

AMENDED IN ASSEMBLY JUNE 16, 2009

AMENDED IN SENATE MAY 28, 2009

AMENDED IN SENATE APRIL 20, 2009

AMENDED IN SENATE APRIL 1, 2009

SENATE BILL

No. 98

Introduced by Senator Calderon

January 26, 2009

An act to amend Section 10110.1 of, to add Sections 10113.3 and 10113.35 to, and to repeal and add Sections 10113.1 and 10113.2 of, the Insurance Code, relating to life insurance.

LEGISLATIVE COUNSEL'S DIGEST

SB 98, as amended, Calderon. Life insurance: contracts and viatical settlements.

Existing law establishes when an interest, with respect to life and disability insurance, is insurable.

This bill would provide that trusts and special purpose entities, as specified, where one or more beneficiaries of these trusts or special purpose entities do not have an insurable interest in the life of the insured, violate the insurable interest laws and the prohibition against wagering on life. The bill would also provide that any device, scheme, or artifice designed to give the appearance of an insurable interest, where there is no insurable interest, violates the insurable interest laws.

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. A person who enters into or solicits a viatical settlement without a license, or a licensee who fails to comply with certain requirements, is guilty of a misdemeanor.

This bill would repeal these provisions, and would instead 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, and of the annual statements of life settlement licensees, as specified. This bill would also provide that applicable license fees shall be established by the commissioner. Because the bill would change the definition of a crime, the bill would impose a state-mandated local program.

This bill would provide that the adoption or amendment of any regulation required by specific provisions shall take effect when filed with the Office of Administrative Law, as specified.

This bill would provide that, with certain exceptions, it shall not apply to any life settlement contract entered into on or before July 1, 2010. This bill would provide that it would apply to any transaction involving any life insurance policy in effect, or entered into, on or after the operative date of the bill.

This bill would make legislative findings and declarations relating to the need for confidentiality of specified information.

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.

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

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

1 SECTION 1. Section 10110.1 of the Insurance Code is
2 amended to read:

3 10110.1. (a) An insurable interest, with reference to life and
4 disability insurance, is an interest based upon a reasonable
5 expectation of pecuniary advantage through the continued life,
6 health, or bodily safety of another person and consequent loss by
7 reason of that person's death or disability or a substantial interest
8 engendered by love and affection in the case of individuals closely
9 related by blood or law.

10 (b) An individual has an unlimited insurable interest in his or
11 her own life, health, and bodily safety and may lawfully take out
12 a policy of insurance on his or her own life, health, or bodily safety
13 and have the policy made payable to whomsoever he or she pleases,
14 regardless of whether the beneficiary designated has an insurable
15 interest.

16 (c) Except as provided in Section 10110.4, an employer has an
17 insurable interest, as referred to in subdivision (a), in the life or
18 physical or mental ability of any of its directors, officers, or
19 employees or the directors, officers, or employees of any of its
20 subsidiaries or any other person whose death or physical or mental
21 disability might cause financial loss to the employer; or, pursuant
22 to any contractual arrangement with any shareholder concerning
23 the reacquisition of shares owned by the shareholder at the time
24 of his or her death or disability, on the life or physical or mental
25 ability of that shareholder for the purpose of carrying out the
26 contractual arrangement; or, pursuant to any contract obligating
27 the employer as part of compensation arrangements or pursuant
28 to a contract obligating the employer as guarantor or surety, on
29 the life of the principal obligor. The trustee of an employer or
30 trustee of a pension, welfare benefit plan, or trust established by
31 an employer providing life, health, disability, retirement, or similar
32 benefits to employees and retired employees of the employer or
33 its affiliates and acting in a fiduciary capacity with respect to those
34 employees, retired employees, or their dependents or beneficiaries
35 has an insurable interest in the lives of employees and retired
36 employees for whom those benefits are to be provided. The
37 employer shall obtain the written consent of the individual being
38 insured.

(d) Trusts and special purpose entities that are used to apply for and initiate the issuance of policies of insurance for investors, where one or more beneficiaries of those trusts or special purpose entities do not have an insurable interest in the life of the insured, violate the insurable interest laws and the prohibition against wagering on life.

(e) Any device, scheme, or artifice designed to give the appearance of an insurable interest where there is no legitimate insurable interest violates the insurable interest laws.

(f) An insurable interest shall be required to exist at the time the contract of life or disability insurance becomes effective, but need not exist at the time the loss occurs.

(g) Any contract of life or disability insurance procured or caused to be procured upon another individual is void unless the person applying for the insurance has an insurable interest in the individual insured at the time of the application.

(h) Notwithstanding subdivisions (a), (f), and (g), a charitable organization that meets the requirements of Section 214 or 23701d of the Revenue and Taxation Code may effectuate life or disability insurance on an insured who consents to the issuance of that insurance.

(i) This section shall not be interpreted to define all instances in which an insurable interest exists.

SEC. 2. Section 10113.1 of the Insurance Code is repealed.

