

ASSEMBLY, No. 4196

STATE OF NEW JERSEY

213th LEGISLATURE

INTRODUCED NOVEMBER 23, 2009

Sponsored by:

Assemblyman GARY S. SCHAER

District 36 (Bergen, Essex and Passaic)

SYNOPSIS

"Life Settlements Act"; regulates life settlement contracts and prohibits stranger-originated life insurance contracts; repeals "Viatical Settlements Act."

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning certain life insurance contracts, supplementing
2 Title 17B of the New Jersey Statutes, amending P.L.1967, c.93
3 and repealing sections 1 through 17 of P.L.2005, c.229.

4
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

7
8 1. This act shall be known and may be cited as the "Life
9 Settlements Act."

10
11 2. As used in this act:

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

22 "Broker" means a person who, on behalf of an owner and for a
23 fee, commission or other valuable consideration, offers or attempts
24 to negotiate life settlement contracts between an owner and
25 providers. A broker represents only the owner and owes a fiduciary
26 duty to the owner to act according to the owner's instructions, and
27 in the best interest of the owner, notwithstanding the manner in
28 which the broker is compensated. A broker does not include an
29 attorney, certified public accountant or financial planner, retained in
30 the type of practice customarily performed in their professional
31 capacity to represent the owner, whose compensation is not paid
32 directly or indirectly by the provider or any other person, except the
33 owner.

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

38 "Chronically ill" means:

39 (1) Being unable to perform at least two activities of daily
40 living, including, but not limited to, eating, toileting, transferring,
41 bathing, dressing or continence;

42 (2) Requiring substantial supervision to protect the individual
43 from threats to health and safety due to severe cognitive
44 impairment; or

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 (3) Having a level of disability similar to that described in
2 paragraph (1) of this subsection as determined by the United States
3 Secretary of Health and Human Services.

4 "Commissioner" means the Commissioner of Banking and
5 Insurance.

6 "Department" means the Department of Banking and Insurance.

7 "Financing entity" means:

8 (1) An underwriter, placement agent, lender, purchaser of
9 securities, purchaser of a policy or certificate from a provider,
10 credit enhancer, or any entity that has a direct ownership in a policy
11 or certificate that is the subject of a life settlement contract, but:

12 (a) Whose principal activity related to the transaction is
13 providing funds to effect the life settlement contract or purchase of
14 one or more policies; and

15 (b) Who has an agreement in writing with one or more
16 providers, to finance the acquisition of life settlement contracts.

17 (2) "Financing entity" does not include a non-accredited
18 investor or purchaser.

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

25 "Fraudulent life settlement act" means and includes:

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

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

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

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

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

42 (iv) Premiums paid on an insurance policy;

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

46 (vi) The reinstatement or conversion of an insurance policy;

47 (vii) The solicitation, offer, or effectuation of a life settlement
48 contract or insurance policy;

