
3		(C)	The owner's spouse dies;
4		(D)	The owner divorces the owner's spouse;
5		(E)	The owner retires from full-time employment;
6		(F)	The owner becomes physically or mentally disabled
7			and a physician determines that the disability
8			prevents the owner from maintaining full-time
9			employment; or
10		(G)	A final order, judgment, or decree is entered by
11			a court of competent jurisdiction, on the
12			application of a creditor of the owner,
13			adjudicating the owner bankrupt or insolvent, or
14			approving a petition seeking reorganization of
15			the owner or appointing a receiver, trustee, or
16			liquidator to all or a substantial part of the
17			owner's assets;
18	(3)	Copi	es of the independent evidence required by
19		subs	ection (m)(2) shall be submitted to the insurer
20		when	the provider submits a request to the insurer for
21		veri	fication of coverage. The copies shall be
22		acco	mpanied by a letter of attestation from the





1		provider that the copies are true and correct copies
2		of the documents received by the provider. Nothing in
3		this section shall prohibit an insurer from exercising
4		its right to contest the validity of any policy;
5	(4)	If the provider submits to the insurer a copy of
6		independent evidence required by subsection $(m)(2)$
7		when the provider submits a request to the insurer to
8		effect the transfer of the policy to the provider, the
9		copy shall be deemed to establish that the life
10		settlement contract satisfies the requirements of this
11		section.

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

16

PART V. MISCELLANEOUS PROVISIONS

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

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



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any transaction, practice, or course of
if the person knows or reasonably should have
at the intent was to avoid the notice
ents of this chapter;
a any fraudulent act or practice in connection
transaction relating to any life settlement
involving an owner who is a resident of this
olicit, market, or otherwise promote the
of a policy for the purpose of or with an
on settling the policy;
to a premium finance agreement with any person
, or any person affiliated with the person or
oursuant to which the person shall receive any
fees, or other consideration, directly or
y, from the policy or owner of the policy or
person with respect to the premium finance
or any life settlement contract or other
on related to such policy that are in
to the amounts required to pay the principal,
and service charges related to policy

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1 subsequent sale of such agreement; provided that any payments, charges, fees or other amounts in addition 2 3 to the amounts required to pay the principal, 4 interest, and service charges related to policy 5 premiums paid under the premium finance agreement shall be remitted to the original owner of the policy 6 7 or to the owner's estate if the owner not living at 8 the time of the determination of the overpayment; 9 With respect to any policy or life settlement contract (6) 10 and a broker, knowingly solicit an offer from, 11 effectuate a life settlement contract with or make a 12 sale to any provider, financing entity, or related 13 provider trust that is controlling, controlled by, or 14 under common control with such broker; With respect to any policy or life settlement contract 15 (7)16 and a provider, knowingly enter into a life settlement 17 contract with an owner, if, in connection with such 18 life settlement contract, anything of value will be 19 paid to a broker that is controlling, controlled by, 20 or under common control with such provider or the 21 financing entity or related provider trust that is 22 involved in such life settlement contract;



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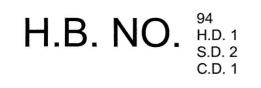
1 (8) With respect to a provider, enter into a life settlement contract unless the life settlement 2 contract promotional, advertising, and marketing 3 materials, as may be prescribed by rule, have been 4 filed with the commissioner. In no event shall any 5 marketing materials expressly reference that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

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



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With respect to a person in the business of life 1 (11)settlements, knowingly or intentionally permit any 2 3 person convicted of a felony involving dishonesty or breach of trust to participate in the business of life 4 5 settlements. A violation of this section shall be deemed a 6 (b) fraudulent life settlement act. 7 8 -42 Fraudulent life settlement acts prohibited. S It is 9 a violation of this chapter for any person, provider, broker, or any other party related to the business of life settlements, to 10 11 commit a fraudulent life settlement act. For the purposes of this section, "fraudulent life 12 settlement act" includes: 13 14 Acts or omissions committed by any person who, (1)15 knowingly and with intent to defraud, for the purpose of depriving another of property or for pecuniary 16 17 gain, commits, or permits its employees or agents to engage in acts including but not limited to: 18 19 (A) Presenting, causing to be presented, or preparing with knowledge and belief that it will be 20 21 presented to or by a provider, premium finance lender, broker, insurer, insurance producer, or 22 HB94 CD1 HMS 2008-4086 54



