

AMENDED IN SENATE MARCH 24, 2008

SENATE BILL

No. 1224

Introduced by Senator Machado

February 14, 2008

~~An act to amend Section 10113.1 of the Insurance Code, relating to insurance.~~ *An act to amend Sections 25019, 25023, 25102 of, to add Section 25257 to, to repeal Section 25209 of, and to repeal and add Section 25401 of, the Corporations Code, and to amend Section 10113.2 of, to add Section 10113.3 to, and to repeal and add Section 10113.1 of, the Insurance Code, relating to insurance.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1224, as amended, Machado. Insurance: viatical ~~settlements~~. *and life settlement contracts.*

Existing law, the Corporate Securities Law of 1968, provides for regulation by the Commissioner of Corporations of the issuance and sale of securities and makes the willful violation of the provisions of this law a crime. The law defines a security for its purposes as including a viatical settlement contract and a life settlement contract, each as defined, and a fractionalized or pooled interest in either type of contract. Under this law, a person is prohibited from selling, or offering to sell, a security in an issuer transaction, as specified, unless the sale satisfies specified conditions. Existing law exempts certain transactions from this requirement, including the offer or sale of a viatical or life settlement contract or fractionalized or pooled interest in the contract if particular criteria are satisfied.

This bill would expand the definition of a security to include a fractional or proportional interest in a life insurance policy benefit, including a viatical settlement contract and a life settlement contract.

It would delete reference to catastrophic illness in defining a viatical settlement contract. The bill would delete the exemption for the offer and sale of these contracts from certain laws specifying conditions on the offer or sale of securities.

Because the bill would expand a requirement under the Corporate Securities Law of 1968, the willful violation of which would be a crime, it would impose a state-mandated local program.

Existing law provides that unless otherwise exempted, broker-dealers, or a person acting on behalf of a broker-dealer shall not affect any transaction in, or induce or attempt to induce, the purchase or sale of any security unless the broker-dealer has applied to the Commissioner of Corporations to so act, and complies with any rules as the commissioner may adopt for their qualification or employment. These requirements do not apply when the person is a life agent, as specified, and is offering or selling any viatical or life settlement contract, or pooled interest in a transaction, as specified.

This bill would repeal this exemption for life agents.

Existing law provides that it is unlawful for any investment adviser to conduct a business as an investment adviser in this state without a certificate from the Commissioner of Corporations. Existing law regulates the activities of investment advisers and provides for administrative penalties for violations of these provisions.

This bill would make it unlawful for a person, except as specified, to represent himself or herself as, a “financial planner,” “investment counselor,” “financial consultant,” “investment consultant,” “money manager,” “investment manager,” “investment planner,” “chartered financial consultant” or other similar term, unless the person is certified or registered as an investment adviser or investment adviser representative or is exempt from certification, as specified.

Existing law makes it a crime for any person to offer or sell a security, or to buy or offer to buy a security, in this state via any specified communication that includes an untrue statement of a material fact or omits to state a necessary material fact, as specified.

This bill would instead make it a crime for any person, in connection with the offer, sale, or purchase of a security, either directly or indirectly to (1) employ a device, scheme, or artifice to defraud, or (2) make an untrue statement of a material fact or omit to state a necessary material fact, as specified, or (3) engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

By changing the definition of a crime, the bill would impose a state-mandated local program.

Existing law defines “viatical settlement,” as specified, and requires life and disability agents, among others, to file a declaration with the Insurance Commissioner that their agent license is valid and in good standing in order to engage in the business of viatical settlements. The commissioner may suspend the agent’s ability to transact viatical settlements if this requirement is not complied with.

This bill would repeal these provisions.

This bill would revise and recast the law relating to viatical settlements, to define those and other specified financial arrangements as “life settlements,” as defined. The bill would prohibit a person from entering into, brokering, or soliciting life settlements unless that person holds a license, issued by the commissioner, to so act. The bill would specify the requirements to obtain a life settlement license, and specify, among other things, disclosure requirements that must be complied with at the time of the solicitation of the life settlement contract. The bill would also provide that the insurance carrier may require a specified certification from the applicant. The bill would contain various other regulatory provisions relating to life settlement contracts, including provisions relating to the confidentiality of the insured’s medical and financial information, as specified.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law defines “viatical settlements” to mean an agreement entered into between a person owning a life insurance policy upon the life of a person with a catastrophic or life-threatening illness or condition and another person by which the policy owner receives compensation or anything of value less than the death benefits of the insurance policy in return for an assignment, transfer, sale, devise, or bequest of the death benefits or ownership of the insurance policy, but does not include an assignment of a life insurance policy to a licensed lending institution or credit union as collateral for a loan.~~

~~This bill would make a technical, nonsubstantive change in that provision.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 SECTION 1. *This act shall be known and may be cited as the*
2 *Life Settlement Consumer Protection Act of 2008.*
3 SEC. 2. *Section 25019 of the Corporations Code is amended*
4 *to read:*
5 25019. (a) “Security” means any note; stock; treasury stock;
6 membership in an incorporated or unincorporated association;
7 bond; debenture; evidence of indebtedness; certificate of interest
8 or participation in any profit-sharing agreement; collateral trust
9 certificate; preorganization certificate or subscription; transferable
10 share; investment contract; *fractional or proportional interest in*
11 *a life insurance policy benefit, including a viatical settlement*
12 *contract or a fractionalized or pooled interest therein; and a life*
13 *settlement contract or a fractionalized or pooled interest therein;*
14 voting trust certificate; certificate of deposit for a security; interest
15 in a limited liability company and any class or series of those
16 interests (including any fractional or other interest in that interest),
17 except a membership interest in a limited liability company in
18 which the person claiming this exception can prove that all of the
19 members are actively engaged in the management of the limited
20 liability company; provided that evidence that members vote or
21 have the right to vote, or the right to information concerning the
22 business and affairs of the limited liability company, or the right
23 to participate in management, shall not establish, without more,
24 that all members are actively engaged in the management of the
25 limited liability company; certificate of interest or participation in
26 an oil, gas or mining title or lease or in payments out of production
27 under that title or lease; put, call, straddle, option, or privilege on
28 any security, certificate of deposit, or group or index of securities
29 (including any interest therein or based on the value thereof); or
30 any put, call, straddle, option, or privilege entered into on a national
31 securities exchange relating to foreign currency; any beneficial
32 interest or other security issued in connection with a funded
33 employees’ pension, profit sharing, stock bonus, or similar benefit
34 plan; or, in general, any interest or instrument commonly known
35 as a “security”; or any certificate of interest or participation in,

1 temporary or interim certificate for, receipt for, guarantee of, or
2 warrant or right to subscribe to or purchase, any of the foregoing.
3 All of the foregoing are securities whether or not evidenced by a
4 written document. ~~“Security”~~

5 (b) “Security” does not include: ~~(1) any of the following:~~

6 (1) Any beneficial interest in any voluntary inter vivos trust
7 ~~which that~~ is not created for the purpose of carrying on any
8 business or solely for the purpose of voting; ~~or (2) any.~~

9 (2) Any beneficial interest in any testamentary trust; ~~or (3) any.~~

10 (3) Any insurance or endowment policy or annuity contract
11 under which an insurance company admitted in this state promises
12 to pay a sum of money (whether or not based upon the investment
13 performance of a segregated fund) either in a lump sum or
14 periodically for life or some other specified period; ~~or (4) any.~~

15 (4) Any franchise subject to registration under the Franchise
16 Investment Law (Division 5 (commencing with Section 31000)),
17 or exempted from registration by Section 31100 or 31101.

18 SEC. 3. Section 25023 of the Corporations Code is amended
19 to read:

20 25023. (a) Except as provided in subdivision (b), “viatical
21 settlement contract” means an agreement ~~as defined in paragraph~~
22 ~~(1) of subdivision (a) of Section 10113.1 of the Insurance Code~~
23 ~~and between a person owning a life insurance policy upon the life~~
24 ~~of a person with a life-threatening illness or condition and another~~
25 ~~person by which the policyowner receives compensation or~~
26 ~~anything of value in an amount that is less than the death benefits~~
27 ~~of the insurance policy in return for an assignment, transfer, sale,~~
28 ~~devise, or bequest of the death benefits or ownership of the~~
29 ~~insurance policy, but does not include an assignment of a life~~
30 ~~insurance policy to a licensed lending institution or credit union~~
31 ~~as collateral for a loan. Except as provided in subdivision (b),~~
32 “life settlement contract” means an agreement, other than a viatical
33 settlement contract, for the purchase, sale, assignment, transfer,
34 devise, or bequest of any portion of the death benefit or ownership
35 of a life insurance policy or certificate for consideration that is less
36 than the expected death benefit of the life insurance policy or
37 certificate.

38 (b) “Viatical settlement contract” and “life settlement contract”
39 do not include any of the following:

1 (1) The assignment, transfer, sale, devise, or bequest of a death
2 benefit, life insurance policy, or certificate of insurance by the
3 insured or the original owner to any person if the assignment,
4 transfer, sale, devise, or bequest ~~(A)~~ *meets both of the following*
5 *criteria:*

6 (A) *It is not accompanied by the publication of any*
7 *advertisement and (B).*

8 (B) *It is not effected by or through a broker-dealer (Section*
9 *25004).*

10 (2) The assignment of a life insurance policy to a bank, savings
11 bank, savings association, credit union, or other lender (either
12 licensed or not required to be licensed) as collateral for a loan, or
13 to a stop-loss insurer or reinsurer.

14 (3) The exercise of accelerated benefits pursuant to the terms
15 of a life insurance policy issued in accordance with the insurance
16 laws of this state.

17 (4) The assignment, transfer, sale, devise or bequest of any
18 undivided death benefit, life insurance policy, or certificate of
19 insurance by an entity licensed pursuant to Section 10113.2 of the
20 Insurance Code, or a viatical or life settlement provider licensed
21 from another state, to one individual or entity, ~~provided that~~ *if* the
22 individual or entity represents that the individual or entity is
23 purchasing for its own account (or trust account, if the entity is a
24 trustee) and not with a view to or for sale in connection with a
25 distribution of the individual death benefit, life insurance policy,
26 or certificate of insurance.

27 *SEC. 4. Section 25102 of the Corporations Code is amended*
28 *to read:*

29 25102. The following transactions are exempted from the
30 provisions of Section 25110:

31 (a) Any offer (but not a sale) not involving any public offering
32 and the execution and delivery of any agreement for the sale of
33 securities pursuant to the offer if ~~(1) the~~ *both of the following*
34 *criteria are satisfied:*

35 (1) *The agreement contains substantially the following provision:*
36 *“The sale of the securities that are the subject of this agreement*
37 *has not been qualified with the Commissioner of Corporations of*
38 *the State of California and the issuance of the securities or the*
39 *payment or receipt of any part of the consideration therefor prior*
40 *to the qualification is unlawful, unless the sale of securities is*

1 exempt from the qualification by Section 25100, 25102, or 25105
2 of the California Corporations Code. The rights of all parties to
3 this agreement are expressly conditioned upon the qualification
4 being obtained, unless the sale is so exempt²; and (2) ~~no exempt.~~”

5 (2) *No* part of the purchase price is paid or received and none
6 of the securities are issued until the sale of the securities is qualified
7 under this law unless the sale of securities is exempt from the
8 qualification by this section, Section 25100, or 25105.

9 (b) Any offer (but not a sale) of a security for which a
10 registration statement has been filed under the Securities Act of
11 1933 but has not yet become effective, or for which an offering
12 statement under Regulation A has been filed but has not yet been
13 qualified, if no stop order or refusal order is in effect and no public
14 proceeding or examination looking towards an order is pending
15 under Section 8 of the act and no order under Section 25140 or
16 subdivision (a) of Section 25143 is in effect under this law.

17 (c) Any offer (but not a sale) and the execution and delivery of
18 any agreement for the sale of securities pursuant to the offer as
19 may be permitted by the commissioner upon application. Any
20 negotiating permit under this subdivision shall be conditioned to
21 the effect that none of the securities may be issued and none of
22 the consideration therefor may be received or accepted until the
23 sale of the securities is qualified under this law.

24 (d) Any transaction or agreement between the issuer and an
25 underwriter or among underwriters if the sale of the securities is
26 qualified, or exempt from qualification, at the time of distribution
27 thereof in this state, if any.

28 (e) Any offer or sale of any evidence of indebtedness, whether
29 secured or unsecured, and any guarantee thereof, in a transaction
30 not involving any public offering.