SEC. 3. Section 10113.1 is added to the Insurance Code, to read:

10113.1. The following provisions shall apply to this act:

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

(b) “Broker” means a person who, on behalf of an owner, and for a fee, commission, or other valuable consideration, offers or attempts to negotiate life settlement contracts between an owner

1 and providers. A broker represents only the owner and owes a
2 fiduciary duty to the owner to act according to the owner's
3 instructions, and in the best interest of the owner, notwithstanding
4 the manner in which the broker is compensated. A broker does not
5 include an attorney, certified public accountant, or financial planner
6 retained in the type of practice customarily performed in his or her
7 professional capacity to represent the owner whose compensation
8 is not paid directly or indirectly by the provider or any other person,
9 except the owner.

10 (c) "Business of life settlements" means an activity involved
11 in, but not limited to, offering to enter into, soliciting, negotiating,
12 procuring, effectuating, monitoring, or tracking of life settlement
13 contracts.

14 (d) "Commissioner" means the Insurance Commissioner.

15 (e) "Financing entity" means an underwriter, placement agent,
16 lender, purchaser of securities, purchaser of a policy or certificate
17 from a provider, credit enhancer, or any entity that has a direct
18 ownership in a policy or certificate that is the subject of a life
19 settlement contract, as to which both of the following apply:

20 (1) It is an entity whose principal activity related to the
21 transaction is providing funds to effect the life settlement contract
22 or purchase of one or more policies.

23 (2) It is an entity that has an agreement in writing with one or
24 more providers to finance the acquisition of life settlement
25 contracts.

26 (f) "Financing transaction" means a transaction in which a
27 licensed provider obtains financing from a financing entity,
28 including, without limitation, any secured or unsecured financing,
29 any securitization transaction, or any securities offering which
30 either is registered or exempt from registration under federal and
31 state securities law.

32 (g) "Fraudulent life settlement act" includes all of the following:

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

37 (A) Presenting, causing to be presented, or preparing with
38 knowledge and belief that it will be presented to or by a provider,
39 premium finance lender, broker, insurer, insurance producer, or
40 any other person, false material information, or concealing material

- 1 information, as part of, in support of, or concerning a fact material
2 to one or more of the following:
- 3 (i) An application for the issuance of a life settlement contract
4 or insurance policy.
 - 5 (ii) The underwriting of a life settlement contract or insurance
6 policy.
 - 7 (iii) A claim for payment or benefit pursuant to a life settlement
8 contract or insurance policy.
 - 9 (iv) Premiums paid on an insurance policy.
 - 10 (v) Payments and changes in ownership or beneficiary made in
11 accordance with the terms of a life settlement contract or insurance
12 policy.
 - 13 (vi) The reinstatement or conversion of an insurance policy.
 - 14 (vii) The solicitation, offer to enter into, or effectuation of, a
15 life settlement contract or insurance policy.
 - 16 (viii) The issuance of written evidence of life settlement
17 contracts or insurance.
 - 18 (ix) Any application for, or the existence of or any payments
19 related to, a loan secured directly or indirectly by any interest in
20 a life insurance policy.
- 21 (B) Entering into stranger-originated life insurance (STOLI).
22 (C) Employing any device, scheme, or artifice to defraud in the
23 business of life settlements.
- 24 (2) Any of the following that any person does, or permits his
25 or her employees or agents to do, in the furtherance of a fraud, or
26 to prevent the detection of a fraud:
- 27 (A) Remove, conceal, alter, destroy, or sequester from the
28 commissioner the assets or records of a licensee or other person
29 engaged in the business of life settlements.
 - 30 (B) Misrepresent or conceal the financial condition of a licensee,
31 financing entity, insurer, or other person.
 - 32 (C) Transact the business of life settlements in violation of laws
33 requiring a license, certificate of authority, or other legal authority
34 for the transaction of the business of life settlements.
 - 35 (D) File with the commissioner or the chief insurance regulatory
36 official of another jurisdiction a document containing false
37 information or otherwise concealing information about a material
38 fact from the commissioner.
 - 39 (E) Engage in embezzlement, theft, misappropriation, or
40 conversion of moneys, funds, premiums, credits, or other property

1 of a provider, insurer, insured, owner, insurance policyowner, or
2 any other person engaged in the business of life settlements or
3 insurance.

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

11 (G) Attempt to commit, assist, aid, or abet in the commission
12 of, or conspiracy to commit the acts or omissions specified in this
13 subdivision.

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

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

20 (i) "Life expectancy" means the arithmetic mean of the number
21 of months the insured under the life insurance policy to be settled
22 can be expected to live considering medical records and appropriate
23 experiential data.

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

29 (k) "Life settlement contract" means a written agreement
30 solicited, negotiated, or entered into in this state between a provider
31 and an owner, establishing the terms under which compensation
32 or any thing of value will be paid, which compensation or thing
33 of value is less than the expected death benefit of the insurance
34 policy or certificate, in return for the owner's assignment, transfer,
35 sale, devise, or bequest of the death benefit or any portion of an
36 insurance policy or certificate of insurance for compensation,
37 provided, however, that the minimum value for a life settlement
38 contract shall be greater than a cash surrender value or accelerated
39 death benefit available at the time of an application for a life
40 settlement contract. "Life settlement contract" also includes the

1 transfer for compensation or value of ownership or beneficial
2 interest in a trust or other entity that owns such policy if the trust
3 or other entity was formed or availed of for the principal purpose
4 of acquiring one or more life insurance contracts, which life
5 insurance contract is owned by a person residing in this state.

