

AMENDED IN SENATE AUGUST 24, 2011

AMENDED IN ASSEMBLY MAY 19, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1425

Introduced by Committee on Insurance (Assembly Members Solorio (Chair), Carter, Feuer, Hayashi, Skinner, Torres, and Wieckowski)

March 22, 2011

An act to amend ~~Section 10113.2 of~~, *Sections 10113.2 and 11629.79 of*, to repeal *Section 1758.994 of*, and to repeal and add Section 10113.35 of, the Insurance Code, relating to ~~life~~ insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 1425, as amended, Committee on Insurance. ~~Life insurance. Insurance.~~

(1) Existing law requires the Insurance Commissioner to report to the Legislature by June 30, 2004, regarding the effectiveness of specified provisions regulating credit insurance agents in protecting consumers involved in credit insurance transactions.

This bill would repeal this reporting requirement provision.

Existing

(2) Existing law governs the regulation of life settlements, as defined, by the Insurance Commissioner. Existing law prohibits a person from entering into, brokering, or soliciting life settlements unless that person holds a license, issued by the commissioner, to so act. Existing law authorizes the commissioner to adopt rules and regulations reasonably necessary to govern life settlement transactions and to adopt rules and regulations under those provisions as emergency regulations.

This bill would revise and recast the provisions governing the rulemaking authority of the commissioner and would instead authorize the commissioner to adopt rules and regulations reasonably necessary to implement specified provisions governing life settlements, as specified.

(3) Existing law establishes a low-cost automobile insurance program. Existing law, subject to exceptions, requires that the Office of Administrative Law review administrative regulations proposed by state agencies prior to their adoption. Exceptions to this requirement authorized the Insurance Commissioner to adopt emergency regulations relating to the low-cost automobile insurance program as it commenced in 2000, and as it was expanded in 2006, that are not subject to the review process of the Office of Administrative Law.

This bill would repeal the language that authorized the commissioner to adopt emergency regulations in relation to the low-cost automobile insurance program.

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

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

1 SECTION 1. Section 1758.994 of the Insurance Code is
 2 repealed.

3 ~~1758.994. The commissioner shall submit a report to the~~
 4 ~~Legislature by June 30, 2004, regarding the effectiveness of this~~
 5 ~~article in protecting consumers involved in credit insurance~~
 6 ~~transactions. This report shall include, but not be limited to, the~~
 7 ~~number and categories of licensees licensed pursuant to this article,~~
 8 ~~the number and nature of enforcement actions related to credit~~
 9 ~~insurance licensing or marketing issues, and any needed legislative~~
 10 ~~reforms recommended by the commissioner.~~

11 SECTION 1.

12 SEC. 2. Section 10113.2 of the Insurance Code is amended to
 13 read:

14 10113.2. (a) This section applies to any person entering into,
 15 brokering, or soliciting life settlements pursuant to this section and
 16 Sections 10113.1 and 10113.3.

17 (b) (1) Except as provided in subparagraph (B) or (D), no person
 18 may enter into, broker, or solicit life settlements pursuant to Section
 19 10113.1 unless that person has been licensed by the commissioner

1 under this section. The person shall file an application for a license
2 in the form prescribed by the commissioner, and the application
3 shall be accompanied by a fee established by the commissioner.
4 The license fees for a provider license shall be reasonable and
5 sufficient to cover the costs incurred by the department to
6 implement this act. The license and renewal fees for a broker shall
7 be reasonable and sufficient to cover the costs incurred by the
8 department to implement this act and shall not exceed the license
9 and renewal fees established for an insurance producer who is
10 acting as a life settlement broker. The applicant shall provide any
11 information the commissioner may require. The commissioner
12 may issue a license, or deny the application if, in his or her
13 discretion, it is determined that it is contrary to the interests of the
14 public to issue a license to the applicant. The reasons for a denial
15 shall be set forth in writing.

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

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

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

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

38 (ii) Not later than 10 days from the first day of operating as a
39 broker, the life insurance producer shall notify the commissioner
40 that he or she is acting as a broker, on a form prescribed by the

1 commissioner, and shall pay any applicable fee to be determined
2 by the commissioner.

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

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

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

23 (2) Whenever it appears to the commissioner that it is contrary
24 to the interests of the public for a person licensed pursuant to this
25 section to continue to transact life settlements business, he or she
26 shall issue a notice to the licensee stating the reasons therefor. If,
27 after a hearing, the commissioner concludes that it is contrary to
28 the interests of the public for the licensee to continue to transact
29 life settlements business, he or she may revoke the person's license,
30 or issue an order suspending the license for a period as determined
31 by the commissioner. Any hearing conducted pursuant to this
32 paragraph shall be in accordance with Chapter 5 (commencing
33 with Section 11500) of Part 1 of Division 3 of Title 2 of the
34 Government Code, except that the hearing may be conducted by
35 administrative law judges chosen pursuant to Section 11502 or
36 appointed by the commissioner, and the commissioner shall have
37 the powers granted therein.

38 (3) Each licensee shall owe and pay in advance to the
39 commissioner an annual renewal fee in an amount to be determined

1 by the commissioner pursuant to paragraph (1) of subdivision (b).
2 This fee shall be for each license year, as defined by Section 1629.

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

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

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

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

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

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

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

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

38 (6) That a change in ownership of the settled policy could limit
39 the insured's ability to purchase insurance in the future on the

1 insured’s life because there is a limit to how much coverage
2 insurers will issue on one life.

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

15 (8) That proceeds will be sent to the owner within three business
16 days after the provider has received the insurer or group
17 administrator’s acknowledgment that ownership of the policy or
18 the interest in the certificate has been transferred and the
19 beneficiary has been designated in accordance with the terms of
20 the life settlement contract.