31 (f) Any offer or sale of any security in a transaction (other than
32 an offer or sale to a pension or profit-sharing trust of the issuer)
33 that meets each of the following criteria:

34 (1) Sales of the security are not made to more than 35 persons,
35 including persons not in this state.

36 (2) All purchasers either have a preexisting personal or business
37 relationship with the offeror or any of its partners, officers,
38 directors or controlling persons, or managers (as appointed or
39 elected by the members) if the offeror is a limited liability
40 company, or by reason of their business or financial experience or

1 the business or financial experience of their professional advisers
2 who are unaffiliated with and who are not compensated by the
3 issuer or any affiliate or selling agent of the issuer, directly or
4 indirectly, could be reasonably assumed to have the capacity to
5 protect their own interests in connection with the transaction.

6 (3) Each purchaser represents that the purchaser is purchasing
7 for the purchaser's own account (or a trust account if the purchaser
8 is a trustee) and not with a view to or for sale in connection with
9 any distribution of the security.

10 (4) The offer and sale of the security is not accomplished by
11 the publication of any advertisement. The number of purchasers
12 referred to above is exclusive of any described in subdivision (i),
13 any officer, director, or affiliate of the issuer, or manager (as
14 appointed or elected by the members) if the issuer is a limited
15 liability company, and any other purchaser who the commissioner
16 designates by rule. For purposes of this section, a husband and
17 wife (together with any custodian or trustee acting for the account
18 of their minor children) are counted as one person and a
19 partnership, corporation, or other organization that was not
20 specifically formed for the purpose of purchasing the security
21 offered in reliance upon this exemption, is counted as one person.
22 The commissioner may by rule require the issuer to file a notice
23 of transactions under this subdivision.

24 The failure to file the notice or the failure to file the notice within
25 the time specified by the rule of the commissioner shall not affect
26 the availability of this exemption. An issuer who fails to file the
27 notice as provided by rule of the commissioner shall, within 15
28 business days after discovery of the failure to file the notice or
29 after demand by the commissioner, whichever occurs first, file the
30 notice and pay to the commissioner a fee equal to the fee payable
31 had the transaction been qualified under Section 25110.

32 (g) Any offer or sale of conditional sale agreements, equipment
33 trust certificates, or certificates of interest or participation therein
34 or partial assignments thereof, covering the purchase of railroad
35 rolling stock or equipment or the purchase of motor vehicles,
36 aircraft, or parts thereof, in a transaction not involving any public
37 offering.

38 (h) Any offer or sale of voting common stock by a corporation
39 incorporated in any state if, immediately after the proposed sale
40 and issuance, there will be only one class of stock of the

1 corporation outstanding that is owned beneficially by no more than
2 35 persons, provided all of the following requirements have been
3 met:

4 (1) The offer and sale of the stock is not accompanied by the
5 publication of any advertisement, and no selling expenses have
6 been given, paid, or incurred in connection therewith.

7 (2) The consideration to be received by the issuer for the stock
8 to be issued consists of any of the following:

9 (A) Only assets (which may include cash) of an existing business
10 enterprise transferred to the issuer upon its initial organization, of
11 which all of the persons who are to receive the stock to be issued
12 pursuant to this exemption were owners during, and the enterprise
13 was operated for, a period of not less than one year immediately
14 preceding the proposed issuance, and the ownership of the
15 enterprise immediately prior to the proposed issuance was in the
16 same proportions as the shares of stock are to be issued.

17 (B) Only cash or cancellation of indebtedness for money
18 borrowed, or both, upon the initial organization of the issuer,
19 provided all of the stock is issued for the same price per share.

20 (C) Only cash, provided the sale is approved in writing by each
21 of the existing shareholders and the purchaser or purchasers are
22 existing shareholders.

23 (D) In a case where after the proposed issuance there will be
24 only one owner of the stock of the issuer, only any legal
25 consideration.

26 (3) No promotional consideration has been given, paid, or
27 incurred in connection with the issuance. Promotional consideration
28 means any consideration paid directly or indirectly to a person
29 who, acting alone or in conjunction with one or more other persons,
30 takes the initiative in founding and organizing the business or
31 enterprise of an issuer for services rendered in connection with the
32 founding or organizing.

33 (4) A notice in a form prescribed by rule of the commissioner,
34 signed by an active member of the State Bar of California, is filed
35 with or mailed for filing to the commissioner not later than 10
36 business days after receipt of consideration for the securities by
37 the issuer. That notice shall contain an opinion of the member of
38 the State Bar of California that the exemption provided by this
39 subdivision is available for the offer and sale of the securities. The
40 failure to file the notice as required by this subdivision and the

1 rules of the commissioner shall not affect the availability of this
2 exemption. An issuer who fails to file the notice within the time
3 specified by this subdivision shall, within 15 business days after
4 discovery of the failure to file the notice or after demand by the
5 commissioner, whichever occurs first, file the notice and pay to
6 the commissioner a fee equal to the fee payable had the transaction
7 been qualified under Section 25110. The notice, except when filed
8 on behalf of a California corporation, shall be accompanied by an
9 irrevocable consent, in the form that the commissioner by rule
10 prescribes, appointing the commissioner or his or her successor in
11 office to be the issuer's attorney to receive service of any lawful
12 process in any noncriminal suit, action, or proceeding against it
13 or its successor that arises under this law or any rule or order
14 hereunder after the consent has been filed, with the same force and
15 validity as if served personally on the issuer. An issuer on whose
16 behalf a consent has been filed in connection with a previous
17 qualification or exemption from qualification under this law (or
18 application for a permit under any prior law if the application or
19 notice under this law states that the consent is still effective) need
20 not file another. Service may be made by leaving a copy of the
21 process in the office of the commissioner, but it is not effective
22 unless (A) the plaintiff, who may be the commissioner in a suit,
23 action, or proceeding instituted by him or her, forthwith sends
24 notice of the service and a copy of the process by registered or
25 certified mail to the defendant or respondent at its last address on
26 file with the commissioner, and (B) the plaintiff's affidavit of
27 compliance with this section is filed in the case on or before the
28 return day of the process, if any, or within the further time as the
29 court allows.

30 (5) Each purchaser represents that the purchaser is purchasing
31 for the purchaser's own account, or a trust account if the purchaser
32 is a trustee, and not with a view to or for sale in connection with
33 any distribution of the stock.

34 For the purposes of this subdivision, all securities held by a
35 husband and wife, whether or not jointly, shall be considered to
36 be owned by one person, and all securities held by a corporation
37 that has issued stock pursuant to this exemption shall be considered
38 to be held by the shareholders to whom it has issued the stock.

39 All stock issued by a corporation pursuant to this subdivision as
40 it existed prior to the effective date of the amendments to this

1 section made during the 1996 portion of the 1995–96 Regular
2 Session that required the issuer to have stamped or printed
3 prominently on the face of the stock certificate a legend in a form
4 prescribed by rule of the commissioner restricting transfer of the
5 stock in a manner provided for by that rule shall not be subject to
6 the transfer restriction legend requirement and, by operation of
7 law, the corporation is authorized to remove that transfer restriction
8 legend from the certificates of those shares of stock issued by the
9 corporation pursuant to this subdivision as it existed prior to the
10 effective date of the amendments to this section made during the
11 1996 portion of the 1995–96 Regular Session.

12 (i) Any offer or sale (1) to a bank, savings and loan association,
13 trust company, insurance company, investment company registered
14 under the Investment Company Act of 1940, pension or
15 profit-sharing trust (other than a pension or profit-sharing trust of
16 the issuer, a self-employed individual retirement plan, or individual
17 retirement account), or other institutional investor or governmental
18 agency or instrumentality that the commissioner may designate
19 by rule, whether the purchaser is acting for itself or as trustee, or
20 (2) to any corporation with outstanding securities registered under
21 Section 12 of the Securities Exchange Act of 1934 or any wholly
22 owned subsidiary of the corporation that after the offer and sale
23 will own directly or indirectly 100 percent of the outstanding
24 capital stock of the issuer, provided the purchaser represents that
25 it is purchasing for its own account (or for the trust account) for
26 investment and not with a view to or for sale in connection with
27 any distribution of the security.

28 (j) Any offer or sale of any certificate of interest or participation
29 in an oil or gas title or lease (including subsurface gas storage and
30 payments out of production) if either of the following apply:

31 (1) All of the purchasers meet one of the following requirements:

32 (A) Are and have been during the preceding two years engaged
33 primarily in the business of drilling for, producing, or refining oil
34 or gas (or whose corporate predecessor, in the case of a corporation,
35 has been so engaged).

36 (B) Are persons described in paragraph (1) of subdivision (i).

37 (C) Have been found by the commissioner upon written
38 application to be substantially engaged in the business of drilling
39 for, producing, or refining oil or gas so as not to require the

1 protection provided by this law (which finding shall be effective
2 until rescinded).

3 (2) The security is concurrently hypothecated to a bank in the
4 ordinary course of business to secure a loan made by the bank,
5 provided that each purchaser represents that it is purchasing for
6 its own account for investment and not with a view to or for sale
7 in connection with any distribution of the security.

8 (k) Any offer or sale of any security under, or pursuant to, a
9 plan of reorganization under Chapter 11 of the federal bankruptcy
10 law that has been confirmed or is subject to confirmation by the
11 decree or order of a court of competent jurisdiction.

12 (l) Any offer or sale of an option, warrant, put, call, or straddle,
13 and any guarantee of any of these securities, by a person who is
14 not the issuer of the security subject to the right, if the transaction,
15 had it involved an offer or sale of the security subject to the right
16 by the person, would not have violated Section 25110 or 25130.

17 (m) Any offer or sale of a stock to a pension, profit-sharing,
18 stock bonus, or employee stock ownership plan, provided that (1)
19 the plan meets the requirements for qualification under Section
20 401 of the Internal Revenue Code, and (2) the employees are not
21 required or permitted individually to make any contributions to
22 the plan. The exemption provided by this subdivision shall not be
23 affected by whether the stock is contributed to the plan, purchased
24 from the issuer with contributions by the issuer or an affiliate of
25 the issuer, or purchased from the issuer with funds borrowed from
26 the issuer, an affiliate of the issuer, or any other lender.

27 (n) Any offer or sale of any security in a transaction, other than
28 an offer or sale of a security in a rollup transaction, that meets all
29 of the following criteria:

30 (1) The issuer is (A) a California corporation or foreign
31 corporation that, at the time of the filing of the notice required
32 under this subdivision, is subject to Section 2115, or (B) any other
33 form of business entity, including without limitation a partnership
34 or trust organized under the laws of this state. The exemption
35 provided by this subdivision is not available to a “blind pool”
36 issuer, as that term is defined by the commissioner, or to an
37 investment company subject to the Investment Company Act of
38 1940.

39 (2) Sales of securities are made only to qualified purchasers or
40 other persons the issuer reasonably believes, after reasonable

1 inquiry, to be qualified purchasers. A corporation, partnership, or
2 other organization specifically formed for the purpose of acquiring
3 the securities offered by the issuer in reliance upon this exemption
4 may be a qualified purchaser if each of the equity owners of the
5 corporation, partnership, or other organization is a qualified
6 purchaser. Qualified purchasers include the following:

7 (A) A person designated in Section 260.102.13 of Title 10 of
8 the California Code of Regulations.

9 (B) A person designated in subdivision (i) or any rule of the
10 commissioner adopted thereunder.

11 (C) A pension or profit-sharing trust of the issuer, a
12 self-employed individual retirement plan, or an individual
13 retirement account, if the investment decisions made on behalf of
14 the trust, plan, or account are made solely by persons who are
15 qualified purchasers.

16 (D) An organization described in Section 501(c)(3) of the
17 Internal Revenue Code, corporation, Massachusetts or similar
18 business trust, or partnership, each with total assets in excess of
19 five million dollars (\$5,000,000) according to its most recent
20 audited financial statements.

21 (E) With respect to the offer and sale of one class of voting
22 common stock of an issuer or of preferred stock of an issuer
23 entitling the holder thereof to at least the same voting rights as the
24 issuer's one class of voting common stock, provided that the issuer
25 has only one-class voting common stock outstanding upon
26 consummation of the offer and sale, a natural person who, either
27 individually or jointly with the person's spouse, (i) has a minimum
28 net worth of two hundred fifty thousand dollars (\$250,000) and
29 had, during the immediately preceding tax year, gross income in
30 excess of one hundred thousand dollars (\$100,000) and reasonably
31 expects gross income in excess of one hundred thousand dollars
32 (\$100,000) during the current tax year or (ii) has a minimum net
33 worth of five hundred thousand dollars (\$500,000). "Net worth"
34 shall be determined exclusive of home, home furnishings, and
35 automobiles. Other assets included in the computation of net worth
36 may be valued at fair market value.