6 (1) A “life settlement contract” includes a premium finance loan
7 made for a policy on or before the date of issuance of the policy
8 where one or more of the following conditions apply:

9 (A) The loan proceeds are not used solely to pay premiums for
10 the policy and any costs or expenses incurred by the lender or the
11 borrower in connection with the financing.

12 (B) The owner receives on the date of the premium finance loan
13 a guarantee of the future life settlement value of the policy.

14 (C) The owner agrees on the date of the premium finance loan
15 to sell the policy or any portion of the policy’s death benefit on
16 any date following the issuance of the policy, not including an
17 agreement to sell the policy in the event of a default, provided that
18 the default is not pursuant to an agreement or understanding with
19 any other person for the purpose of evading regulation under this
20 act.

21 (2) “Life settlement contract” does not include any of the
22 following:

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

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

33 (C) A collateral assignment of a life insurance policy by an
34 owner.

35 (D) A loan made by a lender that does not violate Article 5.8
36 (commencing with Section 778) of Chapter 1 of Part 2, provided
37 the loan is not described in paragraph (1), and is not otherwise
38 within the definition of life settlement contract.

39 (E) An agreement where all of the parties satisfy one of the
40 following conditions:

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

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

4 (iii) They are trusts established primarily for the benefit of those
5 parties.

6 (F) Any designation, consent, or agreement by an insured who
7 is an employee of an employer in connection with the purchase
8 by the employer, or by a trust established by the employer of life
9 insurance on the life of the employee.

10 (G) A bona fide business succession planning arrangement:

11 (i) Between one or more shareholders in a corporation or
12 between a corporation and one or more of its shareholders or one
13 or more trusts established by its shareholders.

14 (ii) Between one or more partners in a partnership or between
15 a partnership and one or more of its partners or one or more trusts
16 established by its partners.

17 (iii) Between one or more members in a limited liability
18 company or between a limited liability company and one or more
19 of its members or one or more trusts established by its members.

20 (H) An agreement entered into by a service recipient, or a trust
21 established by the service recipient, and a service provider, or a
22 trust established by the service provider, who performs significant
23 services for the service recipient's trade or business.

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

27 (l) "Net death benefit" means the amount of the life insurance
28 policy or certificate to be settled less any outstanding debts or
29 liens.

30 (m) "Owner" means the owner of a life insurance policy or a
31 certificate holder under a group policy, with or without a terminal
32 illness, who enters or seeks to enter into a life settlement contract.
33 For the purposes of this article, an owner shall not be limited to
34 an owner of a life insurance policy or a certificate holder under a
35 group policy that insures the life of an individual with a terminal
36 illness or condition except where specifically addressed. The term
37 "owner" does not include any of the following:

38 (1) Any provider or other licensee under this act.

39 (2) A qualified institutional buyer as defined in Rule 144A of
40 the federal Securities Act of 1933, as amended.

1 (3) A financing entity.

2 (4) A special purpose entity.

3 (5) A related provider trust.

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

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

12 (p) "Policy" means an individual or group policy, group
13 certificate, contract, or arrangement of life insurance owned by a
14 resident of this state, regardless of whether delivered or issued for
15 delivery in this state.

16 (q) "Premium finance loan" is a loan made primarily for the
17 purpose of making premium payments on a life insurance policy,
18 which loan is secured by an interest in such life insurance policy.

19 (r) "Provider" means a person, other than an owner, who enters
20 into or effectuates a life settlement contract with an owner. A
21 provider does not include any of the following:

22 (1) Any bank, savings bank, savings and loan association, or
23 credit union.

24 (2) A licensed lending institution or creditor or secured party
25 pursuant to a premium finance loan agreement which takes an
26 assignment of a life insurance policy or certificate issued pursuant
27 to a group life insurance policy as collateral for a loan.

28 (3) The insurer of a life insurance policy or rider to the extent
29 of providing accelerated death benefits or riders or cash surrender
30 value.

31 (4) A purchaser.

32 (5) Any authorized or eligible insurer that provides stop loss
33 coverage to a provider, purchaser, financing entity, special purpose
34 entity, or related provider trust.

35 (6) A financing entity.

36 (7) A related provider trust.

37 (8) A broker.

38 (9) An accredited investor or qualified institutional buyer as
39 defined respectively in Regulation D, Rule 501 or Rule 144A of

1 the federal Securities Act of 1933, as amended, who purchases a
2 life settlement policy from a provider.

3 (s) “Purchaser” means a person who pays compensation or
4 anything of value as consideration for a beneficial interest in a
5 trust which is vested with, or for the assignment, transfer, or sale
6 of, an ownership or other interest in a life insurance policy or a
7 certificate issued pursuant to a group life insurance policy which
8 has been the subject of a life settlement contract.

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

20 (u) “Settled policy” means a life insurance policy or certificate
21 that has been acquired by a provider pursuant to a life settlement
22 contract.

23 (v) “Special purpose entity” means a corporation, partnership,
24 trust, limited liability company, or other legal entity whose
25 securities pay a fixed rate of return commensurate with established
26 asset-backed capital markets, or has been formed solely to provide
27 either directly or indirectly access to institutional capital markets:

28 (1) For a financing entity or provider.