- 1 (viii) The issuance of written evidence of a life settlement
2 contract or insurance policy; or
- 3 (ix) Any application for, or the existence of, or any payments
4 related to, a loan secured directly or indirectly by any interest in a
5 life insurance policy.
- 6 (b) If the insurer has requested such disclosure, failing to
7 disclose to the insurer that the prospective insured has undergone a
8 life expectancy evaluation by any person or entity other than the
9 insurer or its authorized representatives in connection with the
10 issuance of the policy.
- 11 (c) Employing any device, scheme, or artifice to defraud in the
12 business of life settlements.
- 13 (d) In the solicitation, application or issuance of a life insurance
14 policy, employing any device, scheme or artifice in violation of
15 state insurable interest laws.
- 16 (2) In the furtherance of a fraud or to prevent the detection of a
17 fraud, any person commits or permits its employees or its agents to:
- 18 (a) Remove, conceal, alter, destroy or sequester from the
19 commissioner the assets or records of a licensee or other person
20 engaged in the business of life settlements;
- 21 (b) Misrepresent or conceal the financial condition of a licensee,
22 financing entity, insurer or other person;
- 23 (c) Transact the business of life settlements in violation of laws
24 requiring a license, certificate of authority or other legal authority
25 for the transaction of the business of life settlements;
- 26 (d) File with the commissioner or the chief insurance regulatory
27 official of another jurisdiction a document containing false
28 information or otherwise concealing information about a material
29 fact from the commissioner;
- 30 (e) Engage in embezzlement, theft, misappropriation or
31 conversion of monies, funds, premiums, credits or other property of
32 a provider, insurer, insured, owner, insurance policy owner or any
33 other person engaged in the business of life settlements or
34 insurance;
- 35 (f) Knowingly and with intent to defraud, enter into, broker, or
36 otherwise deal in a life settlement contract, the subject of which is a
37 life insurance policy that was obtained by presenting false
38 information concerning any fact material to the policy or by
39 concealing, for the purpose of misleading another, information
40 concerning any fact material to the policy, if the owner or the
41 owner's agent intended to defraud the policy's issuer;
- 42 (g) Attempt to commit, assist, aid or abet in the commission of,
43 or conspiracy to commit the acts or omissions specified in this
44 subsection; or
- 45 (h) Misrepresent the state of residence of an owner to be a state
46 or jurisdiction that does not have a law substantially similar to this
47 act for the purpose of evading or avoiding the provisions of this act.

1 (3) Entering into stranger-originated life insurance or "STOLI"
2 as defined in this section.

3 "Insured" means the person covered under the policy being
4 considered for sale in a life settlement contract.

5 "Life expectancy" means the arithmetic mean of the number of
6 months the insured under the life insurance policy to be settled can
7 be expected to live as determined by a life expectancy company
8 considering medical records and appropriate experiential data.

9 "Life insurance producer" means any person licensed as a
10 resident or nonresident insurance producer with a life insurance line
11 of authority pursuant to the "New Jersey Insurance Producer
12 Licensing Act of 2001," P.L.2001, c.210 (C.17:22A-26 et al.).

13 "Life settlement contract" means a written agreement entered
14 into between a provider and an owner, establishing the terms under
15 which compensation or any thing of value will be paid, which
16 compensation or thing of value is less than the expected death
17 benefit of the insurance policy or certificate, in return for the
18 owner's assignment, transfer, sale, devise or bequest of the death
19 benefit or any portion of an insurance policy or certificate for
20 compensation. The minimum value for a life settlement contract
21 shall be greater than a cash surrender value or accelerated death
22 benefit available at the time of an application for a life settlement
23 contract.

24 (1) "Life settlement contract" also includes the transfer for
25 compensation or value of ownership or beneficial interest in a trust
26 or other entity that owns that policy if the trust or other entity was
27 formed or availed of for the principal purpose of acquiring one or
28 more life insurance policies, which life insurance policy insures the
29 life of a person residing in this State.

30 (2) "Life settlement contract" also means and includes:

31 (a) A written agreement for a loan or other lending transaction,
32 secured primarily by an individual or group life insurance policy; or

33 (b) A premium finance loan made for a policy on or before the
34 date of issuance of the policy and pursuant to which one or more of
35 the following conditions apply:

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

39 (ii) The owner receives on the date of the premium finance loan
40 a guarantee of the future life settlement value of the policy; or

41 (iii) The owner agrees on the date of the premium finance loan to
42 sell the policy or any portion of its death benefit on any date
43 following the issuance of the policy.