37 Each natural person specified above, by reason of his or her
38 business or financial experience, or the business or financial
39 experience of his or her professional adviser, who is unaffiliated
40 with and who is not compensated, directly or indirectly, by the

1 issuer or any affiliate or selling agent of the issuer, can be
2 reasonably assumed to have the capacity to protect his or her
3 interests in connection with the transaction. The amount of the
4 investment of each natural person shall not exceed 10 percent of
5 the net worth, as determined by this subparagraph, of that natural
6 person.

7 (F) Any other purchaser designated as qualified by rule of the
8 commissioner.

9 (3) Each purchaser represents that the purchaser is purchasing
10 for the purchaser's own account (or trust account, if the purchaser
11 is a trustee) and not with a view to or for sale in connection with
12 a distribution of the security.

13 (4) Each natural person purchaser, including a corporation,
14 partnership, or other organization specifically formed by natural
15 persons for the purpose of acquiring the securities offered by the
16 issuer, receives, at least five business days before securities are
17 sold to, or a commitment to purchase is accepted from, the
18 purchaser, a written offering disclosure statement that shall meet
19 the disclosure requirements of Regulation D (17 C.F.R. 230.501
20 et seq.), and any other information as may be prescribed by rule
21 of the commissioner, provided that the issuer shall not be obligated
22 pursuant to this paragraph to provide this disclosure statement to
23 a natural person qualified under Section 260.102.13 of Title 10 of
24 the California Code of Regulations. The offer or sale of securities
25 pursuant to a disclosure statement required by this paragraph that
26 is in violation of Section 25401, or that fails to meet the disclosure
27 requirements of Regulation D (17 C.F.R. 230.501 et seq.), shall
28 not render unavailable to the issuer the claim of an exemption from
29 Section 25110 afforded by this subdivision. This paragraph does
30 not impose, directly or indirectly, any additional disclosure
31 obligation with respect to any other exemption from qualification
32 available under any other provision of this section.

33 (5) (A) A general announcement of proposed offering may be
34 published by written document only, provided that the general
35 announcement of proposed offering sets forth the following
36 required information:

37 (i) The name of the issuer of the securities.

38 (ii) The full title of the security to be issued.

39 (iii) The anticipated suitability standards for prospective
40 purchasers.

1 (iv) A statement that (I) no money or other consideration is
2 being solicited or will be accepted, (II) an indication of interest
3 made by a prospective purchaser involves no obligation or
4 commitment of any kind, and, if the issuer is required by paragraph
5 (4) to deliver a disclosure statement to prospective purchasers,
6 (III) no sales will be made or commitment to purchase accepted
7 until five business days after delivery of a disclosure statement
8 and subscription information to the prospective purchaser in
9 accordance with the requirements of this subdivision.

10 (v) Any other information required by rule of the commissioner.

11 (vi) The following legend: “For more complete information
12 about (Name of Issuer) and (Full Title of Security), send for
13 additional information from (Name and Address) by sending this
14 coupon or calling (Telephone Number).”

15 (B) The general announcement of proposed offering referred
16 to in subparagraph (A) may also set forth the following
17 information:

18 (i) A brief description of the business of the issuer.

19 (ii) The geographic location of the issuer and its business.

20 (iii) The price of the security to be issued, or, if the price is not
21 known, the method of its determination or the probable price range
22 as specified by the issuer, and the aggregate offering price.

23 (C) The general announcement of proposed offering shall
24 contain only the information that is set forth in this paragraph.

25 (D) Dissemination of the general announcement of proposed
26 offering to persons who are not qualified purchasers, without more,
27 shall not disqualify the issuer from claiming the exemption under
28 this subdivision.

29 (6) No telephone solicitation shall be permitted until the issuer
30 has determined that the prospective purchaser to be solicited is a
31 qualified purchaser.

32 (7) The issuer files a notice of transaction under this subdivision
33 both (A) concurrent with the publication of a general announcement
34 of proposed offering or at the time of the initial offer of the
35 securities, whichever occurs first, accompanied by a filing fee, and
36 (B) within 10 business days following the close or abandonment
37 of the offering, but in no case more than 210 days from the date
38 of filing the first notice. The first notice of transaction under
39 subparagraph (A) shall contain an undertaking, in a form acceptable
40 to the commissioner, to deliver any disclosure statement required

1 by paragraph (4) to be delivered to prospective purchasers, and
2 any supplement thereto, to the commissioner within 10 days of
3 the commissioner's request for the information. The exemption
4 from qualification afforded by this subdivision is unavailable if
5 an issuer fails to file the first notice required under subparagraph
6 (A) or to pay the filing fee. The commissioner has the authority
7 to assess an administrative penalty of up to one thousand dollars
8 (\$1,000) against an issuer that fails to deliver the disclosure
9 statement required to be delivered to the commissioner upon the
10 commissioner's request within the time period set forth above.
11 Neither the filing of the disclosure statement nor the failure by the
12 commissioner to comment thereon precludes the commissioner
13 from taking any action deemed necessary or appropriate under this
14 division with respect to the offer and sale of the securities.

15 (o) An offer or sale of any security issued by a corporation or
16 limited liability company pursuant to a purchase plan or agreement,
17 or issued pursuant to an option plan or agreement, where the
18 security at the time of issuance or grant is exempt from registration
19 under the Securities Act of 1933, as amended, pursuant to Rule
20 701 adopted pursuant to that act (17 C.F.R. 230.701), the provisions
21 of which are hereby incorporated by reference into this section,
22 provided that (1) the terms of any purchase plan or agreement shall
23 comply with Sections 260.140.42, 260.140.45, and 260.140.46 of
24 Title 10 of the California Code of Regulations, (2) the terms of
25 any option plan or agreement shall comply with Sections
26 260.140.41, 260.140.45, and 260.140.46 of Title 10 of the
27 California Code of Regulations, and (3) the issuer files a notice of
28 transaction in accordance with rules adopted by the commissioner
29 no later than 30 days after the initial issuance of any security under
30 that plan, accompanied by a filing fee as prescribed by subdivision
31 (y) of Section 25608. The failure to file the notice of transaction
32 within the time specified in this subdivision shall not affect the
33 availability of this exemption. An issuer that fails to file the notice
34 shall, within 15 business days after discovery of the failure to file
35 the notice or after demand by the commissioner, whichever occurs
36 first, file the notice and pay the commissioner a fee equal to the
37 maximum aggregate fee payable had the transaction been qualified
38 under Section 25110.

39 Offers and sales exempt pursuant to this subdivision shall be
40 deemed to be part of a single, discrete offering and are not subject

1 to integration with any other offering or sale, whether qualified
2 under Chapter 2 (commencing with Section 25110), or otherwise
3 exempt, or not subject to qualification.

4 (p) An offer or sale of nonredeemable securities to accredited
5 investors (Section 28031) by a person licensed under the Capital
6 Access Company Law (Division 3 (commencing with Section
7 28000) of Title 4). All nonredeemable securities shall be evidenced
8 by certificates that shall have stamped or printed prominently on
9 their face a legend in a form to be prescribed by rule or order of
10 the commissioner restricting transfer of the securities in the manner
11 as the rule or order provides.

12 ~~(q) Any offer or sale of any viatical or life settlement contract~~
13 ~~or fractionalized or pooled interest therein in a transaction that~~
14 ~~meets all of the following criteria:~~

15 ~~(1) Sales of securities described in this subdivision are made~~
16 ~~only to qualified purchasers or other persons the issuer reasonably~~
17 ~~believes, after reasonable inquiry, to be qualified purchasers. A~~
18 ~~corporation, partnership, or other organization specifically formed~~
19 ~~for the purpose of acquiring the securities offered by the issuer in~~
20 ~~reliance upon this exemption may be a qualified purchaser only if~~
21 ~~each of the equity owners of the corporation, partnership, or other~~
22 ~~organization is a qualified purchaser. Qualified purchasers include~~
23 ~~the following:~~

24 ~~(A) A person designated in Section 260.102.13 of Title 10 of~~
25 ~~the California Code of Regulations.~~

26 ~~(B) A person designated in subdivision (i) or any rule of the~~
27 ~~commissioner adopted thereunder.~~

28 ~~(C) A pension or profit-sharing trust of the issuer, a~~
29 ~~self-employed individual retirement plan, or an individual~~
30 ~~retirement account, if the investment decisions made on behalf of~~
31 ~~the trust, plan, or account are made solely by persons who are~~
32 ~~qualified purchasers.~~

33 ~~(D) An organization described in Section 501(c)(3) of the~~
34 ~~Internal Revenue Code, corporation, Massachusetts or similar~~
35 ~~business trust, or partnership, each with total assets in excess of~~
36 ~~five million dollars (\$5,000,000) according to its most recent~~
37 ~~audited financial statements.~~

38 ~~(E) A natural person who, either individually or jointly with the~~
39 ~~person's spouse, (i) has a minimum net worth of one hundred fifty~~
40 ~~thousand dollars (\$150,000) and had, during the immediately~~

1 preceding tax year, gross income in excess of one hundred thousand
2 dollars (\$100,000) and reasonably expects gross income in excess
3 of one hundred thousand dollars (\$100,000) during the current tax
4 year or (ii) has a minimum net worth of two hundred fifty thousand
5 dollars (\$250,000). “Net worth” shall be determined exclusive of
6 home, home furnishings, and automobiles. Other assets included
7 in the computation of net worth may be valued at fair market value.

8 Each natural person specified above, by reason of his or her
9 business or financial experience, or the business or financial
10 experience of his or her professional adviser, who is unaffiliated
11 with and who is not compensated, directly or indirectly, by the
12 issuer or any affiliate or selling agent of the issuer, can be
13 reasonably assumed to have the capacity to protect his or her
14 interests in connection with the transaction.

15 The amount of the investment of each natural person shall not
16 exceed 10 percent of the net worth, as determined by this
17 subdivision, of that natural person.

18 ~~(F) Any other purchaser designated as qualified by rule of the~~
19 ~~commissioner.~~

20 ~~(2) Each purchaser represents that the purchaser is purchasing~~
21 ~~for the purchaser’s own account (or trust account, if the purchaser~~
22 ~~is a trustee) and not with a view to or for sale in connection with~~
23 ~~a distribution of the security.~~

24 ~~(3) Each natural person purchaser, including a corporation,~~
25 ~~partnership, or other organization specifically formed by natural~~
26 ~~persons for the purpose of acquiring the securities offered by the~~
27 ~~issuer, receives, at least five business days before securities~~
28 ~~described in this subdivision are sold to, or a commitment to~~
29 ~~purchase is accepted from, the purchaser, the following information~~
30 ~~in writing:~~

31 ~~(A) The name, principal business and mailing address, and~~
32 ~~telephone number of the issuer.~~

33 ~~(B) The suitability standards for prospective purchasers as set~~
34 ~~forth in paragraph (1) of this subdivision.~~

35 ~~(C) A description of the issuer’s type of business organization~~
36 ~~and the state in which the issuer is organized or incorporated.~~

37 ~~(D) A brief description of the business of the issuer.~~

38 ~~(E) If the issuer retains ownership or becomes the beneficiary~~
39 ~~of the insurance policy, an audit report of an independent certified~~
40 ~~public accountant together with a balance sheet and related~~

1 statements of income, retained earnings, and cashflows that reflect
2 the issuer's financial position, the results of the issuer's operations,
3 and the issuer's cashflows as of a date within 15 months before
4 the date of the initial issuance of the securities described in this
5 subdivision. The financial statements listed in this subparagraph
6 shall be prepared in conformity with generally accepted accounting
7 principles. If the date of the audit report is more than 120 days
8 before the date of the initial issuance of the securities described
9 in this subdivision, the issuer shall provide unaudited interim
10 financial statements.