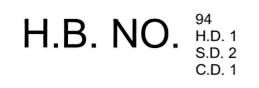
1	any o	other person, false material information, or
2	conce	ealing material information, as part of, in
3	suppo	ort of, or concerning a fact material to one
4	or mo	ore of the following:
5	(i)	An application for the issuance of a policy
6		or life settlement contract;
7	(ii)	The underwriting of a policy or life
8		settlement contract;
9	(iii)	A claim for payment or benefit pursuant to a
10		policy or life settlement contract;
11	(iv)	Premiums paid on a policy;
12	(v)	Payments and changes in ownership or
13		beneficiary made in accordance with the
14		terms of a policy or life settlement
15		contract;
16	(vi)	The reinstatement or conversion of a policy;
17	(vii)	In the solicitation, offer to enter into, or
18		effectuation of a policy or life settlement
19		contract;
20	(viii)	The issuance of written evidence of a policy
21		or life settlement contract;



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1			(ix)	Any application for or the existence of or
2				any payments related to a loan secured
3				directly or indirectly by any interest in a
4				policy; or
5			(x)	Entering into any practice or plan that
6				involves stranger-originated life insurance;
7		(B)	Fail	ing to disclose to the insurer, where the
8			insu	rer requests such disclosure, that the
9			pros	pective insured has undergone a life
10			expe	ctancy evaluation by any person or entity
11			othe	r than the insurer or its authorized
12			repr	esentatives in connection with the issuance
13			of t	he policy;
14		(C)	Empl	oying any device, scheme, or artifice to
15			defr	aud in the business of life settlements; or
16		(D)	In t	he solicitation, application, or issuance of
17			a po	licy, employing any device, scheme, or
18			arti	fice in violation of state insurable interest
19			laws	;
20	(2)	In t	he fu	rtherance of a fraud or to prevent the
21		dete	ection	of a fraud, any person commits or permits
22		its	emplo	yees or its agents to:





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



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1		or any other person engaged in the business of
2		life settlements or insurance;
3	(F)	Knowingly and with intent to defraud, enter into,
4		broker, or otherwise deal in a life settlement
5		contract, the subject of which is a policy that
6		was obtained by presenting false information
7		concerning any fact material to the policy or by
8		concealing, for the purpose of misleading
9		another, information concerning any fact material
10		to the policy, where the owner or the owner's
11		agent intended to defraud the policy's issuer;
12	(G)	Attempt to commit, assist, aid, or abet in the
13		commission of, or conspire to commit the acts or
14		omissions specified in this definition; or
15	(H)	Misrepresent the state of residence of an owner
16		to be a state or jurisdiction that does not have
17		a law substantially similar to this chapter for
18		the purpose of evading or avoiding the provisions
19		of this chapter.
20	§ -43	Fraud warning required. (a) Life settlement
21	contracts and	applications for life settlement contracts,



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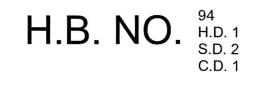
1 regardless of the form of transmission, shall contain the
2 following statement or a substantially similar statement:
3 "Any person who knowingly presents false information in an
4 application for insurance or life settlement contract is guilty
5 of a crime and may be subject to fines and confinement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

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

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

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

S -45 Immunity from liability. (a) No civil liability
 shall be imposed on and no cause of action shall arise from a HB94 CD1 HMS 2008-4086



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

5 A person identified in subsection (a) shall be (C) 6 entitled to an award of attorney's fees and costs if the person 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 9 carrying out the provisions of this chapter and the party 10 bringing the action was not substantially justified in doing so. For purposes of this section, a proceeding is "substantially 11 justified" if it had a reasonable basis in law or fact at the 12 13 time that it was initiated.