44 (3) "Life settlement contract" does not include:

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

- 1 (b) A premium finance loan, as defined in this section, or any
- 2 loan made by a licensed financial institution, provided that neither
- 3 default on that loan nor the transfer of the policy in connection with
- 4 that default is made pursuant to an agreement or understanding with
- 5 any other person for the purpose of evading regulation under this
- 6 act;
- 7 (c) A collateral assignment of a life insurance policy by an
- 8 owner;
- 9 (d) A loan made by a lender that does not violate the "Insurance
- 10 Premium Finance Company Act," P.L.1968, c.221 (C.17:16D-1 et
- 11 seq.) so long as that loan is not described in paragraph (1) above,
- 12 and is not otherwise within the definition of a life settlement
- 13 contract;
- 14 (e) An agreement in which all the parties:
- 15 (i) Are closely related to the insured by blood or law; or
- 16 (ii) Have a lawful substantial economic interest in the continued
- 17 life, health and bodily safety of the person insured; or
- 18 (iii) Are trusts established primarily for the benefit of such
- 19 parties;
- 20 (f) Any designation, consent or agreement by an insured who is
- 21 an employee of an employer in connection with the purchase by the
- 22 employer, or trust established by the employer, of life insurance on
- 23 the life of the employee;
- 24 (g) A bona fide business succession planning arrangement:
- 25 (i) Between one or more shareholders in a corporation or
- 26 between a corporation and one or more of its shareholders or one or
- 27 more trusts established by its shareholders;
- 28 (ii) Between one or more partners in a partnership or between a
- 29 partnership and one or more of its partners or one or more trusts
- 30 established by its partners; or
- 31 (iii) Between one or more members in a limited liability
- 32 company or between a limited liability company and one or more of
- 33 its members or one or more trusts established by its members;
- 34 (h) An agreement entered into by a service recipient, or a trust
- 35 established by the service recipient, and a service provider, or a
- 36 trust established by the service provider, who performs significant
- 37 services for the service recipient's trade or business; or
- 38 (i) Any other contract, transaction or arrangement that the
- 39 commissioner determines is not of the type intended to be regulated
- 40 by this act.
- 41 "Net death benefit" means the amount of the life insurance policy
- 42 or certificate to be settled, less any outstanding debts or liens.
- 43 "Owner" means the owner of a life insurance policy or a
- 44 certificate holder under a group policy, with or without a terminal
- 45 illness, who enters or seeks to enter into a life settlement contract.
- 46 For the purposes of this act, an owner shall not be limited to an
- 47 owner of a life insurance policy or a certificate holder under a group

1 policy that insures the life of an individual with a terminal or
2 chronic illness or condition except where specifically addressed.

3 The term "owner" does not include:

4 (1) Any provider or other licensee under this act;

5 (2) A qualified institutional buyer as defined in Rule 144A (17
6 C.F.R. 230.144A) of the federal "Securities Act of 1933," title I of
7 Pub.L.73-22 (15 U.S.C. s.77a et seq.) as amended;

8 (3) A financing entity;

9 (4) A special purpose entity; or

10 (5) A related provider trust.

11 "Patient identifying information" means an insured's address,
12 telephone number, facsimile number, electronic mail address,
13 photograph or likeness, employer, employment status, Social
14 Security number, or any other information that is likely to lead to
15 the identification of the insured.

16 "Policy" means an individual or group policy, group certificate,
17 contract or arrangement of life insurance owned by an owner who is
18 a resident of this State, regardless of whether delivered or issued for
19 delivery in this State.

20 "Premium finance loan" means a loan made primarily for the
21 purposes of making premium payments on a life insurance policy,
22 which loan is secured by an interest in that life insurance policy.

23 "Person" means any natural person or legal entity, including but
24 not limited to, a partnership, a limited liability partnership, limited
25 liability company, association, trust or corporation.

26 "Provider" means a person, other than an owner, who enters into
27 or effectuates a life settlement contract with an owner.

28 A "provider" does not include:

29 (1) Any bank, savings bank, savings and loan association, credit
30 union;

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

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

38 (4) Any natural person who enters into or effectuates no more
39 than one agreement in a calendar year for the transfer of a life
40 insurance policy or certificate issued pursuant to a group life
41 insurance policy, for compensation or anything of value less than
42 the expected death benefit payable under the policy;

43 (5) A purchaser;

44 (6) Any authorized or eligible insurer that provides stop loss
45 coverage to a provider, purchaser, financing entity, special purpose
46 entity, or related provider trust;

47 (7) A financing entity;

48 (8) A special purpose entity;

1 (9) A related provider trust;

2 (10) A broker; or

3 (11) An accredited investor or qualified institutional buyer as
4 defined respectively in Regulation D, Rule 501 through 508 (17
5 C.F.R. 230.501-230.508) or rule 144A (17 C.F.R. 230.144A) of the
6 federal "Securities Act of 1933," title I of Pub.L.73-22 (15 U.S.C.
7 s.77a et seq.) as amended, who purchases a life settlement policy
8 from a provider.