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

33 (w) “Stranger-originated life insurance” or “STOLI” is an act,
34 practice, or arrangement to initiate the issuance of a life insurance
35 policy in this state for the benefit of a third-party investor who, at
36 the time of policy origination, has no insurable interest, under the
37 laws of this state, in the life of the insured. STOLI practices
38 include, but are not limited to, cases in which life insurance is
39 purchased with resources or guarantees from or through a person
40 or entity, that, at the time of policy inception, could not lawfully

1 initiate the policy himself, herself, or itself, and where, at the time
2 of inception, there is an arrangement or agreement, to directly or
3 indirectly transfer the ownership of the policy or the policy benefits
4 to a third party. Trusts that are created to give the appearance of
5 insurable interest and that are used to initiate policies for investors
6 violate insurable interest laws and the prohibition against wagering
7 on life. STOLI arrangements do not include otherwise lawful life
8 settlement contracts as permitted by the act that added this section
9 or those practices set forth in paragraph (2) of subdivision (k).

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

12 SEC. 4. Section 10113.2 of the Insurance Code is repealed.

13 SEC. 5. Section 10113.2 is added to the Insurance Code, to
14 read:

15 10113.2. (a) This section applies to any person entering into,
16 brokering, or soliciting life settlements pursuant to this section and
17 Sections 10113.1 and 10113.3.

18 (b) (1) Except as provided in subparagraph (B) or (D), no person
19 may enter into, broker, or solicit life settlements pursuant to Section
20 10113.1 unless that person has been licensed by the commissioner
21 under this section. The person shall file an application for a license
22 in the form prescribed by the commissioner, and the application
23 shall be accompanied by a fee established by the commissioner.
24 The license fees for a provider license shall be reasonable and
25 sufficient to cover the costs incurred by the department to
26 implement this act. The license and renewal fees for a broker shall
27 be reasonable and sufficient to cover the costs incurred by the
28 department to implement this act and shall not exceed the license
29 and renewal fees established for an insurance producer who is
30 acting as a life settlement broker. The applicant shall provide any
31 information the commissioner may require. The commissioner
32 may issue a license, or deny the application if, in his or her
33 discretion, it is determined that it is contrary to the interests of the
34 public to issue a license to the applicant. The reasons for a denial
35 shall be set forth in writing.

36 (A) An individual acting as a broker under this section shall
37 complete at least 15 hours of continuing education related to life
38 settlements and life settlement transactions, as required and
39 approved by the commissioner, prior to operating as a broker. This

1 requirement shall not apply to a life insurance producer who
2 qualifies under subparagraph (D).

3 (B) A person licensed as an attorney, certified public accountant,
4 or financial planner accredited by a nationally recognized
5 accreditation agency, who is retained to represent the owner, and
6 whose compensation is not paid directly or indirectly by the
7 provider or purchaser, may negotiate a life settlement contract on
8 behalf of the owner without having to obtain a license as a broker.

9 (C) A person licensed to act as a viatical settlement broker or
10 provider as of December 31, 2009, shall be deemed qualified for
11 licensure as a life settlement broker or provider, and shall be subject
12 to all the provisions of this article as if the person were originally
13 licensed as a life settlement broker or provider.

14 (D) (i) A life insurance producer who has been duly licensed
15 as a life agent for at least one year or as a licensed nonresident
16 producer in this state for one year shall be deemed to meet the
17 licensing requirements of this section and shall be permitted to
18 operate as a broker.

19 (ii) Not later than 10 days from the first day of operating as a
20 broker, the life insurance producer shall notify the commissioner
21 that he or she is acting as a broker, on a form prescribed by the
22 commissioner, and shall pay any applicable fee to be determined
23 by the commissioner. ~~The commissioner.~~

24 (iii) ~~The fee established by the commissioner shall be reasonable~~
25 ~~and sufficient to cover the costs incurred by the department to~~
26 ~~implement this act, but shall not be in excess of the license and~~
27 ~~renewal fees paid by a life insurance producer. The fee shall be~~
28 ~~paid by the life insurance producer for each license term the~~
29 ~~producer intends to operate as a broker and shall be remitted to~~
30 ~~the commissioner at the same time and in the same manner as the~~
31 ~~life insurance producer pays renewal fees. broker. The fee shall~~
32 ~~be calculated pursuant to Section 1750.~~ The notification to the
33 commissioner shall include an acknowledgment by the life
34 insurance producer that he or she will operate as a broker in
35 accordance with this act.

36 (iii)

37 (iv) The insurer that issued the policy that is the subject of a life
38 settlement contract shall not be responsible for any act or omission
39 of a broker or provider arising out of, or in connection with, the
40 life settlement transaction, unless the insurer receives compensation

1 for the replacement of the life settlement contract for the provider
2 or broker.

3 (E) The commissioner shall review the examination for the
4 licensing of life insurance agents and may recommend any changes
5 to the examination to the department's curriculum committee in
6 order to carry out the purposes of this section and Sections 10113.1
7 and 10113.3.