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

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



Subsection (a) does not prohibit release by the 1 (b) commissioner of documents and evidence obtained in an 2 investigation of suspected or actual fraudulent life settlement 3 4 acts: In administrative or judicial proceedings to enforce 5 (1)laws administered by the commissioner; 6 To federal, state, or local law enforcement or 7 (2)regulatory agencies, to an organization established 8 for the purpose of detecting and preventing fraudulent 9 10 life settlement acts or to the National Association of 11 Insurance Commissioners; or (3) At the discretion of the commissioner, to a person in 12 the business of life settlements that is aggrieved by 13 a fraudulent life settlement act. 14 (c) Release of documents and evidence under subsection (b) 15 16 does not abrogate or modify the privilege granted in subsection 17 (a). 18 S -47 Other law enforcement or regulatory authority. 19 This chapter shall not: (1) Preempt the authority or relieve the duty of other law 20

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21 enforcement or regulatory agencies to investigate,

22 examine, and prosecute suspected violations of law;



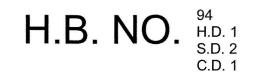
1	(2)	Preempt, supersede, or limit any provision of any
2		state securities law or any rule, order, or notice
3		issued thereunder;
4	(3)	Prevent or prohibit a person from disclosing
5		voluntarily information concerning life settlement
6		fraud to a law enforcement or regulatory agency other
7		than the insurance division; or
8	(4)	Limit the powers granted elsewhere by the laws of this
9		state to the commissioner or the insurance fraud
10		investigations unit to investigate and examine
11		possible violations of law and to take appropriate
12		action against wrongdoers.
13	s ·	-48 Life settlement anti-fraud initiatives. (a)
14	Providers	and brokers shall have in place anti-fraud initiatives
15	reasonably	y calculated to detect, prosecute, and prevent
16	fraudulent	t life settlement acts. At the discretion of the
17	commission	ner, the commissioner may order, or a licensee may
18	request an	nd the commissioner may grant, such modifications of
19	the follow	wing required initiatives as necessary to ensure an
20	effective	anti-fraud program. The modifications may be more or
21	less rest	rictive than the required initiatives so long as the

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1	modificat	ions	may reasonably be expected to accomplish the
2	purpose o	f thi	s section. Anti-fraud initiatives shall include:
3	(1)	Frau	d investigators, who may be provider or broker
4		empl	oyees or independent contractors; and
5	(2)	An a	nti-fraud plan that shall be submitted to the
6		comm	issioner. 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



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fraudulent life settlement acts and investigating 1 unresolved material inconsistencies between 2 medical records and insurance applications. 3 Anti-fraud plans submitted to the commissioner shall 4 (b) be privileged and confidential and shall not be a public record 5 and shall not be subject to discovery or subpoena in a civil or 6 criminal action. 7 8 Injunctions; civil remedies; cease and desist. 8 -49 In addition to the penalties and other enforcement 9 (a) provisions of this chapter, if any person violates this chapter 10 11 or any rule implementing this chapter, the commissioner may seek 12 an injunction in a court of competent jurisdiction in the county 13 where the person resides or has a principal place of business 14 and may apply for temporary and permanent orders that the 15 commissioner determines necessary to restrain the person from 16 further committing the violation. 17 (b) Any person damaged by the acts of another person in

18 violation of this chapter or any rule implementing this chapter, 19 may bring a civil action for damages against the person 20 committing the violation in a court of competent jurisdiction.

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



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

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

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

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

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

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

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



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

4 A provider from this state who enters into a life (b) settlement contract with an owner who is a resident of another 5 state that has enacted statutes or adopted regulations governing 6 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 transactions in those states, however, the provider shall 14 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.