9 "Purchased policy" means a life insurance policy or group
10 certificate that has been acquired by a provider pursuant to a life
11 settlement contract.

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

18 "Related provider trust" means a titling trust or other trust
19 established by a licensed provider or a financing entity for the sole
20 purpose of holding the ownership or beneficial interest in purchased
21 policies in connection with a financing transaction. The trust shall
22 have a written agreement with the licensed provider under which
23 the licensed provider is responsible for ensuring compliance with
24 all statutory and regulatory requirements and under which the trust
25 agrees to make all records and files relating to life settlement
26 transactions available to the commissioner as if those records and
27 files were maintained directly by the licensed provider.

28 "Settled policy" means a life insurance policy or certificate that
29 has been acquired by a provider pursuant to a life settlement
30 contract.

31 "Special purpose entity" means a corporation, partnership,
32 limited liability partnership, trust, limited liability company, or
33 other legal entity formed solely to provide, either directly or
34 indirectly, access to institutional capital markets:

35 For a financing entity or provider; or

36 (1) In connection with a transaction in which the securities in
37 the special purpose entity are acquired by the owner or by a
38 qualified institutional buyer as defined in Rule 144A (17 C.F.R.
39 230.144A) of The federal "Securities Act of 1933," title I of
40 Pub.L.73-22 (15 U.S.C. s.77a et seq.) as amended; or

41 (2) The securities pay a fixed rate of return commensurate with
42 established asset-backed institutional capital markets.

43 "Stranger-originated life insurance" or "STOLI" means an act,
44 practice, or plan to initiate a life insurance policy for the benefit of
45 a third party investor who, at the time of policy origination, has no
46 insurable interest in the life of the insured. STOLI practices include
47 but are not limited to cases in which life insurance is purchased
48 with resources or guarantees from or through a person, or entity,

1 who, at the time of policy inception, could not lawfully initiate the
2 policy himself or itself, and where, at the time of policy inception,
3 there exists an arrangement or agreement, whether verbal or written,
4 to transfer directly or indirectly, the ownership of that policy or the
5 policy benefits to a third party. Trusts that are created to give the
6 appearance of insurable interest, and are used to initiate policies for
7 investors, violate insurable interest laws and the prohibition against
8 wagering on life. STOLI arrangements do not include those
9 practices set forth in paragraph (2) of the definition of "life
10 settlement contract" in this section.

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

13

14 3. a. A person shall not act as a provider or broker with an
15 owner or multiple owners who is a resident of this State, without
16 first obtaining a license from the commissioner. If there is more
17 than one owner on a single policy and the owners are residents of
18 different states, the life settlement contract shall be governed by the
19 law of the state in which the owner having the largest percentage
20 ownership resides or, if the owners hold equal ownership, the state
21 of residence of one owner agreed upon in writing by all owners.

22 b. Application for a provider, or broker, license shall be made
23 to the commissioner by the applicant on a form prescribed by the
24 commissioner, and the application shall be accompanied by a fee in
25 an amount established by the commissioner, provided, however,
26 that the license and renewal fees for a provider license shall be
27 reasonable and that the license and renewal fees for a broker license
28 shall not exceed those established for an insurance producer, as
29 those fees are otherwise provided for in this act.

30 c. A life insurance producer who has been duly licensed as a
31 resident insurance producer with a life insurance line of authority in
32 this State or his or her home state for at least one year and is
33 licensed as a nonresident producer in this State shall be deemed to
34 meet the licensing requirements of this section and shall be
35 permitted to operate as a broker.