11 (F) ~~The names of all directors, officers, partners, members, or~~
12 ~~trustees of the issuer.~~

13 (G) ~~A description of any order, judgment, or decree that is final~~
14 ~~as to the issuing entity of any state, federal, or foreign country~~
15 ~~governmental agency or administrator, or of any state, federal or~~
16 ~~foreign country court of competent jurisdiction (i) revoking,~~
17 ~~suspending, denying, or censuring for cause any license, permit,~~
18 ~~or other authority of the issuer or of any director, officer, partner,~~
19 ~~member, trustee, or person owning or controlling, directly or~~
20 ~~indirectly, 10 percent or more of the outstanding interest or equity~~
21 ~~securities of the issuer, to engage in the securities, commodities,~~
22 ~~franchise, insurance, real estate, or lending business or in the offer~~
23 ~~or sale of securities, commodities, franchises, insurance, real estate,~~
24 ~~or loans, (ii) permanently restraining, enjoining, barring,~~
25 ~~suspending, or censuring any such person from engaging in or~~
26 ~~continuing any conduct, practice, or employment in connection~~
27 ~~with the offer or sale of securities, commodities, franchises,~~
28 ~~insurance, real estate, or loans, (iii) convicting any such person~~
29 ~~of, or pleading nolo contendere by any such person to, any felony~~
30 ~~or misdemeanor involving a security, commodity, franchise,~~
31 ~~insurance, real estate, or loan, or any aspect of the securities,~~
32 ~~commodities, franchise, insurance, real estate, or lending business,~~
33 ~~or involving dishonesty, fraud, deceit, embezzlement, fraudulent~~
34 ~~conversion, or misappropriation of property, or (iv) holding any~~
35 ~~such person liable in a civil action involving breach of a fiduciary~~
36 ~~duty, fraud, deceit, embezzlement, fraudulent conversion, or~~
37 ~~misappropriation of property. This subparagraph does not apply~~
38 ~~to any order, judgment, or decree that has been vacated, overturned,~~
39 ~~or is more than 10 years old.~~

- 1 ~~(H) Notice of the purchaser's right to rescind or cancel the~~
2 ~~investment and receive a refund pursuant to Section 25508.5.~~
- 3 ~~(I) The name, address, and telephone number of the issuing~~
4 ~~insurance company, and the name, address, and telephone number~~
5 ~~of the state or foreign country regulator of the insurance company.~~
- 6 ~~(J) The total face value of the insurance policy and the~~
7 ~~percentage of the insurance policy the purchaser will own.~~
- 8 ~~(K) The insurance policy number, issue date, and type.~~
- 9 ~~(L) If a group insurance policy, the name, address, and telephone~~
10 ~~number of the group, and, if applicable, the material terms and~~
11 ~~conditions of converting the policy to an individual policy,~~
12 ~~including the amount of increased premiums.~~
- 13 ~~(M) If a term insurance policy, the term and the name, address,~~
14 ~~and telephone number of the person who will be responsible for~~
15 ~~renewing the policy if necessary.~~
- 16 ~~(N) That the insurance policy is beyond the state statute for~~
17 ~~contestability and the reason therefor.~~
- 18 ~~(O) The insurance policy premiums and terms of premium~~
19 ~~payments.~~
- 20 ~~(P) The amount of the purchaser's moneys that will be set aside~~
21 ~~to pay premiums.~~
- 22 ~~(Q) The name, address, and telephone number of the person~~
23 ~~who will be the insurance policy owner and the person who will~~
24 ~~be responsible for paying premiums.~~
- 25 ~~(R) The date on which the purchaser will be required to pay~~
26 ~~premiums and the amount of the premium, if known.~~
- 27 ~~(S) A statement to the effect that any projected rate of return to~~
28 ~~the purchaser from the purchase of a viatical or life settlement~~
29 ~~contract or a fractionalized or pooled interest therein is based on~~
30 ~~an estimated life expectancy for the person insured under the life~~
31 ~~insurance policy; that the return on the purchase may vary~~
32 ~~substantially from the expected rate of return based upon the actual~~
33 ~~life expectancy of the insured that may be less than, equal to, or~~
34 ~~may greatly exceed the estimated life expectancy; and that the rate~~
35 ~~of return would be higher if the actual life expectancy were less~~
36 ~~than, and lower if the actual life expectancy were greater than the~~
37 ~~estimated life expectancy of the insured at the time the viatical or~~
38 ~~life settlement contract was closed.~~
- 39 ~~(T) A statement that the purchaser should consult with his or~~
40 ~~her tax adviser regarding the tax consequences of the purchase of~~

1 ~~the viatical or life settlement contract or fractionalized or pooled~~
2 ~~interest therein and, if the purchaser is using retirement funds or~~
3 ~~accounts for that purchase, whether or not any adverse tax~~
4 ~~consequences might result from the use of those funds for the~~
5 ~~purchase of that investment.~~

6 ~~(U) Any other information as may be prescribed by rule of the~~
7 ~~commissioner.~~

8 *SEC. 5. Section 25209 of the Corporations Code is repealed.*

9 ~~25209. Section 25210 shall not apply to an agent of an issuer~~
10 ~~when engaged in transactions exempted by subdivision (q) of~~
11 ~~Section 25102, provided that the agent is a life agent licensed in~~
12 ~~California or in the state of domicile of the purchaser.~~

13 *SEC. 6. Section 25257 is added to the Corporations Code, to*
14 *read:*

15 *25257. It is unlawful for a person, other than a person who is*
16 *registered under Section 80b-3 of Title 15 of the United States*
17 *Code, to hold himself or herself out as, or otherwise represent that*
18 *he or she is a “financial planner,” “investment counselor,”*
19 *“financial consultant,” “investment consultant,” “money*
20 *manager,” “investment manager,” “investment planner,”*
21 *“chartered financial consultant,” or other similar term, or use the*
22 *abbreviation ChFC or CFP, unless the person is certified or*
23 *registered as an investment adviser or investment adviser*
24 *representative, is exempt from certification under this division, or*
25 *is excluded from the definition of investment adviser under this*
26 *division.*

27 *SEC. 7. Section 25401 of the Corporations Code is repealed.*

28 ~~25401. It is unlawful for any person to offer or sell a security~~
29 ~~in this state or buy or offer to buy a security in this state by means~~
30 ~~of any written or oral communication which includes an untrue~~
31 ~~statement of a material fact or omits to state a material fact~~
32 ~~necessary in order to make the statements made, in the light of the~~
33 ~~circumstances under which they were made, not misleading.~~

34 *SEC. 8. Section 25401 is added to the Corporations Code, to*
35 *read:*

36 *25401. It is unlawful for any person, in connection with the*
37 *offer, sale, or purchase of a security, directly or indirectly, (a) to*
38 *employ a device, scheme, or artifice to defraud, or (b) to make an*
39 *untrue statement of a material fact or to omit to state a material*
40 *fact necessary in order to make the statements made, in light of*

1 *the circumstances under which they were made, not misleading,*
2 *or (c) to engage in an act, practice, or course of business that*
3 *operates or would operate as a fraud or deceit upon another*
4 *person.*

5 *SEC. 9. Section 10113.1 of the Insurance Code is repealed.*

6 ~~10113.1. (a) (1) As used in this section, a “viatical settlement”~~
7 ~~means an agreement entered into between a person owning a life~~
8 ~~insurance policy upon the life of a person with a catastrophic or~~
9 ~~life-threatening illness or condition and another person by which~~
10 ~~the policy owner receives compensation or anything of value less~~
11 ~~than the death benefits of the insurance policy in return for an~~
12 ~~assignment, transfer, sale, devise, or bequest of the death benefits~~
13 ~~or ownership of the insurance policy, but does not include an~~
14 ~~assignment of a life insurance policy to a licensed lending~~
15 ~~institution or credit union as collateral for a loan.~~

16 ~~(2) As used in this section, “person” means any natural person~~
17 ~~or legal entity including, but not limited to, individuals,~~
18 ~~partnerships, associations, trusts, or corporations including a~~
19 ~~resident or nonresident life and disability insurance agent licensed~~
20 ~~by the commissioner.~~

21 ~~The life and disability insurance agents shall file with the~~
22 ~~commissioner a declaration that the person’s life and disability~~
23 ~~agent license is valid and in good standing. The life and disability~~
24 ~~insurance agent shall provide copies of all endorsements and~~
25 ~~appointments received by the agent to engage in the business of~~
26 ~~viatical settlements. If the commissioner determines that the agent’s~~
27 ~~life and disability agent license is invalid or not in good standing,~~
28 ~~or the agent has failed to submit any fees or proper endorsements~~
29 ~~or appointments, the commissioner may suspend the agent’s ability~~
30 ~~to transact or otherwise be involved in viatical settlements.~~

31 ~~(b) A viatical settlement shall not include a provision for~~
32 ~~payment of cash surrender values, loans or other benefits made by~~
33 ~~an insurer in accordance with the policy provisions.~~

34 ~~(c) Any person entering into a viatical settlement with any~~
35 ~~person with a catastrophic or life-threatening illness or condition~~
36 ~~shall first obtain the following:~~

37 ~~(1) A written statement from a licensed medical practitioner~~
38 ~~attending the person that the person is of sound mind and under~~
39 ~~no constraint or undue influence.~~

1 ~~(2) A duly witnessed signed document in which the person~~
2 ~~consents to the viatical settlement, acknowledges the catastrophic~~
3 ~~or life-threatening illness, represents that he or she has a full and~~
4 ~~complete understanding of the viatical settlement, that he or she~~
5 ~~has a full and complete understanding of the benefits of the life~~
6 ~~insurance policy, a release of his or her medical records, and~~
7 ~~acknowledges that he or she has entered into the settlement freely~~
8 ~~and voluntarily.~~

9 ~~(d) No person domiciled, residing or conducting business in~~
10 ~~California may do any of the following unless he or she has~~
11 ~~complied with subdivision (c):~~

12 ~~(1) Enter into a viatical settlement with any person, domiciled~~
13 ~~or residing in California.~~

14 ~~(2) Execute a viatical settlement in whole or in part in this state.~~

15 ~~(e) A violation of this section is a misdemeanor.~~

16 *SEC. 10. Section 10113.1 is added to the Insurance Code, to*
17 *read:*

18 *10113.1. The following provisions shall apply to this act:*

19 *(a) "Advertisement" means any written, electronic, or printed*
20 *communication or any communication by means of recorded*
21 *telephone messages or transmitted on radio, television, the Internet,*
22 *or similar communications media, including film strips, motion*
23 *pictures, and videos, published, disseminated, circulated, or placed*
24 *before the public, directly or indirectly, for the purpose of creating*
25 *an interest in or inducing a person to purchase or sell, assign,*
26 *devise, bequest, or transfer the death benefit or ownership of a life*
27 *insurance policy or an interest in a life insurance policy pursuant*
28 *to a life settlement contract.*

29 *(b) "Broker" means a person who, on behalf of an owner, and*
30 *for a fee, commission, or other valuable consideration, offers or*
31 *attempts to negotiate life settlement contracts between an owner*
32 *and providers. A broker represents only the owner and owes a*
33 *fiduciary duty to the owner to act according to the owner's*
34 *instructions, and in the best interest of the owner, notwithstanding*
35 *the manner in which the broker is compensated. A broker does not*
36 *include an attorney, certified public accountant, or financial*
37 *planner retained in the type of practice customarily performed in*
38 *his or her professional capacity to represent the owner whose*
39 *compensation is not paid directly or indirectly by the provider or*
40 *any other person, except the owner.*

1 (c) “Business of life settlements” means an activity involved in,
2 but not limited to, offering to enter into, soliciting, negotiating,
3 procuring, effectuating, monitoring, or tracking of life settlement
4 contracts.

5 (d) “Commissioner” means the Insurance Commissioner.

6 (e) (1) “Financing entity” means an underwriter, placement
7 agent, lender, purchaser of securities, purchaser of a policy or
8 certificate from a provider, credit enhancer, or any entity that has
9 a direct ownership in a policy or certificate that is the subject of
10 a life settlement contract, as to which both of the following apply:

11 (A) It is an entity whose principal activity related to the
12 transaction is providing funds to effect the life settlement contract
13 or purchase of one or more policies.

14 (B) It is an entity that has an agreement in writing with one or
15 more providers to finance the acquisition of life settlement
16 contracts.

17 (2) “Financing entity” does not include a nonaccredited investor
18 or purchaser.

19 (f) “Financing transaction” means a transaction in which a
20 licensed provider obtains financing from a financing entity,
21 including, without limitation, any secured or unsecured financing,
22 any securitization transaction, or any securities offering which
23 either is registered or exempt from registration under federal and
24 state securities law.

25 (g) “Fraudulent life settlement act” includes all of the following:

26 (1) Acts or omissions committed by any person that, for the
27 purpose of depriving another of property or for pecuniary gain,
28 commits or permits its employees or its agents to engage in acts,
29 including, but not limited to, the following:

30 (A) Presenting, causing to be presented, or preparing with
31 knowledge and belief that it will be presented to or by a provider,
32 premium finance lender, broker, insurer, insurance producer, or
33 any other person, false material information, or concealing
34 material information, as part of, in support of, or concerning a
35 fact material to one or more of the following:

36 (i) An application for the issuance of a life settlement contract
37 or insurance policy.