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

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1	S	-53 Authority to adopt rules. The commissioner may
2	adopt rul	es to implement this chapter pursuant to chapter 91."
3	SECT	ION 2. Section 431:7-101, Hawaii Revised Statutes, is
4	amended b	by amending subsections (a) and (b) to read as follows:
5	"(a)	The commissioner shall collect in advance the
6	following	fees:
7	(1)	Certificate of authority: Issuance\$900
8	(2)	Organization of domestic insurers and affiliated
9		corporations:
10		(A) Application and all other papers required
11		for issuance of solicitation permit,
12		filing\$1,500
13		(B) Issuance of solicitation permit\$150
14	(3)	Producer's license:
15		(A) Issuance, regular license\$50
16		(B) Issuance, temporary license\$50
17	(4)	Nonresident producer's license: Issuance\$75
18	(5)	Independent adjuster's license: Issuance\$75
19	(6)	Public adjuster's license: Issuance\$75
20	(7)	Workers' compensation claim adjuster's limited
21		license: Issuance\$75
22	(8)	Independent bill reviewer's license: Issuance \$80
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1	(9)	Limited producer's license: Issuance\$60
2	(10)	Managing general agent's license: Issuance\$75
3	(11)	Reinsurance intermediary's license: Issuance\$75
4	(12)	Surplus lines broker's license: Issuance\$150
5	(13)	Service contract provider's registration:
6		Issuance\$75
7	(14)	Approved course provider certificate: Issuance \$100
8	(15)	Approved continuing education course
9		certificate: Issuance\$30
10	(16)	Vehicle protection product warrantor's
11		registration: Issuance\$75
12	(17)	Criminal history record check\$20
13	(18)	Limited line motor vehicle rental company
14		producer's license: Issuance\$1,000
15	(19)	Life settlement contract provider's license:
16		Issuance\$75
17	(20)	Life settlement contract broker's license:
18		Issuance\$75
19	[(19)]	(21) Examination for license: For each
20		examination, a fee to be established by the
21		commissioner.

commissioner.

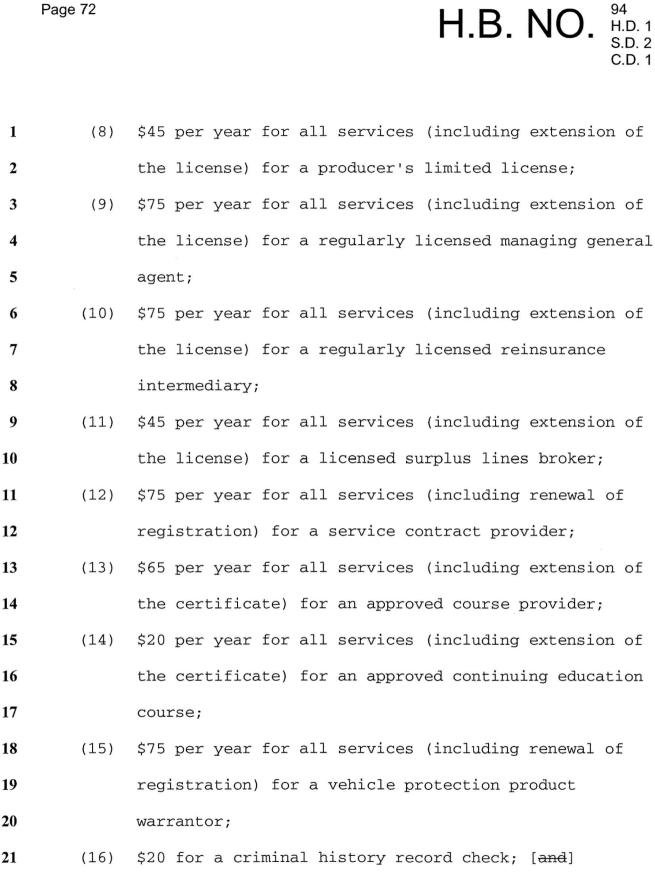


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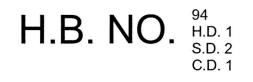
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1	(b)	The fees for services of the department of commerce
2	and consu	mer affairs subsequent to the issuance of a certificate
3	of author	ity, license, or other certificate are as follows:
4	(1)	\$600 per year for all services (including extension of
5		the certificate of authority) for an authorized
6		insurer;
7	(2)	\$50 per year for all services (including extension of
8		the license) for a regularly licensed producer;
9	(3)	\$75 per year for all services (including extension of
10		the license) for a regularly licensed nonresident
11		producer;
12	(4)	\$45 per year for all services (including extension of
13		the license) for a regularly licensed independent
14		adjuster;
15	(5)	\$45 per year for all services (including extension of
16		the license) for a regularly licensed public adjuster;
17	(6)	\$45 per year for all services (including extension of
18		the license) for a workers' compensation claims
19		adjuster's limited license;
20	(7)	\$60 per year for all services (including extension of
21		the license) for a regularly licensed independent bill
22		reviewer;