36 d. Not later than 30 days from the first day of operating as a
37 broker, the life insurance producer shall notify the commissioner
38 that he or she is acting as a broker on a form prescribed by the
39 commissioner, and shall pay any applicable fee to be determined by
40 the commissioner. Notification shall include an acknowledgement
41 by the life insurance producer that he or she will operate as a broker
42 in accordance with this act.

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

1 the provider or purchaser or broker in connection with the life
2 settlement contract.

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

9 g. Licenses may be renewed annually on the anniversary date
10 upon payment of the periodic renewal fee. Failure to pay the fee
11 within the terms prescribed shall result in the automatic revocation
12 of the license requiring periodic renewal.

13 h. The term of a provider license shall be equal to that of a
14 domestic stock life insurance company and the term of a broker
15 license shall be equal to that of an insurance producer license.
16 Licenses requiring periodic renewal may be renewed on their
17 anniversary date upon payment of the periodic renewal fee as
18 specified in subsection b. of this section. Failure to pay the fees on
19 or before the renewal date shall result in expiration of the license.

20 i. The applicant shall provide information as required by the
21 commissioner on forms prepared by the commissioner. The
22 commissioner shall have authority, at any time, to require an
23 applicant to fully disclose the identity of its stockholders (except
24 stockholders owning fewer than ten percent of the shares of an
25 applicant whose shares are publicly traded), partners, officers and
26 employees, and the commissioner may, in the exercise of the
27 commissioner's sole discretion, refuse to issue such a license in the
28 name of any person if not satisfied that any officer, employee,
29 stockholder or partner thereof who may materially influence the
30 applicant's conduct meets the standards of sections 1 to 14 of this
31 act.

32 j. A license issued to a partnership, corporation or other entity
33 authorizes all members, officers and designated employees to act as
34 a licensee under the license, if those persons are named in the
35 application and any supplements to the application.

36 k. Upon the filing of an application and the payment of the
37 license fee, the commissioner shall make an investigation of each
38 applicant and may issue a license if the commissioner finds that the
39 applicant:

- 40 (1) If a provider, has provided a detailed plan of operation;
- 41 (2) Is competent and trustworthy and intends to transact its
42 business in good faith;
- 43 (3) Has a good business reputation and has had experience,
44 training or education so as to be qualified in the business for which
45 the license is applied;
- 46 (4) If the applicant is a legal entity, is formed or organized
47 pursuant to the laws of this State or is a foreign legal entity

1 authorized to transact business in this State, or provides a certificate
2 of good standing from the state of its domicile; and
3 (5) Has provided to the commissioner an anti-fraud plan that
4 meets the requirements of section 13 of this act and includes:
5 (a) A description of the procedures for detecting and
6 investigating possible fraudulent acts and procedures for resolving
7 material inconsistencies between medical records and insurance
8 applications;
9 (b) A description of the procedures for reporting fraudulent
10 insurance acts to the commissioner;
11 (c) A description of the plan for anti-fraud education and
12 training of its underwriters and other personnel; and
13 (d) A written description or chart outlining the arrangement of
14 the anti-fraud personnel who are responsible for the investigation
15 and reporting of possible fraudulent insurance acts and investigating
16 unresolved material inconsistencies between medical records and
17 insurance applications.
18 l. The commissioner shall not issue any license to any
19 nonresident applicant, unless a written designation of an agent for
20 service of process is filed and maintained with the commissioner or
21 the applicant has filed with the commissioner the applicant's written
22 irrevocable consent that any action against the applicant may be
23 commenced against the applicant by service of process on the
24 commissioner.
25 m. Each licensee shall file with the commissioner on or before
26 the first day of March of each year an annual statement containing
27 that information which the commissioner prescribes by rule.
28 n. A provider may not use any person to perform the functions
29 of a broker as defined in this act unless the person holds a current,
30 valid license as a broker.
31 o. A broker may not use any person to perform the functions of
32 a provider as defined in this act unless that person holds a current,
33 valid license as a provider.
34 p. A provider or broker shall provide to the commissioner new
35 or revised information about officers, stockholders holding ten
36 percent or more of the outstanding shares of the corporation,
37 partners, directors, members or designated employees within 30
38 days of the change.
39 q. An individual licensed as a broker shall complete on a
40 biennial basis 15 hours of training related to life settlements and life
41 settlement transactions, as required by the commissioner; provided,
42 however, that a life insurance producer who is operating as a broker
43 pursuant to this section shall not be subject to the requirements of
44 this subsection. Any person failing to meet the requirements of this
45 subsection shall be subject to the penalties imposed by the
46 commissioner.

