AMENDED IN ASSEMBLY JUNE 30, 2009

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 *would* 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:

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

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

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

(c) Except as provided in Section 10110.4, an employer has an insurable interest, as referred to in subdivision (a), in the life or physical or mental ability of any of its directors, officers, or employees or the directors, officers, or employees of any of its subsidiaries or any other person whose death or physical or mental disability might cause financial loss to the employer; or, pursuant to any contractual arrangement with any shareholder concerning the reacquisition of shares owned by the shareholder at the time of his or her death or disability, on the life or physical or mental ability of that shareholder for the purpose of carrying out the contractual arrangement; or, pursuant to any contract obligating the employer as part of compensation arrangements or pursuant to a contract obligating the employer as guarantor or surety, on the life of the principal obligor. The trustee of an employer or trustee of a pension, welfare benefit plan, or trust established by an employer providing life, health, disability, retirement, or similar benefits to employees and retired employees of the employer or its affiliates and acting in a fiduciary capacity with respect to those employees, retired employees, or their dependents or beneficiaries has an insurable interest in the lives of employees and retired employees for whom those benefits are to be provided. The employer shall obtain the written consent of the individual being 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 and providers. A broker represents only the owner and owes a fiduciary duty to the owner to act according to the owner's instructions, and in the best interest of the owner, notwithstanding the manner in which the broker is compensated. A broker does not include an attorney, certified public accountant, or financial planner retained in the type of practice customarily performed in his or her professional capacity to represent the owner whose compensation is not paid directly or indirectly by the provider or any other person, except the owner.

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

(d) "Commissioner" means the Insurance Commissioner.

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

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

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

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

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

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

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

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

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

(iii) A claim for payment or benefit pursuant to a life settlement contract or insurance policy.

(iv) Premiums paid on an insurance policy.

(v) Payments and changes in ownership or beneficiary made in accordance with the terms of a life settlement contract or insurance policy.

(vi) The reinstatement or conversion of an insurance policy.

(vii) The solicitation, offer to enter into, or effectuation of, a life settlement contract or insurance policy.

(viii) The issuance of written evidence of life settlement contracts or insurance.

(ix) Any application for, or the existence of or any payments related to, a loan secured directly or indirectly by any interest in a life insurance policy.

(B) Entering into stranger-originated life insurance (STOLI).

(C) Employing any device, scheme, or artifice to defraud in the business of life settlements.

(2) Any of the following that any person does, or permits his or her employees or agents to do, in the furtherance of a fraud, or to prevent the detection of a fraud:

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

(B) Misrepresent or conceal the financial condition of a licensee, financing entity, insurer, or other person.

(C) Transact the business of life settlements in violation of laws requiring a license, certificate of authority, or other legal authority for the transaction of the business of life settlements.

(D) File with the commissioner or the chief insurance regulatory official of another jurisdiction a document containing false information or otherwise concealing information about a material fact from the commissioner.

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

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

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

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

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

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

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

(k) "Life settlement contract" means a written agreement solicited, negotiated, or entered into in this state between a provider and an owner, establishing the terms under which compensation or any thing of value will be paid, which compensation or thing of value is less than the expected death benefit of the insurance policy or certificate, in return for the owner's assignment, transfer, sale, devise, or bequest of the death benefit or any portion of an insurance policy or certificate of insurance for compensation, provided, however, that the minimum value for a life settlement contract shall be greater than a cash surrender value or accelerated death benefit available at the time of an application for a life settlement contract. "Life settlement contract" also includes the transfer for compensation or value of ownership or beneficial interest in a trust or other entity that owns such policy if the trust or other entity was formed or availed of for the principal purpose of acquiring one or more life insurance contracts, which life insurance contract is owned by a person residing in this state.

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

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

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

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

(2) "Life settlement contract" does not include any of the following:

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

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

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

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

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

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

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

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

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

(G) A bona fide business succession planning arrangement:

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

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

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

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

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

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

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

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

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

(3) A financing entity.

(4) A special purpose entity.

(5) A related provider trust.

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

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

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

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

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

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

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

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

(4) A purchaser.

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

(6) A financing entity.

(7) A related provider trust.

(8) A broker.

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

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

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

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

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

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

(1) For a financing entity or provider.

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

(w) “Stranger-originated life insurance” or “STOLI” is an act, practice, or arrangement to initiate the issuance of a life insurance policy in this state for the benefit of a third-party investor who, at the time of policy origination, has no insurable interest, under the laws of this state, in the life of the insured. STOLI practices include, but are not limited to, cases in which life insurance is purchased with resources or guarantees from or through a person or entity, that, at the time of policy inception, could not lawfully initiate the policy himself, herself, or itself, and where, at the time of inception, there is an arrangement or agreement, to directly or indirectly transfer the ownership of the policy or the policy benefits to a third party. Trusts that are created to give the appearance of insurable interest and that are used to initiate policies for investors violate insurable interest laws and the prohibition against wagering on life. STOLI arrangements do not include ~~otherwise~~ lawful life settlement contracts as permitted by the act that added this section or those practices set forth in paragraph (2) of subdivision (k), *provided that they are not for the purpose of evading regulation under this act*.

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

(y) "This act" shall refer to the act in the 2009–10 Regular Session that added Sections 10113.1 to 10113.35, inclusive, and as it may from time to time be amended.