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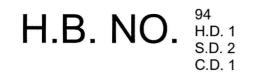
1	(17)	\$600 per year for all services (including extension of	
2		the license) for a regularly licensed limited line	
3		motor vehicle rental company producer [-];	
4	(18)	\$75 per year for all services (including extension of	
5		the license) for a regularly licensed life settlement	
6		contract provider; and	
7	(19)	\$75 per year for all services (including extension of	
8		the license) for a regularly licensed life settlement	
9		contract broker.	
10	The	services referred to in paragraphs (1) to $[(17)]$ (19)	
11	shall not	include services in connection with examinations,	
12	investigations, hearings, appeals, and deposits with a		
13	depository other than the department of commerce and consumer		
14	affairs."		
15	SECT	ION 3. (a) A provider as defined in section 1 of this	
16	Act lawfu	lly transacting business in this state prior to the	
17	effective	date of this Act may continue to do so pending	
18	approval or disapproval of that person's application for a		
19	license a	s long as the application is filed with the insurance	

20 $\,$ commissioner not later than thirty days after publication by the

21 commissioner of an application form and instructions for

22 licensure of providers. If the publication of the application



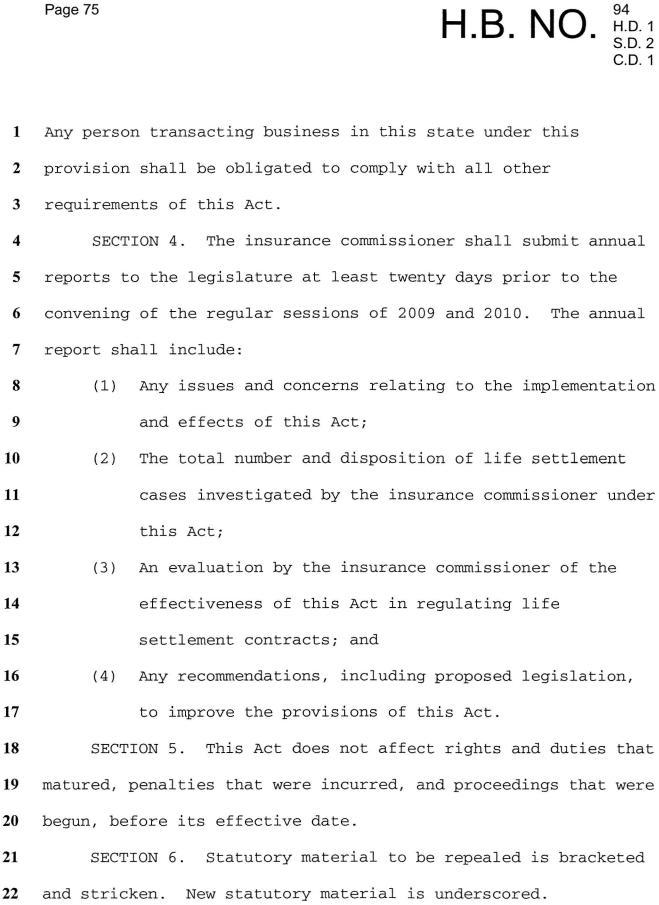


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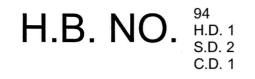
1 form and instructions is prior to the effective date of this Act, then the filing of the application shall not be later than 2 thirty days after the effective date of this Act. During the 3 4 time that such an application is pending with the commissioner, 5 the applicant may use any form of life settlement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

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









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



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Report Title:

Life Settlements Model Act; Stranger-Originated Life Insurance

Description:

Enacts the Life Settlements Model Act, which establishes consumer protections in life settlement transactions where the owner of a life insurance policy transfers the death benefit for compensation that is less than the expected death benefit, but more than the surrender value of the policy. Requires the Insurance Commissioner to report annually to the Legislature on the implementation and effects of the Act. Sunsets in 2010. (HB94 CD1)