38 (ii) The underwriting of a life settlement contract or insurance
39 policy.

- 1 (iii) *A claim for payment or benefit pursuant to a life settlement*
2 *contract or insurance policy.*
- 3 (iv) *Premiums paid on an insurance policy.*
- 4 (v) *Payments and changes in ownership or beneficiary made in*
5 *accordance with the terms of a life settlement contract or insurance*
6 *policy.*
- 7 (vi) *The reinstatement or conversion of an insurance policy.*
- 8 (vii) *The solicitation, offer to enter into, or effectuation of, a*
9 *life settlement contract or insurance policy.*
- 10 (viii) *The issuance of written evidence of life settlement contracts*
11 *or insurance.*
- 12 (ix) *Any application for, or the existence of or any payments*
13 *related to, a loan secured directly or indirectly by any interest in*
14 *a life insurance policy.*
- 15 (x) *Enter into any practice or plan which involves*
16 *Stranger-Originated Life Insurance (STOLI).*
- 17 (B) *Failing to disclose to the insurer where the request for such*
18 *disclosure has been asked for by the insurer that the prospective*
19 *insured has undergone a life expectancy evaluation by any person*
20 *or entity other than the insurer or its authorized representatives*
21 *in connection with the issuance of the policy.*
- 22 (C) *Employing any device, scheme, or artifice to defraud in the*
23 *business of life settlements.*
- 24 (D) *In the solicitation of, application for, or issuance of a life*
25 *insurance policy, employing any device, scheme, or artifice in*
26 *violation of state insurable interest laws.*
- 27 (2) *Any of the following that any person does, or permits his or*
28 *her employees or agents to do, in the furtherance of a fraud, or to*
29 *prevent the detection of a fraud:*
- 30 (A) *Remove, conceal, alter, destroy, or sequester from the*
31 *commissioner the assets or records of a licensee or other person*
32 *engaged in the business of life settlements.*
- 33 (B) *Misrepresent or conceal the financial condition of a licensee,*
34 *financing entity, insurer, or other person.*
- 35 (C) *Transact the business of life settlements in violation of laws*
36 *requiring a license, certificate of authority, or other legal authority*
37 *for the transaction of the business of life settlements.*
- 38 (D) *File with the commissioner or the chief insurance regulatory*
39 *official of another jurisdiction a document containing false*

1 *information or otherwise concealing information about a material*
2 *fact from the commissioner.*

3 *(E) Engage in embezzlement, theft, misappropriation, or*
4 *conversion of moneys, funds, premiums, credits, or other property*
5 *of a provider, insurer, insured, owner, insurance policyowner, or*
6 *any other person engaged in the business of life settlements or*
7 *insurance.*

8 *(F) Enter into, broker, or otherwise deal in a life settlement*
9 *contract, the subject of which is a life insurance policy that was*
10 *obtained by presenting false information concerning any fact*
11 *material to the policy or by concealing, for the purpose of*
12 *misleading another, information concerning any fact material to*
13 *the policy, where the owner or the owner's agent intended to*
14 *defraud the policy's issuer.*

15 *(G) Attempt to commit, assist, aid, or abet in the commission*
16 *of, or conspiracy to commit the acts or omissions specified in this*
17 *subdivision.*

18 *(H) Misrepresent the state of residence of an owner to be a state*
19 *or jurisdiction that does not have a law substantially similar to*
20 *this act for the purpose of evading or avoiding the provisions of*
21 *this act.*

22 *(h) "Insured" means the person covered under the policy being*
23 *considered for sale in a life settlement contract.*

24 *(i) "Life expectancy" means the arithmetic mean of the number*
25 *of months the insured under the life insurance policy to be settled*
26 *can be expected to live as determined by a life expectancy company*
27 *considering medical records and appropriate experiential data.*

28 *(j) "Life insurance producer" means any person licensed in*
29 *this state as a resident or nonresident insurance agent who has*
30 *received qualification or authority for life insurance coverage or*
31 *a life line of coverage pursuant to Chapter 5 (commencing with*
32 *Section 1621) of Part 2 of Division 1.*

33 *(k) "Life settlement contract" means a written agreement*
34 *entered into between a provider and an owner, establishing the*
35 *terms under which compensation or any thing of value will be*
36 *paid, which compensation or thing of value is less than the expected*
37 *death benefit of the insurance policy or certificate, in return for*
38 *the owner's assignment, transfer, sale, devise, or bequest of the*
39 *death benefit or any portion of an insurance policy or certificate*
40 *of insurance for compensation, provided, however, that the*

1 *minimum value for a life settlement contract shall be greater than*
2 *a cash surrender value or accelerated death benefit available at*
3 *the time of an application for a life settlement contract. “Life*
4 *settlement contract” also includes the transfer for compensation*
5 *or value of ownership or beneficial interest in a trust or other*
6 *entity that owns such policy if the trust or other entity was formed*
7 *or availed of for the principal purpose of acquiring one or more*
8 *life insurance contracts, which life insurance contract insures the*
9 *life of a person residing in this state.*

10 *(1) A “life settlement contract” also includes the following:*

11 *(A) A written agreement for a loan or other lending transaction,*
12 *secured primarily by an individual or group life insurance policy.*

13 *(B) A premium finance loan made for a policy on or before the*
14 *date of issuance of the policy where one or more of the following*
15 *conditions apply:*

16 *(i) The loan proceeds are not used solely to pay premiums for*
17 *the policy and any costs or expenses incurred by the lender or the*
18 *borrower in connection with the financing.*

19 *(ii) The owner receives on the date of the premium finance loan*
20 *a guarantee of the future life settlement value of the policy.*

21 *(iii) The owner agrees on the date of the premium finance loan*
22 *to sell the policy or any portion of the policy’s death benefit on*
23 *any date following the issuance of the policy.*

24 *(2) “Life settlement contract” does not include any of the*
25 *following:*

26 *(A) A policy loan by a life insurance company pursuant to the*
27 *terms of the life insurance policy or accelerated death provisions*
28 *contained in the life insurance policy, whether issued with the*
29 *original policy or as a rider.*

30 *(B) A premium finance loan, as defined herein, or any loan*
31 *made by a bank or other licensed financial institution, provided*
32 *that neither default on such loan nor the transfer of the policy in*
33 *connection with such default is pursuant to an agreement or*
34 *understanding with any other person for the purpose of evading*
35 *regulation under this act.*

36 *(C) A collateral assignment of a life insurance policy by an*
37 *owner.*

38 *(D) A loan made by a lender that does not violate Article 5.8*
39 *(commencing with Section 778) of Chapter 1 of Part 2, provided*

1 *such loan is not described in paragraph (1), and is not otherwise*
2 *within the definition of life settlement contract.*

3 *(E) An agreement where all of the parties satisfy one of the*
4 *following conditions:*

5 *(i) They are closely related to the insured by blood or law.*

6 *(ii) They have a lawful substantial economic interest in the*
7 *continued life, health, and bodily safety of the person insured.*

8 *(iii) They are trusts established primarily for the benefit of those*
9 *parties.*

10 *(F) Any designation, consent, or agreement by an insured who*
11 *is an employee of an employer in connection with the purchase by*
12 *the employer, or by a trust established by the employer of life*
13 *insurance on the life of the employee.*

14 *(G) A bona fide business succession planning arrangement:*

15 *(i) Between one or more shareholders in a corporation or*
16 *between a corporation and one or more of its shareholders or one*
17 *or more trust established by its shareholders.*

18 *(ii) Between one or more partners in a partnership or between*
19 *a partnership and one or more of its partners or one or more trust*
20 *established by its partners.*

21 *(iii) Between one or more members in a limited liability company*
22 *or between a limited liability company and one or more of its*
23 *members or one or more trust established by its member.*

24 *(H) An agreement entered into by a service recipient, or a trust*
25 *established by the service recipient, and a service provider, or a*
26 *trust established by the service provider, who performs significant*
27 *services for the service recipient's trade or business.*

28 *(I) Any other contract, transaction, or arrangement from the*
29 *definition of "life settlement contract" that the commissioner*
30 *determines is not of the type intended to be regulated by this act.*

31 *(l) "Net death benefit" means the amount of the life insurance*
32 *policy or certificate to be settled less any outstanding debts or*
33 *liens.*

34 *(m) "Owner" means the owner of a life insurance policy or a*
35 *certificate holder under a group policy, with or without a terminal*
36 *illness, who enters or seeks to enter into a life settlement contract.*
37 *For the purposes of this article, an owner shall not be limited to*
38 *an owner of a life insurance policy or a certificate holder under*
39 *a group policy that insures the life of an individual with a terminal*

- 1 *illness or condition except where specifically addressed. The term*
2 *“owner” does not include any of the following:*
3 *(1) Any provider or other licensee under this act.*
4 *(2) A qualified institutional buyer as defined in Rule 144A of*
5 *the federal Securities Act of 1933, as amended.*
6 *(3) A financing entity.*
7 *(4) A special purpose entity.*
8 *(5) A related provider trust.*
9 *(n) “Patient identifying information” means an insured’s*
10 *address, telephone number, facsimile number, electronic mail*
11 *address, photograph or likeness, employer, employment status,*
12 *social security number, or any other information that is likely to*
13 *lead to the identification of the insured.*
14 *(o) “Person” means any natural person or legal entity, including*
15 *but not limited to, a partnership, limited liability company,*
16 *association, trust, or corporation.*
17 *(p) “Policy” means an individual or group policy, group*
18 *certificate, contract, or arrangement of life insurance owned by a*
19 *resident of this state, regardless of whether delivered or issued for*
20 *delivery in this state.*
21 *(q) “Premium finance loan” is a loan made primarily for the*
22 *purpose of making premium payments on a life insurance policy,*
23 *which loan is secured by an interest in such life insurance policy.*
24 *(r) “Provider” means a person, other than an owner, who enters*
25 *into or effectuates a life settlement contract with an owner. A*
26 *provider does not include any of the following:*
27 *(1) Any bank, savings bank, savings and loan association, or*
28 *credit union.*
29 *(2) A licensed lending institution or creditor or secured party*
30 *pursuant to a premium finance loan agreement which takes an*
31 *assignment of a life insurance policy or certificate issued pursuant*
32 *to a group life insurance policy as collateral for a loan.*
33 *(3) The insurer of a life insurance policy or rider to the extent*
34 *of providing accelerated death benefits or riders or cash surrender*
35 *value.*
36 *(4) A purchaser.*
37 *(5) Any authorized or eligible insurer that provides stop loss*
38 *coverage to a provider, purchaser, financing entity, special purpose*
39 *entity, or related provider trust.*
40 *(6) A financing entity.*

1 (7) *A related provider trust.*

2 (8) *A broker.*

3 (9) *An accredited investor or qualified institutional buyer as*
4 *defined respectively in Regulation D, Rule 501 or Rule 144A of*
5 *the federal Securities Act of 1933, as amended, who purchases a*
6 *life settlement policy from a provider.*

7 (s) *“Purchased policy” means a policy or group certificate that*
8 *has been acquired by a provider pursuant to a life settlement*
9 *contract.*

10 (t) *“Purchaser” means a person who pays compensation or*
11 *anything of value as consideration for a beneficial interest in a*
12 *trust which is vested with, or for the assignment, transfer, or sale*
13 *of, an ownership or other interest in a life insurance policy or a*
14 *certificate issued pursuant to a group life insurance policy which*
15 *has been the subject of a life settlement contract.*

16 (u) *“Related provider trust” means a titling trust or other trust*
17 *established by a licensed provider or a financing entity for the sole*
18 *purpose of holding the ownership or beneficial interest in*
19 *purchased policies in connection with a financing transaction. In*
20 *order to qualify as a related provider trust, the trust must have a*
21 *written agreement with the licensed provider under which the*
22 *licensed provider is responsible for ensuring compliance with all*
23 *statutory and regulatory requirements and under which the trust*
24 *agrees to make all records and files relating to life settlement*
25 *transactions available to the Department of Insurance as if those*
26 *records and files were maintained directly by the licensed provider.*

27 (v) *“Settled policy” means a life insurance policy or certificate*
28 *that has been acquired by a provider pursuant to a life settlement*
29 *contract.*

30 (w) *“Special purpose entity” means a corporation, partnership,*
31 *trust, limited liability company, or other legal entity formed solely*
32 *to provide either directly or indirectly access to institutional capital*
33 *markets:*

34 (1) *For a financing entity or provider.*

35 (2) *In connection with a transaction in which the securities in*
36 *the special purpose entity are acquired by the owner or by a*
37 *“qualified institutional buyer” as defined in Rule 144 promulgated*
38 *under the federal Securities Act of 1933, as amended.*

39 (3) *The securities pay a fixed rate of return commensurate with*
40 *established asset-backed institutional capital markets.*

1 (x) “Stranger-originated life insurance” or “STOLI” is a
2 practice or plan to initiate a life insurance policy for the benefit
3 of a third-party investor who, at the time of policy origination, has
4 no insurable interest in the insured. STOLI practices include, but
5 are not limited to, cases in which life insurance is purchased with
6 resources or guarantees from or through a person or entity, that,
7 at the time of policy inception, could not lawfully initiate the policy
8 himself, herself, or itself, and where, at the time of inception, there
9 is an arrangement or agreement, whether verbal or written, to
10 directly or indirectly transfer the ownership of the policy or the
11 policy benefits to a third party. Trusts that are created to give the
12 appearance of insurable interest and that are used to initiate
13 policies for investors violate insurable interest laws and the
14 prohibition against wagering on life. STOLI arrangements do not
15 include those practices set forth in paragraph (2) of subdivision
16 (k).