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

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

25
26 “All medical, financial, or personal information solicited or
27 obtained by a provider or broker about an insured, including
28 the insured’s identity or the identity of family members, a
29 spouse, or a significant other may be disclosed as necessary
30 to effect the life settlement contract between the owner and
31 provider. If you are asked to provide this information, you will
32 be asked to consent to the disclosure. The information may be
33 provided to someone who buys the policy or provides funds
34 for the purchase. You may be asked to renew your permission
35 to share information every two years.”

36
37 (11) That the insured may be contacted by either the provider
38 or the broker or its authorized representative for the purpose of
39 determining the insured’s health status or to verify the insured’s
40 address. This contact is limited to once every three months if the

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

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

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

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

13 (e) Prior to the execution of the life settlement contract by all
14 parties, the life settlement provider entering into a life settlement
15 contract with the owner shall provide, in a document signed by
16 the owner, the gross purchase price the life settlement provider is
17 paying for the policy, the amount of the purchase price to be paid
18 to the owner, the amount of the purchase price to be paid to the
19 owner's life settlement broker, and the name, business address,
20 and telephone number of the life settlement broker. For purposes
21 of this section, "gross purchase price" means the total amount or
22 value paid by the provider for the purchase of one or more life
23 insurance policies, including commissions and fees.

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

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

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

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

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

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

5 (g) All medical information solicited or obtained by any person
6 soliciting or entering into a life settlement is subject to Article 6.6
7 (commencing with Section 791) of Chapter 1 of Part 2 of Division
8 1, concerning confidentiality of medical information.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34
35 (3) In addition to the disclosures in paragraph (2), the insurance
36 carrier may require the following certifications from the applicant
37 or the insured:
38

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

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

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

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

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

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

36 (m) The commissioner may issue orders to licensees whenever
37 he or she determines that it is reasonably necessary to ensure or
38 obtain compliance with this section, or Section 10113.3. This
39 authority includes, but is not limited to, orders directing a licensee
40 to cease and desist in any practice that is in violation of this section,

1 or Section 10113.3, or otherwise contrary to the interests of the
2 public. Any licensee to which an order pursuant to this subdivision
3 is issued may, within 15 days of receipt of that order, request a
4 hearing at which the licensee may challenge the order.

5 (n) The commissioner may, after notice and a hearing at which
6 it is determined that a licensee has violated this section or Section
7 10113.3 or any order issued pursuant to this section, order the
8 licensee to pay a monetary penalty of up to ten thousand dollars
9 (\$10,000), which may be recovered in a civil action. Any hearing
10 conducted pursuant to this subdivision shall be in accordance with
11 Chapter 5 (commencing with Section 11500) of Part 1 of Division
12 3 of Title 2 of the Government Code, except that the hearing may
13 be conducted by administrative law judges chosen pursuant to
14 Section 11502 or appointed by the commissioner, and the
15 commissioner shall have the powers granted therein.

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

34 (p) No person who is not a resident of California may receive
35 or maintain a license unless a written designation of an agent for
36 service of process is filed and maintained with the commissioner.
37 The provisions of Article 3 (commencing with Section 1600) of
38 Chapter 4 of Part 2 shall apply to life settlements licensees as if
39 they were foreign insurers, their license a certificate of authority,

1 and the life settlements a policy, and the commissioner may modify
2 the agreement set forth in Section 1604 accordingly.

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

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

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

35 (t) A violation of this section is a misdemeanor.

36 ~~SEC. 2.~~

37 *SEC. 3.* Section 10113.35 of the Insurance Code is repealed.

38 ~~SEC. 3.~~

39 *SEC. 4.* Section 10113.35 is added to the Insurance Code, to
40 read:

1 10113.35. (a) The commissioner may adopt rules and
2 regulations reasonably necessary to implement the provisions of
3 this act.

4 (b) This section shall be prospective only, and nothing in the
5 act adding this section shall be interpreted to interfere with or
6 overrule regulations adopted prior to the effective date of this act
7 by the Insurance Commissioner pursuant to the authority granted
8 at the time those regulations were adopted.

9 *SEC. 5. Section 11629.79 of the Insurance Code is amended*
10 *to read:*

11 11629.79. (a) The program for the County of Los Angeles and
12 the City and County of San Francisco is authorized to commence
13 operations on January 1, 2000, but shall be fully operational no
14 later than July 1, 2000.

15 (b) To this end, the commissioner, in consultation with the
16 California Automobile Assigned Risk Plan, shall adopt regulations
17 to implement the provisions of this article within 60 days of its
18 effective date. ~~The regulations shall be adopted as emergency~~
19 ~~regulations in accordance with Chapter 3.5 (commencing with~~
20 ~~Section 11340) of the Government Code, and for purposes of that~~
21 ~~chapter, the adoption of the regulations shall be considered by the~~
22 ~~Office of Administrative Law to be necessary for the immediate~~
23 ~~preservation of the public peace, health and safety, and general~~
24 ~~welfare.~~

25 (c) The program for the Counties of Alameda, Fresno, Orange,
26 Riverside, San Bernardino, and San Diego shall commence
27 operations on April 1, 2006, and shall be made operational in all
28 other counties of California according to the discretion of the
29 commissioner. The commissioner, in consultation with the
30 California Automobile Assigned Risk Plan, shall adopt regulations
31 to implement the expansion of the program to these counties. ~~The~~
32 ~~regulations shall be adopted as emergency regulations in~~
33 ~~accordance with Chapter 3.5 (commencing with Section 11340)~~
34 ~~of the Government Code, and for purposes of that chapter, the~~
35 ~~adoption of the regulations shall be considered by the Office of~~
36 ~~Administrative Law to be necessary for the immediate preservation~~
37 ~~of the public peace, health and safety, and general welfare.~~

O