1 4. a. The commissioner may refuse to issue, suspend, revoke or
2 refuse to renew the license of any licensee if the commissioner
3 finds that:

4 (1) There was any material misrepresentation in the application
5 for the license;

6 (2) The licensee or any officer, partner, member or director has
7 been guilty of fraudulent or dishonest practices, is subject to a final
8 administrative action or is otherwise shown to be untrustworthy or
9 incompetent to act as a licensee;

10 (3) The provider demonstrates a pattern of unreasonably
11 withholding payments to policy owners;

12 (4) The licensee no longer meets the requirements for initial
13 licensure;

14 (5) The licensee or any officer, partner, member or director has
15 been convicted of a felony, or of any misdemeanor of which
16 criminal fraud is an element; or the licensee has pleaded guilty or
17 nolo contendere with respect to any felony or any misdemeanor of
18 which criminal fraud or moral turpitude is an element, regardless of
19 whether a judgment of conviction has been entered by the court;

20 (6) The provider has entered into any life settlement contract
21 that has not been approved pursuant to this act;

22 (7) The provider has failed to honor contractual obligations set
23 out in a life settlement contract;

24 (8) The provider has assigned, transferred or pledged a settled
25 policy to a person other than a provider licensed in this State, a
26 purchaser, an accredited investor or qualified institutional buyer as
27 defined respectively in Regulation D, Rule 501 through 508 (17
28 C.F.R. 230.501-230.508) or Rule 144A (17 C.F.R. 230.144A) of the
29 federal "Securities Act of 1933," title I of Pub.L.73-22 (15 U.S.C.
30 s.77a et seq.) as amended, a financing entity, special purpose entity,
31 or related provider trust; or

32 (9) The licensee or any officer, partner, member or key
33 management personnel has violated any of the provisions of this
34 act.

35 b. Before the commissioner denies a license application or
36 suspends, revokes or refuses to renew the license of any licensee
37 under this act, the commissioner shall conduct a hearing in
38 accordance with the "Administrative Procedure Act," P.L.1968,
39 c.410 (C.52:14B-1 et seq.).
40

41 5. a. A person shall not use any form of life settlement contract
42 in this State unless it has been filed with and approved, if required,
43 by the commissioner in a manner that conforms with the filing
44 procedures and any time restrictions or deeming provisions, if any,
45 for life insurance forms, policies and contracts.

46 b. No insurer may, as a condition of responding to a request for
47 verification of coverage or in connection with the transfer of a
48 policy pursuant to a life settlement contract, require that the owner,

1 insured, provider or broker sign any form, disclosure, consent,
2 waiver or acknowledgment that has not been expressly approved by
3 the commissioner for use in connection with life settlement
4 contracts in this State.

5 c. A person shall not use a life settlement contract form or
6 provide to an owner a disclosure statement form in this State unless
7 first filed with and approved by the commissioner. The
8 commissioner shall disapprove a life settlement contract form or
9 disclosure statement form if, in the commissioner's opinion, the
10 contract or provisions contained therein fail to meet the
11 requirements of sections 9 through 11 and subsection d. of section
12 14 of this act, or are unreasonable, contrary to the interests of the
13 public, or otherwise misleading or unfair to the owner.