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

23 (3) Each licensee shall owe and pay in advance to the
24 commissioner an annual renewal fee in an amount to be determined
25 by the commissioner pursuant to paragraph (1) of subdivision (b).
26 ~~This fee shall be for annual periods commencing on July 1 of each~~
27 ~~year and ending on June 30 of each year, and shall be due on each~~
28 ~~March 1 and shall be delinquent on and after each April 1. each~~
29 ~~license year, as defined by Section 1629.~~

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

33 (c) A life settlements licensee shall file with the department a
34 copy of all life settlement forms used in this state. No licensee may
35 use any life settlement form in this state unless it has been provided
36 in advance to the commissioner. The commissioner may disapprove
37 a life settlement form if, in his or her discretion, the form, or
38 provisions contained therein, are contrary to the interests of the
39 public, or otherwise misleading or unfair to the consumer. In the
40 case of disapproval, the licensee may, within 15 days of notice of

1 the disapproval, request a hearing before the commissioner or his
2 or her designee, and the hearing shall be held within 30 days of
3 the request.

4 (d) Life settlements licensees shall be required to provide any
5 applicant for a life settlement contract, at the time of application
6 for the life settlement contract, all of the following disclosures in
7 writing and signed by the owner, in at least 12-point type:

8 (1) That there are possible alternatives to life settlements,
9 including, but not limited to, accelerated benefits options that may
10 be offered by the life insurer.

11 (2) The fact that some or all of the proceeds of a life settlement
12 may be taxable and that assistance should be sought from a
13 professional tax adviser.

14 (3) Consequences for interruption of public assistance as
15 provided by information provided by the State Department of
16 Health Care Services and the State Department of Social Services
17 under Section 11022 of the Welfare and Institutions Code.

18 (4) That the proceeds from a life settlement could be subject to
19 the claims of creditors.

20 (5) That entering into a life settlement contract may cause other
21 rights or benefits, including conversion rights and waiver of
22 premium benefits that may exist under the policy or certificate of
23 a group policy to be forfeited by the owner and that assistance
24 should be sought from a professional financial adviser.

25 (6) That a change in ownership of the settled policy could limit
26 the insured's ability to purchase insurance in the future on the
27 insured's life because there is a limit to how much coverage
28 insurers will issue on one life.

29 (7) That the owner has a right to rescind a life settlement contract
30 within 30 days of the date it is executed by all parties and the owner
31 has received all required disclosures, or 15 days from receipt by
32 the owner of the proceeds of the settlement, whichever is sooner.
33 Rescission, if exercised by the owner, is effective only if both
34 notice of rescission is given and the owner repays all proceeds and
35 any premiums, loans, and loan interest paid on account of the
36 provider within the rescission period. If the insured dies during
37 the rescission period, the contract shall be deemed to have been
38 rescinded subject to repayment by the owner or the owner's estate
39 of all proceeds and any premiums, loans, and loan interest to the
40 provider.

1 (8) That proceeds will be sent to the owner within three business
2 days after the provider has received the insurer or group
3 administrator's acknowledgment that ownership of the policy or
4 the interest in the certificate has been transferred and the
5 beneficiary has been designated in accordance with the terms of
6 the life settlement contract.

7 (9) The date by which the funds will be available to the owner
8 and the transmitter of the funds.

9 (10) The disclosure document shall include the following
10 language:

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

22
23 (11) That the insured may be contacted by either the provider
24 or the broker or its authorized representative for the purpose of
25 determining the insured's health status or to verify the insured's
26 address. This contact is limited to once every three months if the
27 insured has a life expectancy of more than one year, and no more
28 than once per month if the insured has a life expectancy of one
29 year or less.

30 (12) Any affiliations or contractual relations between the
31 provider and the broker, and the affiliation, if any, between the
32 provider and the issuer of the policy to be settled.

33 (13) That a broker represents exclusively the owner, and not
34 the insurer or the provider or any other person, and owes a fiduciary
35 duty to the owner, including a duty to act according to the owner's
36 instructions and in the best interest of the owner.

37 (14) The name, business address, and telephone number of the
38 broker.

39 *(e) Prior to the execution of the life settlement contract by all*
40 *parties, the life settlement provider entering into a life settlement*

contract with the owner shall provide, in a document signed by the owner, the gross purchase price the life settlement provider is paying for the policy, the amount of the purchase price to be paid to the owner, the amount of the purchase price to be paid to the owner's life settlement broker, and the name, business address, and telephone number of the life settlement broker. For purposes of this section, "gross purchase price" means the total amount or value paid by the provider for the purchase of one or more life insurance policies, including commissions and fees.

(e)

(f) The broker shall provide the owner and the insured with at least all of the following disclosures in writing prior to the signing of the life settlement contract by all parties. The disclosures shall be clearly displayed in the life settlement contract or in a separate document signed by the owner:

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

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

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

~~(4) A complete reconciliation of the gross offer or bid by the provider to the net amount of proceeds or value to be received by the owner. For the purpose of this section, gross offer or bid shall mean the total amount or value offered by the provider for the purchase of one or more life insurance policies, inclusive of commissions and fees.~~

~~(5)~~

(4) All estimates of the life expectancy of the insured which are obtained by the licensee in connection with the life settlement, unless such disclosure would violate any California or federal privacy laws.

(6)

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

(f)

1 (g) All medical information solicited or obtained by any person
2 soliciting or entering into a life settlement is subject to Article 6.6
3 (commencing with Section 791) of Chapter 1 of Part 2 of Division
4 1, concerning confidentiality of medical information.