17 (y) “Terminally ill” means having an illness or sickness that
18 can reasonably be expected to result in death in 24 months or less.

19 SEC. 11. Section 10113.2 of the Insurance Code is amended
20 to read:

21 10113.2. (a) This section applies to any person entering into,
22 brokering, or soliciting ~~vital~~ life settlements pursuant to Section
23 10113.1.

24 (b) (1) No person may enter into, ~~broker~~, or solicit ~~vital~~ life
25 settlements pursuant to Section 10113.1 unless that person has
26 been licensed by the commissioner under this section. The person
27 shall file an application for a license in the form prescribed by the
28 commissioner, and the application shall be accompanied by a fee
29 of two thousand eight hundred thirty-three dollars (\$2,833). The
30 applicant shall provide any information the commissioner may
31 require. The commissioner may issue a license, or deny the
32 application if, in his or her discretion, it is determined that it is
33 contrary to the interests of the public to issue a license to the
34 applicant. The reasons for a denial shall be set forth in writing.

35 (A) An individual licensed as a broker under this section shall
36 complete on a biennial basis at least 15 hours of continuing
37 education related to life settlements and life settlement
38 transactions, as required and approved by the commissioner.

39 (B) A person licensed as an attorney, certified public accountant,
40 or financial planner accredited by a nationally recognized

1 accreditation agency, who is retained to represent the owner, and
2 whose compensation is not paid directly or indirectly by the
3 provider or purchaser, may negotiate a life settlement contract on
4 behalf of the owner without having to obtain a license as a broker.

5 (C) A person licensed to act as a viatical settlement broker or
6 provider as of December 31, 2008, shall be deemed qualified for
7 licensure as a life settlement broker or provider, and shall be
8 subject to all the provisions of this article as if such person were
9 originally licensed as a life settlement broker or provider. That
10 license shall be valid until the next license renewal.

11 (2) Whenever it appears to the commissioner that it is contrary
12 to the interests of the public for a person licensed pursuant to this
13 section to continue to transact ~~viatical~~ life settlements business,
14 he or she shall issue a notice to the licensee stating the reasons
15 therefor. If, after a hearing, the commissioner concludes that it is
16 contrary to the interests of the public for the licensee to continue
17 to transact ~~viatical~~ life settlements business, he or she may revoke
18 the person's license, or issue an order suspending the license for
19 a period as determined by the commissioner. Any hearing
20 conducted pursuant to this paragraph shall be in accordance with
21 Chapter 5 (commencing with Section 11500) of Part 1 of Division
22 3 of Title 2 of the Government Code, except that the hearing may
23 be conducted by administrative law judges chosen pursuant to
24 Section 11502 or appointed by the commissioner, and the
25 commissioner shall have the powers granted therein.

26 (3) Each licensee shall owe and pay in advance to the
27 commissioner an annual renewal fee of one hundred seventy-seven
28 dollars (\$177). This fee shall be for annual periods commencing
29 on July 1 of each year and ending on June 30 of each year, and
30 shall be due on each March 1 and shall be delinquent on and after
31 each April 1.

32 (4) Any licensee that intends to discontinue transacting ~~viatical~~
33 life settlements in this state shall so notify the commissioner, and
34 shall surrender its license.

35 (c) A ~~viatical~~ life settlements licensee shall file with the
36 department a copy of all ~~viatical~~ life settlement forms used in this
37 state. No licensee may use any ~~viatical~~ life settlement form in this
38 state unless it has been approved by the commissioner. Any ~~viatical~~
39 life settlement form filed with the commissioner shall be deemed
40 approved if it has not been disapproved within 60 days of filing.

1 The commissioner shall disapprove a ~~viatical~~ *life* settlement form
2 if, in his or her discretion, the form, or provisions contained therein,
3 are contrary to the interests of the public, or otherwise misleading
4 or unfair to the consumer. The commissioner may rescind an
5 approval for any reason or on any basis that would have justified
6 initial disapproval. In the case of disapproval or rescission of
7 approval, the licensee may, within 15 days of notice of the
8 disapproval or rescission, request a hearing before the
9 commissioner or his or her designee, and the hearing shall be held
10 within 30 days of the request.

11 (d) ~~Viatical-Life~~ settlements licensees shall be required to
12 ~~disclose or advise~~ *provide* any applicant for a ~~viatical~~ *life* settlement
13 *contract*, at the time of solicitation for the ~~viatical~~ *life* settlement
14 *contract*, of all of the following *disclosures in writing, in at least*
15 *12-point type*:

16 (1) ~~Possible~~ *That there are possible* alternatives to ~~viatical~~ *life*
17 ~~settlements for persons with catastrophic or life-threatening illness,~~
18 *including, but not limited to, accelerated benefits options that may*
19 *be offered by the life insurer.*

20 (2) ~~Tax consequences that may result from entering into a~~
21 ~~viatical settlement~~ *The fact that some or all of the proceeds of a*
22 *life settlement may be taxable and that assistance should be sought*
23 *from a professional tax advisor.*

24 (3) *Consequences for interruption of public assistance as*
25 *provided by information provided by the State Department of*
26 *Health Services and the State Department of Social Services under*
27 *Section 11022 of the Welfare and Institutions Code.*

28 (4) *That the proceeds from a life settlement could be subject to*
29 *the claims of creditors.*

30 (5) *That entering into a life settlement contract may cause other*
31 *rights or benefits, including conversion rights and waiver of*
32 *premium benefits that may exist under the policy or certificate of*
33 *a group policy to be forfeited by the owner and that assistance*
34 *should be sought from a professional financial advisor.*

35 (6) *That a change in ownership of the settled policy could limit*
36 *the insured's ability to purchase insurance in the future on the*
37 *insured's life because there is a limit to how much coverage*
38 *insurers will issue on one life.*

39 (7) *That the owner has a right to terminate a life settlement*
40 *contract within 30 days of the date it is executed by all parties and*

1 *the owner has received all required disclosures, or 15 days from*
2 *receipt by the owner of the proceeds of the settlement, whichever*
3 *is sooner. Rescission, if exercised by the owner, is effective only*
4 *if both notice of rescission is given and the owner repays all*
5 *proceeds and any premiums, loans, and loan interest paid on*
6 *account of the provider within the rescission period. If the insured*
7 *dies during the rescission period, the contract shall be deemed to*
8 *have been rescinded subject to repayment by the owner or the*
9 *owner's estate of all proceeds and any premiums, loans, and loan*
10 *interest to the provider.*

11 *(8) That proceeds will be sent to the owner within three business*
12 *days after the provider has received the insurer or group*
13 *administrator's acknowledgement that ownership of the policy or*
14 *the interest in the certificate has been transferred and the*
15 *beneficiary has been designated in accordance with the terms of*
16 *the life settlement contract.*

17 *(9) The amount and method of calculating the compensation*
18 *paid or to be paid to the broker, or any other person acting for*
19 *the owner in connection with the transaction, wherein the term*
20 *compensation includes anything of value paid or given.*

21 *(10) The date by which the funds will be available to the owner*
22 *and the transmitter of the funds.*

23 *(11) The disclosure document shall include the following*
24 *language:*

25
26

27 *“All medical, financial, or personal information solicited or*
28 *obtained by a provider or broker about an insured, including*
29 *the insured's identity or the identity of family members, a*
30 *spouse, or a significant other may be disclosed as necessary*
31 *to effect the life settlement contract between the owner and*
32 *provider. If you are asked to provide this information, you will*
33 *be asked to consent to the disclosure. The information may be*
34 *provided to someone who buys the policy or provides funds*
35 *for the purchase. You may be asked to renew your permission*
36 *to share information every two years.”*

37
38

39 *(12) That the insured may be contacted by either the provider*
40 *or the broker or its authorized representative for the purpose of*

1 *determining the insured's health status or to verify the insured's*
2 *address. This contact is limited to once every three months if the*
3 *insured has a life expectancy of more than one year, and no more*
4 *than once per month if the insured has a life expectancy of one*
5 *year or less.*

6 *(13) Any affiliations or contractual relations between the*
7 *provider and the broker, and the affiliation, if any, between the*
8 *provider and the issuer of the policy to be settled.*

9 *(14) That a broker represents exclusively the owner, and not*
10 *the insurer or the provider or any other person, and owes a*
11 *fiduciary duty to the owner, including a duty to act according to*
12 *the owner's instructions and in the best interest of the owner.*

13 *(15) The name, business address, and telephone number of the*
14 *broker.*

15 *(e) The broker shall provide the owner and the provider with*
16 *at least all of the following disclosures in writing prior to the*
17 *signing of the life settlement contract by all parties. The disclosures*
18 *shall be clearly displayed in the life settlement contract or in a*
19 *separate document signed by the owner:*

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

22 *(2) A full, complete, and accurate description of the all the*
23 *offers, counteroffers, acceptances, and rejections relating to the*
24 *proposed life settlement contract.*

25 *(3) A disclosure of any affiliations or contractual arrangements*
26 *between the broker and any person making an offer in connection*
27 *with the proposed life settlement contract.*

28 *(4) The name of each broker or other person who receives*
29 *compensation and the amount of compensation received by that*
30 *person, which compensation includes anything of value paid or*
31 *given in connection with the life settlement contract.*

32 *(5) A complete reconciliation of the gross offer or bid by the*
33 *provider to the net amount of proceeds or value to be received by*
34 *the owner. For the purpose of this section, gross offer or bid shall*
35 *mean the total amount or value offered by the provider for the*
36 *purchase of one or more life insurance policies, inclusive of*
37 *commissions and fees.*

38 *(6) All estimates of the life expectancy of the insured which are*
39 *obtained by the licensee in connection with the life settlement,*

1 *unless such disclosure would violate any California or federal*
2 *privacy laws.*

3 *(7) The commissioner may consider any failure to provide the*
4 *disclosures or rights described in this section as a basis for*
5 *suspending or revoking a broker's or provider's license pursuant*
6 *to paragraph (2) of subdivision (b).*

7 ~~(e)~~

8 *(f) All medical information solicited or obtained by any person*
9 *soliciting or entering into a ~~vital~~ life settlement is subject to*
10 *Article 6.6 (commencing with Section 791) of Chapter 1 of Part*
11 *2 of Division 1, concerning confidentiality of medical information.*

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

20 *(1) It is necessary to effect a life settlement contract between*
21 *the owner and a provider and the owner and insured have provided*
22 *prior written consent to the disclosure.*

23 *(2) It is necessary to effectuate the sale of life settlement*
24 *contracts, or interests therein, as investments, provided the sale*
25 *is conducted in accordance with applicable state and federal*
26 *securities law and provided further that the owner and the insured*
27 *have both provided prior written consent to the disclosure.*

28 *(3) It is provided in response to an investigation or examination*
29 *by the commissioner or any other governmental officer or agency*
30 *or any other provision of law.*

31 *(4) It is a term or condition to the transfer of a policy by one*
32 *provider to another provider, in which case the receiving provider*
33 *shall be required to comply with the confidentiality requirements*
34 *of Article 6.6 (commencing with Section 791) of Part 2 of Division*
35 *1.*

36 *(5) It is necessary to allow the provider or broker or their*
37 *authorized representatives to make contacts for the purpose of*
38 *determining health status. For the purposes of this section, the*
39 *term "authorized representative" shall not include any person*
40 *who has or may have any financial interest in the settlement*

1 contract other than a provider, licensed broker, financing entity,
2 related provider trust, or special purpose entity; further, a provider
3 or broker shall require its authorized representative to agree in
4 writing to adhere to the privacy provisions of this act.