14 d. At the commissioner's discretion, the commissioner may
15 require the submission of advertising material to determine
16 compliance with section 8 of this act.

17
18 6. a. For any policy settled within five years of policy issuance,
19 each provider shall file with the commissioner on or before March 1
20 of each year an annual statement containing that information as to
21 settled policies which the commissioner may prescribe by
22 regulation. In addition to any other requirements, the annual
23 statement shall specify the total number, aggregate face amount and
24 life settlement proceeds of policies settled during the immediately
25 preceding calendar year, together with a breakdown of the
26 information by policy issue year. The annual statement shall also
27 include the names of the insurance companies whose policies have
28 been settled and the brokers that have settled said policies.

29 (1) Such information shall be limited to only those transactions
30 in which the insured is a resident of this State and shall not include
31 individual transaction data regarding the business of life settlements
32 or information that there is a reasonable basis to believe could be
33 used to identify the owner or the insured.

34 (2) Every provider that willfully fails to file an annual statement
35 as required in this section, or willfully fails to reply within 30 days
36 to a written inquiry by the commissioner in connection therewith,
37 shall, in addition to other penalties provided by this act, be subject,
38 upon due notice and opportunity to be heard, to a penalty of up to
39 \$250 per day of delay, not to exceed \$25,000 in the aggregate, for
40 each such failure.

41 b. Except as otherwise allowed or required by law, a provider,
42 broker, insurance company, insurance producer, information
43 bureau, rating agency or company, or any other person with actual
44 knowledge of an insured's identity, shall not disclose the identity of
45 an insured or information that there is a reasonable basis to believe
46 could be used to identify the insured or the insured's financial or
47 medical information to any other person unless the disclosure:

1 (1) Is necessary to effect a life settlement contract between the
2 owner and a provider and the owner and insured have provided
3 prior written consent to the disclosure;

4 (2) Is necessary to effectuate the sale of life settlement
5 contracts, or interests therein, as investments, so long as the sale is
6 conducted in accordance with applicable state and federal securities
7 law and the owner and the insured have both provided prior written
8 consent to the disclosure;

9 (3) Is provided in response to an investigation or examination by
10 the commissioner or any other governmental officer or agency or
11 pursuant to the requirements of section 13 of this act;

12 (4) Is a term or condition to the transfer of a policy by one
13 provider to another provider, in which case the receiving provider
14 shall be required to comply with the confidentiality requirements of
15 this subsection;

16 (5) Is necessary to allow the provider or broker or their
17 authorized representatives to make contacts for the purpose of
18 determining health status. For the purposes of this paragraph, the
19 term "authorized representative" shall not include any person who
20 has or may have any financial interest in the settlement contract
21 other than a provider, licensed broker, financing entity, related
22 provider trust or special purpose entity. A provider or broker shall
23 require its authorized representative to agree in writing to adhere to
24 the privacy provisions of this act; or

25 (6) Is required to purchase stop loss coverage.

26 c. Non-public personal information solicited or obtained in
27 connection with a proposed or actual life settlement contract shall
28 be subject to the provisions applicable to financial institutions under
29 the federal "Gramm-Leach-Bliley Act," title V of Pub.L.106-102,
30 (15 U.S.C. s.6801 et seq.) and all other state and federal laws
31 relating to confidentiality of non-public personal information.
32

33 7. a. The commissioner may, when he deems it reasonably
34 necessary to protect the interests of the public, examine the business
35 and affairs of any licensee or applicant for a license. The
36 commissioner may order any licensee or applicant to produce any
37 records, books, files or other information reasonably necessary to
38 ascertain whether that licensee or applicant is acting or has acted in
39 violation of the law or otherwise contrary to the interests of the
40 public. The expenses incurred in conducting any examination shall
41 be paid by the licensee or applicant.

42 b. In lieu of an examination under this act of any foreign or
43 alien licensee licensed in this State, the commissioner may, at his
44 discretion, accept an examination report on the licensee as prepared
45 by the commissioner for the licensee's state of domicile or port-of-
46 entry state.