5 ~~(g)~~

6 (h) Except as otherwise allowed or required by law, a provider,
7 broker, insurance company, insurance producer, information
8 bureau, rating agency, or company, or any other person with actual
9 knowledge of an insured's identity shall not disclose the identity
10 of an insured or information that there is a reasonable basis to
11 believe that could be used to identify the insured or the insured's
12 financial or medical information to any other person unless the
13 disclosure is one of the following:

14 (1) It is necessary to effect a life settlement contract between
15 the owner and a provider and the owner and insured have provided
16 prior written consent to the disclosure.

17 (2) It is necessary to effectuate the sale of life settlement
18 contracts, or interests therein, as investments, provided the sale is
19 conducted in accordance with applicable state and federal securities
20 law and provided further that the owner and the insured have both
21 provided prior written consent to the disclosure.

22 (3) It is provided in response to an investigation or examination
23 by the commissioner or any other governmental officer or agency
24 or any other provision of law.

25 (4) It is a term or condition to the transfer of a policy by one
26 provider to another provider, in which case the receiving provider
27 shall be required to comply with the confidentiality requirements
28 of Article 6.6 (commencing with Section 791) of Chapter 1 of Part
29 2 of Division 1.

30 (5) It is necessary to allow the provider or broker or their
31 authorized representatives to make contacts for the purpose of
32 determining health status. For the purposes of this section, the term
33 "authorized representative" shall not include any person who has
34 or may have any financial interest in the settlement contract other
35 than a provider, licensed broker; further, a provider or broker shall
36 require its authorized representative to agree in writing to adhere
37 to the privacy provisions of this act.

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

39 ~~(h)~~

1 (i) In addition to other questions an insurance carrier may
2 lawfully pose to a life insurance applicant, insurance carriers may
3 inquire in the application for insurance whether the proposed owner
4 intends to pay premiums with the assistance of financing from a
5 lender that will use the policy as collateral to support the financing.

6 (1) If the premium finance loan provides funds which can be
7 used for a purpose other than paying for the premiums, costs, and
8 expenses associated with obtaining and maintaining the life
9 insurance policy and loan, the application may be rejected as a
10 prohibited practice under this act.

11 (2) If the financing does not violate paragraph (1), the existence
12 of premium financing may not be the sole criterion employed by
13 an insurer in a decision whether to reject an application for life
14 insurance. The insurance carrier may make disclosures to the
15 applicant, either on the application or an amendment to the
16 application to be completed no later than the delivery of the policy,
17 including, but not limited to, the following:

18
19 “If you have entered into a loan arrangement where the
20 policy is used as collateral, and the policy changes ownership
21 at some point in the future in satisfaction of the loan, the
22 following may be true:

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

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

29 “(C) You should consult a professional adviser since a
30 change in ownership in satisfaction of the loan may result in
31 tax consequences to the owner, depending on the structure of
32 the loan.”

33
34 (3) In addition to the disclosures in paragraph (2), the insurance
35 carrier may require the following certifications from the applicant
36 or the insured:

37
38 “(A) I have not entered into any agreement or arrangement
39 under which I have agreed to make a future sale of this life
40 insurance policy.

1 “(B) My loan arrangement for this policy provides funds
2 sufficient to pay for some or all of the premiums, costs, and
3 expenses associated with obtaining and maintaining my life
4 insurance policy, but I have not entered into any agreement
5 by which I am to receive consideration in exchange for
6 procuring this policy.

7 “(C) The borrower has an insurable interest in the insured.”

8
9 ~~(i)~~

10 (j) Life insurers shall provide individual life insurance
11 policyholders with a statement informing them that if they are
12 considering making changes in the status of their policy, they
13 should consult with a licensed insurance or financial advisor. The
14 statement may accompany or be included in notices or mailings
15 otherwise provided to the policyholders.

16 ~~(j)~~

17 (k) The commissioner may adopt rules and regulations
18 reasonably necessary to govern life settlement transactions.

19 ~~(k)~~

20 (l) The commissioner may, whenever he or she deems it
21 reasonably necessary to protect the interests of the public, examine
22 the business and affairs of any licensee or applicant for a license.
23 The commissioner shall have the authority to order any licensee
24 or applicant to produce any records, books, files, or other
25 information as is reasonably necessary to ascertain whether or not
26 the licensee or applicant is acting or has acted in violation of the
27 law or otherwise contrary to the interests of the public. The
28 expenses incurred in conducting any examination shall be paid by
29 the licensee or applicant.

30 ~~(l)~~

31 (m) The commissioner may investigate the conduct of any
32 licensee, its officers, employees, agents, or any other person
33 involved in the business of the licensee, or any applicant for a
34 license, whenever the commissioner has reason to believe that the
35 licensee or applicant for a license may have acted, or may be acting,
36 in violation of the law, or otherwise contrary to the interests of the
37 public. The commissioner may initiate an investigation on his or
38 her own, or upon a complaint filed by any other person.