5 (6) It is required to purchase stop loss coverage.

6 (h) Without limiting the ability of an insurer to assess the
7 insurability of a policy applicant and determine whether or not to
8 issue the policy, and in addition to other questions an insurance
9 carrier may lawfully pose to a life insurance applicant, insurance
10 carriers may inquire in the application for insurance whether the
11 proposed owner intends to pay premiums with the assistance of
12 financing from a lender that will use the policy as collateral to
13 support the financing.

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

19 (2) If the financing does not violate paragraph (1), the insurance
20 carrier may make disclosures to the applicant, either on the
21 application or an amendment to the application to be completed
22 no later than the delivery of the policy, including, but not limited
23 to, the following:

24
25

26 “If you have entered into a loan arrangement where the
27 policy is used as collateral, and the policy changes ownership
28 at some point in the future in satisfaction of the loan, the
29 following may be true:

30 “(A) A change of ownership could lead to a stranger owning
31 an interest in the insured’s life.

32 “(B) A change of ownership could in the future limit your
33 ability to purchase insurance on the insured’s life because
34 there is a limit to how much coverage insurers will issue on
35 a life.

36 “(C) You should consult a professional advisor since a
37 change in ownership in satisfaction of the loan may result in
38 tax consequences to the owner, depending on the structure of
39 the loan.”

40

1
 2 (3) *In addition to the disclosures in paragraph (2), the insurance*
 3 *carrier may require the following certifications from the applicant*
 4 *or the insured:*

5
 6
 7 “(A) *I have not entered into any agreement or arrangement*
 8 *providing for the future sale of this life insurance policy.”*

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

15 “(C) *The borrower has an insurable interest in the insured.”*
 16

17
 18 (f)

19 (i) The commissioner may adopt rules and regulations
 20 reasonably necessary to govern ~~viatical life~~ settlements and
 21 transactions and shall adopt regulations to address those conflicts
 22 of interest that may arise, including referrals by viatical settlement
 23 brokers to viatical settlement providers who have patterns of
 24 unreasonable payments to viators. This authority includes, but is
 25 not limited to, regulation of discount rates used to determine the
 26 amount paid in exchange for assignment, transfer, sale, devise, or
 27 bequest of a death benefit under a life insurance policy, and
 28 regulations restricting the period of time within which a life or
 29 disability agent is prohibited from charging or accepting a fee or
 30 commission for viaticating a policy previously sold by that agent.
 31 In adopting those regulations, the commissioner shall consider the
 32 period of time applicable to that prohibition. The prohibition does
 33 not apply to group policies or certificates.

34 (g)

35 (j) The commissioner may, whenever he or she deems it
 36 reasonably necessary to protect the interests of the public, examine
 37 the business and affairs of any licensee or applicant for a license.
 38 The commissioner shall have the authority to order any licensee
 39 or applicant to produce any records, books, files, or other
 40 information as is reasonably necessary to ascertain whether or not

1 the licensee or applicant is acting or has acted in violation of the
2 law or otherwise contrary to the interests of the public. The
3 expenses incurred in conducting any examination shall be paid by
4 the licensee or applicant.

5 ~~(h)~~

6 (k) The commissioner may investigate the conduct of any
7 licensee, its officers, employees, agents, or any other person
8 involved in the business of the licensee, whenever the
9 commissioner has reason to believe that the licensee may have
10 acted, or may be acting, in violation of the law, or otherwise
11 contrary to the interests of the public. The commissioner may
12 initiate an investigation on his or her own, or upon a complaint
13 filed by any other person.

14 ~~(i)~~

15 (l) The commissioner may issue orders to licensees whenever
16 he or she determines that it is reasonably necessary to ensure or
17 obtain compliance with this section, or Section ~~10113.1~~ 10113.3.
18 This authority includes, but is not limited to, orders directing a
19 licensee to cease and desist in any practice that is in violation of
20 this section, or Section ~~10113.1~~ 10113.3, or otherwise contrary to
21 the interests of the public. Any licensee to which an order pursuant
22 to this subdivision is issued may, within 15 days of receipt of that
23 order, request a hearing at which the licensee may challenge the
24 order.

25 ~~(j)~~

26 (m) The commissioner may, after notice and a hearing at which
27 it is determined that a licensee has violated this section or Section
28 ~~10113.1~~ 10113.3 or any order issued pursuant to this section, order
29 the licensee to pay a monetary penalty of up to ten thousand dollars
30 (\$10,000), which may be recovered in a civil action. Any hearing
31 conducted pursuant to this subdivision shall be in accordance with
32 Chapter 5 (commencing with Section 11500) of Part 1 of Division
33 3 of Title 2 of the Government Code, except that the hearing may
34 be conducted by administrative law judges chosen pursuant to
35 Section 11502 or appointed by the commissioner, and the
36 commissioner shall have the powers granted therein.

37 ~~(k)~~

38 (n) Each licensee shall file with the commissioner on or before
39 March 1 of each year an annual statement in the form prescribed
40 by the commissioner. The information that the commissioner may

1 require in the annual statement shall include, but not be limited
 2 to, the data required to satisfy the commissioner's report to the
 3 Legislature due on or before December 1, 1994.

4 ~~(t)~~

5 (o) No person who is not a resident of California may receive
 6 or maintain a license unless a written designation of an agent for
 7 service of process is filed and maintained with the commissioner.
 8 The provisions of Article 3 (commencing with Section 1600) of
 9 Chapter 4 of Part 2 shall apply to ~~vatical~~ *life* settlements licensees
 10 as if they were foreign insurers, their license a certificate of
 11 authority, and the ~~vatical~~ *life* settlements a policy, and the
 12 commissioner may modify the agreement set forth in Section 1604
 13 accordingly.

14 ~~(m)~~

15 (p) No person licensed pursuant to this section shall engage in
 16 any false or misleading advertising, solicitation, or practice. *In no*
 17 *case shall a broker or provider directly or indirectly, market,*
 18 *advertise, solicit, or otherwise promote the purchase of a policy*
 19 *for the sole purpose of or with an emphasis on settling the policy*
 20 *or use the words "free," "no cost," or words of similar import in*
 21 *the marketing, advertising, soliciting, or otherwise promoting of*
 22 *the purchase of a policy.* The provisions of Article 6 (commencing
 23 with Section 780) and Article 6.5 (commencing with Section 790)
 24 of Chapter 1 of Part 2 shall apply to ~~vatical~~ *life* settlements
 25 licensees as if they were insurers, their license a certificate of
 26 authority or producer's license, and the ~~vatical~~ *life* settlements a
 27 policy, and the commissioner shall liberally construe these
 28 provisions so as to protect the interests of the public.

29 ~~(n)~~

30 (q) Any person who enters into a ~~vatical~~ *life* settlement with a
 31 ~~vatical~~ *life* settlements licensee shall have the absolute right to
 32 rescind the settlement within 15 days of execution of the settlement,
 33 and any waiver or settlement language contrary to this subdivision
 34 shall be void.

35 (r) *Records of all consummated transactions and life settlement*
 36 *contracts shall be maintained by the provider for three years after*
 37 *the death of the insured and shall be available to the commissioner*
 38 *for inspection during reasonable business hours.*

39 ~~(o)~~

40 (s) A violation of this section is a misdemeanor.

1 *SEC. 12. Section 10113.3 is added to the Insurance Code, to*
2 *read:*

3 *10113.3. (a) A provider entering into a life settlement contract*
4 *with any owner of a policy, wherein the insured is terminally ill,*
5 *shall first obtain the following:*

6 *(1) If the owner is the insured, a written statement from a*
7 *licensed attending physician that the owner is of sound mind and*
8 *under no constraint or undue influence to enter into a settlement*
9 *contract.*

10 *(2) A document in which the insured consents to the release of*
11 *his or her medical records to a provider, settlement broker, or*
12 *insurance producer and, if the policy was issued less than two*
13 *years from the date of application for a settlement contract, to the*
14 *insurance company that issued the policy.*

15 *(b) The insurer shall respond to a request for verification of*
16 *coverage submitted by a provider, settlement broker, or life*
17 *insurance producer not later than 30 calendar days of the date*
18 *the request is received. The request for verification of coverage*
19 *must be made on a form approved by the commissioner. The insurer*
20 *shall complete and issue the verification of coverage or indicate*
21 *in which respects it is unable to respond. In its response, the*
22 *insurer shall indicate whether, based on the medical evidence and*
23 *documents provided, the insurer intends to pursue an investigation*
24 *at this time regarding the validity of the insurance contract.*

25 *(c) Before or at the time of execution of the settlement contract,*
26 *the provider shall obtain a witnessed document in which the owner*
27 *consents to the settlement contract, represents that the owner has*
28 *a full and complete understanding of the settlement contract and*
29 *a full and complete understanding of the benefits of the policy,*
30 *acknowledges that the owner is entering into the settlement*
31 *contract freely and voluntarily, and, for persons with a terminal*
32 *or chronic illness or condition, acknowledges that the insured has*
33 *a terminal or chronic illness and that the terminal or chronic*
34 *illness or condition was diagnosed after the policy was issued.*

35 *(d) The insurer shall not unreasonably delay effecting change*
36 *of ownership or beneficiary with any life settlement contract*
37 *lawfully entered into in this state or with a resident of this state.*

38 *(e) If a settlement broker or life insurance producer performs*
39 *any of these activities required of the provider, the provider is*
40 *deemed to have fulfilled the requirements of this section.*

1 (f) *If a broker performs those verification of coverage activities*
2 *required of the provider, the provider is deemed to have fulfilled*
3 *the requirements of this section.*

4 (g) *Within 20 days after an owner executes the life settlement*
5 *contract, the provider shall give written notice to the insurer that*
6 *issued that insurance policy that the policy has become subject to*
7 *a life settlement contract. The notice shall be accompanied by the*
8 *documents required by subdivision (g) of Section 10113.2.*

9 (h) *All medical information solicited or obtained by any licensee*
10 *shall be subject to the applicable provision of state law relating*
11 *to confidentiality of medical information, if not otherwise provided*
12 *in this act.*

13 (i) *All life settlement contracts entered into in this state shall*
14 *provide that the owner may rescind the contract on or before 30*
15 *days after the date it is executed by all parties thereto, or on or*
16 *before 15 days of receipt of the full payment of the proceeds as*
17 *specified below. Rescission, if exercised by the owner, is effective*
18 *only if both notice of the rescission is given, and the owner repays*
19 *all proceeds and any premiums, loans, and loan interest paid on*
20 *account of the provider within the rescission period. If the insured*
21 *dies during the rescission period, the contract shall be deemed to*
22 *have been rescinded subject to repayment by the owner or the*
23 *owner's estate of all proceeds and any premiums, loans, and loan*
24 *interest to the provider.*

25 (j) *Within three business days after receipt from the owner of*
26 *documents to effect the transfer of the insurance policy, the*
27 *provider shall pay the proceeds of the settlement to an escrow or*
28 *trust account managed by a trustee or escrow agent in a state or*
29 *federally chartered financial institution pending acknowledgement*
30 *of the transfer by the issuer of the policy. The trustee or escrow*
31 *agent shall be required to transfer the proceeds due to the owner*
32 *within three business days of acknowledgement of the transfer*
33 *from the insurer.*

34 (k) *Failure to tender the life settlement contract proceeds to the*
35 *owner by the date disclosed to the owner renders the contract*
36 *voidable by the owner for lack of consideration until the time the*
37 *proceeds are tendered to and accepted by the owner. A failure to*
38 *give written notice of the right of rescission hereunder shall toll*
39 *the right of rescission until 30 days after the written notice of the*
40 *right of rescission has been given.*

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

8 *(m) The broker shall disclose to the owner anything of value*
9 *paid or given to a broker, which relates to a life settlement*
10 *contract.*

11 *(n) No person at any time prior to, or at the time of, the*
12 *application for, or issuance of, a policy, or during a two-year*
13 *period commencing with the date of issuance of the policy, shall*
14 *enter into a life settlement regardless of the date the compensation*
15 *is to be provided and regardless of the date the assignment,*
16 *transfer, sale, devise, bequest, or surrender of the policy is to*
17 *occur.*

18 *(1) This prohibition shall not apply if the owner certifies to the*
19 *provider that the policy was issued upon the owner's exercise of*
20 *conversion rights arising out of a group or individual policy,*
21 *provided the total of the time covered under the conversion policy*
22 *plus the time covered under the prior policy is at least 24 months.*
23 *The time covered under a group policy must be calculated without*
24 *regard to a change in insurance carriers, provided the coverage*
25 *has been continuous and under the same group sponsorship.*

26 *(2) This prohibition shall not apply if the owner submits*
27 *independent evidence to the provider that one or more of the*
28 *following conditions have been met within the two-year period:*

29 *(A) The owner or insured is terminally or chronically ill.*

30 *(B) The owner or insured disposes of his or her ownership*
31 *interests in a closely held corporation, pursuant to the terms of a*
32 *buyout or other similar agreement in effect at the time the*
33 *insurance policy was initially issued.*

34 *(C) The owner's spouse dies.*

35 *(D) The owner divorces his or her spouse.*

36 *(E) The owner retires from full-time employment.*

37 *(F) The owner becomes physically or mentally disabled and a*
38 *physician determines that the disability prevents the owner from*
39 *maintaining full-time employment.*

1 (G) A final order, judgment, or decree is entered by a court of
2 competent jurisdiction, on the application of a creditor of the
3 owner, adjudicating the owner bankrupt or insolvent, or approving
4 a petition seeking reorganization of the owner or appointing a
5 receiver, trustee, or liquidator to all or a substantial part of the
6 owner's assets.