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

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

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

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

(A) An individual acting as a broker under this section shall complete at least 15 hours of continuing education related to life settlements and life settlement transactions, as required and approved by the commissioner, prior to operating as a broker. This requirement shall not apply to a life insurance producer who qualifies under subparagraph (D).

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

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

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

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

(iii) The fee established by the commissioner shall be reasonable and sufficient to cover the costs incurred by the department to implement this act, but shall not be in excess of the license and renewal fees paid by a life insurance producer. The fee shall be paid by the life insurance producer for each license term the producer intends to operate as a broker. The fee shall be calculated pursuant to Section 1750. The notification to the commissioner shall include an acknowledgment by the life insurance producer that he or she will operate as a broker in accordance with this act.

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

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

(2) Whenever it appears to the commissioner that it is contrary to the interests of the public for a person licensed pursuant to this section to continue to transact life settlements business, he or she shall issue a notice to the licensee stating the reasons therefor. If, after a hearing, the commissioner concludes that it is contrary to the interests of the public for the licensee to continue to transact life settlements business, he or she may revoke the person's license, or issue an order suspending the license for a period as determined by the commissioner. Any hearing conducted pursuant to this paragraph 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.

(3) Each licensee shall owe and pay in advance to the commissioner an annual renewal fee in an amount to be determined by the commissioner pursuant to paragraph (1) of subdivision (b). This fee shall be for each license year, as defined by Section 1629.

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

(c) A life settlements licensee shall file with the department a copy of all life settlement forms used in this state. No licensee may use any life settlement form in this state unless it has been provided in advance to the commissioner. The commissioner may disapprove a life settlement form if, in his or her discretion, the form, or provisions contained therein, are contrary to the interests of the public, or otherwise misleading or unfair to the consumer. In the case of disapproval, the licensee may, within 15 days of notice of the disapproval, request a hearing before the commissioner or his or her designee, and the hearing shall be held within 30 days of the request.

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

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

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

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

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

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

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

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

(8) That proceeds will be sent to the owner within three business days after the provider has received the insurer or group administrator's acknowledgment that ownership of the policy or

the interest in the certificate has been transferred and the beneficiary has been designated in accordance with the terms of the life settlement contract.

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

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

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

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

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

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

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

(e) Prior to the execution of the life settlement contract by all 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.

(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) 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.

(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).

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

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

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

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

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

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

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

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

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

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

(2) If the financing does not violate paragraph (1), the existence of premium financing may not be the sole criterion employed by an insurer in a decision whether to reject an application for life insurance. The insurance carrier may make disclosures to the applicant, either on the application or an amendment to the

application to be completed no later than the delivery of the policy, including, but not limited to, the following:

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

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

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

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

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

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

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

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

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

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

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

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

(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.

(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.

(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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) All life settlement contracts entered into in this state shall provide that the owner may rescind the contract on or before 30 days after the date it is executed by all parties thereto, and the owner has received all required disclosures, or 15 days from receipt by the owner of the full payment of the proceeds as specified below, whichever is sooner. Rescission, if exercised by the owner, is effective only if both notice of the rescission is given, and the owner repays all proceeds and any premiums, loans, and loan interest paid on account of the provider within the rescission period.

If the insured dies during the rescission period, the contract shall be deemed to have been rescinded subject to repayment by the owner or the owner's estate of all proceeds and any premiums, loans, and loan interest to the provider.

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

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

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

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

(1) This prohibition shall not apply if the owner certifies to the provider that the policy was issued upon the owner's exercise of conversion rights arising out of a group or individual policy, provided the total of the time covered under the conversion policy plus the time covered under the prior policy is at least 24 months. The time covered under a group policy must be calculated without

regard to a change in insurance carriers, provided the coverage has been continuous and under the same group sponsorship.

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

(A) The owner or insured is terminally ill.

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

(C) The owner's spouse dies.

(D) The owner divorces his or her spouse.

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

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

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

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

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

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

(n) An insurer shall not:

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

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

(o) No person providing premium financing shall receive any proceeds, fees, or other consideration from the policy or owner of the policy that are in addition to the amounts required to pay principal, interest, and any reasonable costs or expenses incurred by the lender or borrower in connection with the premium finance agreement, except for the event of a default, unless either the default on the loan or transfer of the policy occurs pursuant to an agreement or understanding with any other person for the purpose of evading regulation under this act.

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

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

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

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

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

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

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

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

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

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

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

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

(9) With respect to a provider, enter into a life settlement contract unless the life settlement promotional, advertising, and marketing materials, as may be prescribed by regulation, have been filed with the commissioner. In no event shall any marketing materials expressly reference that the insurance is “free” for any

period of time. The inclusion of any reference in the marketing materials that would cause an owner to reasonably believe that the insurance is free for any period of time shall be considered a violation of this act; or with respect to any life insurance producer, insurance company, broker, or provider make any statement or representation to the applicant or policyholder in connection with the sale or financing of a life insurance policy to the effect that the insurance is free or without cost to the policyholder for any period of time unless provided in the policy.

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

"Any person who knowingly presents false information in an application for insurance or for a life settlement contract may be subject to criminal or civil liability."

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

(2) This act shall not:

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

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

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

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

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

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

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

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

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

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

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

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

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

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