39 ~~(m)~~

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

~~(n)~~

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

~~(o)~~

(p) Each licensed provider shall file with the commissioner on or before March 1 of each year an annual statement in the form prescribed by the commissioner. The information that the commissioner may require in the annual statement shall include, but not be limited to, the total number, aggregate face amount, and life settlement proceeds of policies settled during the immediately preceding calendar year, together with a breakdown of the information by policy issue year. The annual statement shall also include the names of the insurance companies whose policies have been settled and the brokers that have settled those policies, and that information shall be received in confidence within the meaning of subdivision (d) of Section 6254 of the Government Code and exempt from disclosure pursuant to the Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code). The annual statement shall not include individual transaction data regarding the business of life settlements or information that there is a reasonable basis to believe could be used to identify the owner or the insured.

1 ~~(p)~~

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

10 ~~(q)~~

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

25 ~~(r)~~

26 (s) Any person who enters into a life settlement with a life
27 settlements licensee shall have the absolute right to rescind the
28 settlement within 30 days of the date it is executed by all parties
29 and the owner has received all required disclosures, or 15 days
30 from receipt by the owner of the proceeds of the settlement,
31 whichever is sooner, and any waiver or settlement language
32 contrary to this subdivision shall be void. Rescission, if exercised
33 by the owner, is effective only if both notice of rescission is given
34 and the owner repays all proceeds and any premiums, loans, and
35 loan interest paid on account of the provider within the rescission
36 period. If the insured dies during the rescission period, the contract
37 shall be deemed to have been rescinded subject to repayment by
38 the owner or the owner’s estate of all proceeds and any premiums,
39 loans, and loan interest to the provider.

40 ~~(s)~~

1 (t) Records of all consummated transactions and life settlement
2 contracts shall be maintained by the provider for three years after
3 the death of the insured and shall be available to the commissioner
4 for inspection during reasonable business hours.

5 (~~t~~)

6 (u) A violation of this section is a misdemeanor.

7 SEC. 6. Section 10113.3 is added to the Insurance Code, to
8 read:

9 10113.3. (a) A provider entering into a life settlement contract
10 with any owner of a policy, wherein the insured is terminally ill,
11 shall first obtain the following:

12 (1) If the owner is the insured, a written statement from a
13 licensed attending physician that the owner is of sound mind and
14 under no constraint or undue influence to enter into a settlement
15 contract.

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

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

31 (c) Before or at the time of execution of the settlement contract,
32 the provider shall obtain a witnessed document in which the owner
33 consents to the settlement contract, represents that the owner has
34 a full and complete understanding of the settlement contract and
35 a full and complete understanding of the benefits of the policy,
36 acknowledges that the owner is entering into the settlement contract
37 freely and voluntarily, and, for persons with a terminal illness or
38 condition, acknowledges that the insured has a terminal illness and
39 that the terminal illness or condition was diagnosed after the policy
40 was issued.

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

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

7 (f) If a broker performs those verification of coverage activities
8 required of the provider, the provider is deemed to have fulfilled
9 the requirements of this section.

10 (g) Within 20 days after an owner executes the life settlement
11 contract, the provider shall give written notice to the insurer that
12 issued that insurance policy that the policy has become subject to
13 a life settlement contract. The notice shall be accompanied by the
14 documents required by subdivision (d) of Section 10113.2.

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

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

32 (j) Within three business days after receipt from the owner of
33 documents to effect the transfer of the insurance policy, the
34 provider shall pay the proceeds of the settlement to an escrow or
35 trust account managed by a trustee or escrow agent in a state or
36 federally chartered financial institution pending acknowledgment
37 of the transfer by the issuer of the policy. The trustee or escrow
38 agent shall be required to transfer the proceeds due to the owner
39 within three business days of acknowledgment of the transfer from
40 the insurer.

1 (k) Failure to tender the life settlement contract proceeds to the
2 owner by the date disclosed to the owner renders the contract
3 voidable by the owner for lack of consideration until the time the
4 proceeds are tendered to and accepted by the owner. A failure to
5 give written notice of the right of rescission hereunder shall toll
6 the right of rescission until 30 days after the written notice of the
7 right of rescission has been given.

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

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

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

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

32 (A) The owner or insured is terminally ill.

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

37 (C) The owner's spouse dies.

38 (D) The owner divorces his or her spouse.

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

1 (F) The owner becomes physically or mentally disabled and a
2 physician determines that the disability prevents the owner from
3 maintaining full-time employment.

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

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

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

24 (4) This prohibition shall apply only to policies issued on or
25 after the effective date of this section.

26 (n) An insurer shall not:

27 (1) Engage in any transaction, act, or practice that restricts,
28 limits, or impairs the lawful transfer of ownership, change of
29 beneficiary, or assignment of a policy.

30 (2) Make any false or misleading statement for the purpose of
31 dissuading an owner or insured from a lawful life settlement
32 contract.

33 (o) No person providing premium financing shall receive any
34 proceeds, fees, or other consideration from the policy or owner of
35 the policy that are in addition to the amounts required to pay
36 principal, interest, and any reasonable costs or expenses incurred
37 by the lender or borrower in connection with the premium finance
38 agreement, except for the event of a default, unless either the
39 default on the loan or transfer of the policy occurs pursuant to an

1 agreement or understanding with any other person for the purpose
2 of evading regulation under this act.

3 (p) If there is more than one owner on a single policy, and the
4 owners are residents of different states, the life settlement contract
5 shall be governed by the law of the state in which the owner having
6 the largest percentage ownership resides or, if the owners hold
7 equal ownership, the state of residence of one owner agreed upon
8 in writing by all of the owners. The law of the state of the insured
9 shall govern in the event that equal owners fail to agree in writing
10 upon a state of residence for jurisdictional purposes.