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

15 (B) If the provider submits to the insurer a copy of independent
16 evidence provided for in subparagraph (A) of paragraph (2) when
17 the provider submits a request to the insurer to effect the transfer
18 of the policy to the provider, the copy shall be deemed to establish
19 that the settlement contract satisfies the requirements of this
20 section.

21 (o) If there is more than one owner on a single policy, and the
22 owners are residents of different states, the life settlement contract
23 shall be governed by the law of the state in which the owner having
24 the largest percentage ownership resides or, if the owners hold
25 equal ownership, the state of residence of one owner agreed upon
26 in writing by all of the owners. The law of the state of the insured
27 shall govern in the event that equal owners fail to agree in writing
28 upon a state of residence for jurisdictional purposes.

29 (p) A provider from this state who enters into a life settlement
30 contract with an owner who is a resident of another state that has
31 enacted statutes or adopted regulations governing life settlement
32 contracts shall be governed in the effectuation of that life settlement
33 contract by the statutes and regulations of the owner's state of
34 residence. If the state in which the owner is a resident has not
35 enacted statutes or regulations governing life settlement contracts,
36 the provider shall give the owner notice that neither state regulates
37 the transaction upon which he or she is entering. For transactions
38 in those states, however, the provider is to maintain all records
39 required if the transactions were executed in the state of residence.

1 *The forms used in those states need not be approved by the*
2 *department.*

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

7 *(r) It is a fraudulent life settlement act and a violation of this*
8 *section for any person to do any of the following, or any of the*
9 *acts listed in subdivision (g) of Section 10113.1:*

10 *(1) Enter into a life settlement contract if a person knows or*
11 *reasonably should have known that the life insurance policy was*
12 *obtained by means of a false, deceptive, or misleading application*
13 *for such policy.*

14 *(2) Engage in any transaction, practice, or course of business*
15 *if a person knows or reasonably should have known that the intent*
16 *was to avoid the notice requirements of this section.*

17 *(3) Engage in any fraudulent act or practice in connection with*
18 *any transaction relating to any settlement involving an owner who*
19 *is a resident of this state.*

20 *(4) Fail to provide the disclosures or file the required reports*
21 *with the commissioner as required by this act.*

22 *(5) Issue, solicit, market, or otherwise promote the purchase of*
23 *an insurance policy for the purpose of, or with an emphasis on,*
24 *settling the policy.*

25 *(6) Enter into a premium finance agreement with any person*
26 *or agency, or any person affiliated with a person or agency,*
27 *pursuant to which a person shall receive any proceeds, fees, or*
28 *other consideration, directly or indirectly, from the policy or owner*
29 *of the policy or any other person with respect to the premium*
30 *finance agreement or any settlement contract or other transaction*
31 *related to a policy that are in addition to the amounts required to*
32 *pay the principal, interest, and service charges related to policy*
33 *premiums pursuant to the premium finance agreement or*
34 *subsequent sale of such agreement; provided, further, that any*
35 *payments, charges, fees, or other amounts in addition to the*
36 *amounts required to pay the principal, interest, and service charges*
37 *related to policy premiums paid under the premium finance*
38 *agreement shall be remitted to the original owner of the policy or*
39 *to his or her estate if he or she is not living at the time of the*
40 *determination of the overpayment.*

1 (7) *With respect to any settlement contract or insurance policy*
2 *and a broker, knowingly solicit an offer from, effectuate a life*
3 *settlement contract with, or make a sale to any provider, financing*
4 *entity, or related provider trust that is controlling, controlled by,*
5 *or under common control with a broker.*

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

13 (9) *With respect to a provider, enter into a life settlement*
14 *contract unless the life settlement promotional, advertising, and*
15 *marketing materials, as may be prescribed by regulation, have*
16 *been filed with the commissioner. In no event shall any marketing*
17 *materials expressly reference that the insurance is “free” for any*
18 *period of time. The inclusion of any reference in the marketing*
19 *materials that would cause an owner to reasonably believe that*
20 *the insurance is free for any period of time shall be considered a*
21 *violation of this act; or with respect to any life insurance producer,*
22 *insurance company, broker, or provider make any statement or*
23 *representation to the applicant or policyholder in connection with*
24 *the sale or financing of a life insurance policy to the effect that*
25 *the insurance is free or without cost to the policyholder for any*
26 *period of time unless provided in the policy.*

27 (s) *Life settlement contracts and applications for life settlement*
28 *contracts, regardless of the form of transmission, shall contain*
29 *the following statement or a substantially similar statement:*
30

31
32 *“Any person who knowingly presents false information in an*
33 *application for insurance or life settlement contract is guilty*
34 *of a crime and may be subject to fines and confinement in*
35 *prison.”*
36

37
38 (1) *The lack of a statement as required by this subdivision does*
39 *not constitute a defense in any prosecution for a fraudulent life*
40 *settlement act.*

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

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

15 (A) The commissioner or the commissioner's employees, agents,
16 or representatives.

17 (B) Federal, state, or local law enforcement or regulatory
18 officials or their employees, agents, or representatives.

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

22 (D) Any regulatory body or its employees, agents, or
23 representatives, overseeing life insurance, life settlements,
24 securities, or investment fraud.

25 (E) The life insurer that issued the life insurance policy covering
26 the life of the insured.

27 (F) The licensee and any agents, employees, or representatives.

28 (4) A person identified in paragraph (2) shall be entitled to an
29 award of attorney's fees and costs if he or she is the prevailing
30 party in a civil cause of action for libel, slander, or any other
31 relevant tort arising out of activities in carrying out the provisions
32 of this act, or if the party bringing the action was not substantially
33 justified in doing so. For purposes of this section, a proceeding is
34 "substantially justified" if it had a reasonable basis in law or fact
35 at the time that it was initiated.

36 (5) This section does not abrogate or modify common law or
37 statutory privileges or immunities enjoyed by a person described
38 in paragraph (2).

39 (6) This act shall not:

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

4 (B) Preempt, supersede, or limit any provision of any state
5 securities law or any rule, order, or notice issued thereunder.

6 (C) Prevent or prohibit a person from disclosing voluntarily
7 information concerning life settlement fraud to a law enforcement
8 or regulatory agency other than the insurance department.

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

13 (t) A provider lawfully transacting business in this state prior
14 to the effective date of this act may continue to do so, pending
15 approval or disapproval of that person's application for a license
16 as long as the application is filed with the commissioner not later
17 than 30 days after publication by the commissioner of an
18 application form and instructions for licensure of providers. If the
19 publication of the application form and instructions is prior to the
20 effective date of this chapter, then the filing of the application shall
21 not be later than 30 days after the effective date of this act. During
22 the time that an application is pending with the commissioner, the
23 applicant may use any form of life settlement contract that has
24 been filed with the commissioner pending approval thereof,
25 provided that such form is otherwise in compliance with the
26 provisions of this act. Any person transacting business in this state
27 under this provision shall be obligated to comply with all other
28 requirements of this act. A person who has lawfully acted as a
29 broker and negotiated life settlement contracts between any owner
30 residing in this state and one or more providers for at least one
31 year immediately prior to the effective date of this act may continue
32 to do so pending approval or disapproval of that person's
33 application for a license, as long as the application is filed with
34 the commissioner not later than 30 days after publication by the
35 commissioner of an application form and instructions for licensure
36 of brokers. If the publication of the application form and
37 instructions is prior to the effective date of this chapter, then the
38 filing of the application shall not be later than 30 days after the
39 effective date of this act. Any person transacting business in this

1 *state under this provision shall be obligated to comply with all*
2 *other requirements of this act.*

3 *SEC. 13. No reimbursement is required by this act pursuant*
4 *to Section 6 of Article XIII B of the California Constitution because*
5 *the only costs that may be incurred by a local agency or school*
6 *district will be incurred because this act creates a new crime or*
7 *infraction, eliminates a crime or infraction, or changes the penalty*
8 *for a crime or infraction, within the meaning of Section 17556 of*
9 *the Government Code, or changes the definition of a crime within*
10 *the meaning of Section 6 of Article XIII B of the California*
11 *Constitution.*

12 ~~SECTION 1. Section 10113.1 of the Insurance Code is~~
13 ~~amended to read:~~

14 ~~10113.1. (a) (1) As used in this section, a “viatical settlement”~~
15 ~~means an agreement entered into between a person owning a life~~
16 ~~insurance policy upon the life of a person with a catastrophic or~~
17 ~~life-threatening illness or condition and another person by which~~
18 ~~the policy owner receives compensation or anything of value less~~
19 ~~than the death benefits of the insurance policy in return for an~~
20 ~~assignment, transfer, sale, devise, or bequest of the death benefits~~
21 ~~or ownership of the insurance policy, but does not include an~~
22 ~~assignment of a life insurance policy to a licensed lending~~
23 ~~institution or credit union as collateral for a loan or loans.~~

24 ~~(2) As used in this section, “person” means any natural person~~
25 ~~or legal entity including, but not limited to, individuals,~~
26 ~~partnerships, associations, trusts, or corporations including a~~
27 ~~resident or nonresident life and disability insurance agent licensed~~
28 ~~by the commissioner.~~

29 ~~The life and disability insurance agents shall file with the~~
30 ~~commissioner a declaration that the person’s life and disability~~
31 ~~agent license is valid and in good standing. The life and disability~~
32 ~~insurance agent shall provide copies of all endorsements and~~
33 ~~appointments received by the agent to engage in the business of~~
34 ~~viatical settlements. If the commissioner determines that the agent’s~~
35 ~~life and disability agent license is invalid or not in good standing,~~
36 ~~or the agent has failed to submit any fees or proper endorsements~~
37 ~~or appointments, the commissioner may suspend the agent’s ability~~
38 ~~to transact or otherwise be involved in viatical settlements.~~

- 1 ~~(b) A viatical settlement shall not include a provision for~~
- 2 ~~payment of cash surrender values, loans or other benefits made by~~
- 3 ~~an insurer in accordance with the policy provisions.~~
- 4 ~~(c) Any person entering into a viatical settlement with any~~
- 5 ~~person with a catastrophic or life-threatening illness or condition~~
- 6 ~~shall first obtain the following:~~
- 7 ~~(1) A written statement from a licensed medical practitioner~~
- 8 ~~attending the person that the person is of sound mind and under~~
- 9 ~~no constraint or undue influence.~~
- 10 ~~(2) A duly witnessed signed document in which the person~~
- 11 ~~consents to the viatical settlement, acknowledges the catastrophic~~
- 12 ~~or life-threatening illness, represents that he or she has a full and~~
- 13 ~~complete understanding of the viatical settlement, that he or she~~
- 14 ~~has a full and complete understanding of the benefits of the life~~
- 15 ~~insurance policy, a release of his or her medical records, and~~
- 16 ~~acknowledges that he or she has entered into the settlement freely~~
- 17 ~~and voluntarily.~~
- 18 ~~(d) No person domiciled, residing or conducting business in~~
- 19 ~~California may do any of the following unless he or she has~~
- 20 ~~complied with subdivision (c):~~
- 21 ~~(1) Enter into a viatical settlement with any person, domiciled~~
- 22 ~~or residing in California.~~
- 23 ~~(2) Execute a viatical settlement in whole or in part in this state.~~
- 24 ~~(e) A violation of this section is a misdemeanor.~~