11 (q) A provider from this state who enters into a life settlement
12 contract with an owner who is a resident of another state that has
13 enacted statutes or adopted regulations governing life settlement
14 contracts shall be governed in the effectuation of that life settlement
15 contract by the statutes and regulations of the owner's state of
16 residence. If the state in which the owner is a resident has not
17 enacted statutes or regulations governing life settlement contracts,
18 the provider shall give the owner notice that neither state regulates
19 the transaction upon which he or she is entering. For transactions
20 in those states, however, the provider is to maintain all records
21 required if the transactions were executed in the state of residence.
22 The forms used in those states need not be approved by the
23 department.

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

28 (s) It is a fraudulent life settlement act and a violation of this
29 section for any person to do any of the following, or any of the
30 acts listed in subdivision (g) of Section 10113.1:

31 (1) Enter into a life settlement contract if a person knows or
32 reasonably should have known that the life insurance policy was
33 obtained by means of a false, deceptive, or misleading application
34 for the policy.

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

38 (3) Engage in any fraudulent act or practice in connection with
39 any transaction relating to any settlement involving an owner who
40 is a resident of this state.

1 (4) Fail to provide the disclosures or file the required reports
2 with the commissioner as required by this act.

3 (5) Issue, solicit, or market, the purchase of a new life insurance
4 policy for the purpose of, or with a primary emphasis on, settling
5 the policy.

6 (6) Enter into a premium finance agreement with any person or
7 agency, or any person affiliated with a person or agency that is
8 prohibited under subdivision (o).

9 (7) With respect to any settlement contract or insurance policy
10 and a broker, knowingly solicit an offer from, effectuate a life
11 settlement contract with, or make a sale to any provider, financing
12 entity, or related provider trust that is controlling, controlled by,
13 or under common control with a broker, unless the relationship
14 has been fully disclosed to the owner.

15 (8) With respect to any life settlement contract or insurance
16 policy and a provider, knowingly enter into a life settlement
17 contract with an owner, if, in connection with a life settlement
18 contract, anything of value will be paid to a broker that is
19 controlling, controlled by, or under common control with a provider
20 or the financing entity, or related provider trust that is involved in
21 a settlement contract, unless the relationship has been fully
22 disclosed to the owner.

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

37 (t) Life settlement contracts and applications for life settlement
38 contracts, regardless of the form of transmission, shall contain the
39 following statement or a substantially similar statement:
40

1 “Any person who knowingly presents false information in an
2 application for insurance or for a life settlement contract may
3 be subject to criminal or civil liability.”
4

5 (1) The lack of a statement as required by this subdivision does
6 not constitute a defense in any prosecution for a fraudulent life
7 settlement act.

8 (2) This act shall not:

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

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

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

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

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

1 application for a license, as long as the application is filed with
2 the commissioner not later than 30 days after publication by the
3 commissioner of an application form and instructions for licensure
4 of brokers. If the publication of the application form and
5 instructions is prior to the effective date of this chapter, then the
6 filing of the application shall not be later than 30 days after the
7 effective date of this act. Any person transacting business in this
8 state under this provision shall be obligated to comply with all
9 other requirements of this act.

10 SEC. 7. Section 10113.35 is added to the Insurance Code, to
11 read:

12 10113.35. (a) For the purposes of Chapter 3.5 (commencing
13 with Section 11340) of Part 1 of Division 3 of Title 2 of the
14 Government Code, including Section 11349.6 of the Government
15 Code, the adoption or amendment of the regulations required to
16 be adopted pursuant to this article is an emergency and shall be
17 considered by the Office of Administrative Law as necessary for
18 the immediate preservation of the public peace, health and safety
19 and general welfare.

20 (b) Notwithstanding Chapter 3.5 (commencing with Section
21 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
22 any emergency regulations adopted or amended by the state board
23 pursuant to this article shall be filed with, but not be repealed by,
24 the Office of Administrative Law and shall remain in effect until
25 repealed by the department.

26 SEC. 8. Except as provided for in paragraph (4) of subdivision
27 (m) of Section 10113.3, this act shall not apply to any life
28 settlement contract entered into on or before July 1, 2010. This act
29 shall apply to any transaction involving any life insurance policy
30 in effect, or entered into, on or after the operative date of this act.

31 SEC. 9. The Legislature finds and declares that Section 5 of
32 this act, which adds Section 10113.2 to the Insurance Code,
33 imposes a limitation on the public's right of access to the meetings
34 of public bodies or the writings of public officials and agencies
35 within the meaning of Section 3 of Article I of the California
36 Constitution. Pursuant to that constitutional provision, the
37 Legislature makes the following findings to demonstrate the interest
38 protected by this limitation and the need for protecting that interest:

39 (a) There is a compelling interest in adequately regulating the
40 life settlement industry to protect consumers.

1 (b) That interest is promoted by encouraging the life settlement
2 industry to make full and thorough disclosure of information to
3 the commissioner by providing confidentiality for that information
4 as specified in subdivision (o) of Section 10113.2 of the Insurance
5 Code.

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