47 c. Names and individual identification data, for all owners and
48 insureds shall be considered private and confidential information

1 and shall not be disclosed by the commissioner unless required by
2 law.

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

7 e. (1) Upon determining that an examination should be
8 conducted, the commissioner shall issue an examination warrant
9 appointing one or more examiners to perform the examination and
10 instructing them as to the scope of the examination. In conducting
11 the examination, the examiner shall use methods common to the
12 examination of any life settlement licensee and should use those
13 guidelines and procedures set forth in an examiners' handbook
14 adopted by a national organization.

15 (2) Every licensee or person from whom information is sought,
16 its officers, directors and agents, shall provide to the examiners
17 timely, convenient and free access at all reasonable hours at its
18 offices to all books, records, accounts, papers, documents, assets
19 and computer or other recordings relating to the property, assets,
20 business and affairs of the licensee being examined. The officers,
21 directors, employees and agents of the licensee or person shall
22 facilitate the examination and aid in the examination so far as it is
23 in their power to do. The refusal of a licensee, by its officers,
24 directors, employees or agents, to submit to examination or to
25 comply with any reasonable written request of the commissioner
26 shall be grounds for suspension or refusal of, or nonrenewal of any
27 license or authority held by the licensee to engage in the life
28 settlement business or other business subject to the commissioner's
29 jurisdiction. Any proceedings for suspension, revocation or refusal
30 of any license or authority shall be conducted pursuant to the
31 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
32 seq.).

33 (3) The commissioner shall have the power to issue subpoenas,
34 to administer oaths and to examine under oath any person as to any
35 matter pertinent to the examination. Upon the failure or refusal of a
36 person to obey a subpoena, the commissioner may petition a court
37 of competent jurisdiction, and upon proper showing, the court may
38 enter an order compelling the witness to appear and testify or
39 produce documentary evidence.

40 (4) When making an examination under this act, the
41 commissioner may retain attorneys, appraisers, independent
42 actuaries, independent certified public accountants or other
43 professionals and specialists as examiners, the reasonable cost of
44 which shall be borne by the licensee that is the subject of the
45 examination.

46 (5) Nothing contained in this act shall be construed to limit the
47 commissioner's authority to terminate or suspend an examination in
48 order to pursue other legal or regulatory action pursuant to the

1 insurance laws of this State. Findings of fact and conclusions made
2 pursuant to any examination shall be prima facie evidence in any
3 legal or regulatory action.

4 (6) Nothing contained in this act shall be construed to limit the
5 commissioner's authority to use and, if appropriate, to make public
6 any final or preliminary examination report, any examiner or
7 licensee work papers or other documents, or any other information
8 discovered or developed during the course of any examination in
9 the furtherance of any legal or regulatory action which the
10 commissioner may, in his sole discretion, deem appropriate.

11 f. (1) Examination reports shall be comprised of only facts
12 appearing upon the books, from the testimony of its officers or
13 agents or other persons examined concerning its affairs, and those
14 conclusions and recommendations which the examiners find
15 reasonably warranted from the facts.

16 (2) No later than 60 days following completion of the
17 examination, the examiner in charge shall file with the
18 commissioner a verified written report of examination under oath.
19 Upon receipt of the verified report, the commissioner shall transmit
20 the report to the licensee examined, together with a notice that shall
21 afford the licensee examined a reasonable opportunity of not more
22 than 30 days to make a written submission or rebuttal with respect
23 to any matters contained in the examination report and which shall
24 become part of the report or to request a hearing on any matter in
25 dispute.

26 (3) If the commissioner determines that regulatory action is
27 appropriate as a result of an examination, the commissioner may
28 initiate any proceedings or actions provided by law.

29 g. (1) Names and individual identification data for all owners,
30 purchasers, and insureds shall be considered private and
31 confidential information and shall not be disclosed by the
32 commissioner, unless the disclosure is to another regulator or is
33 required by law.

34 (2) Except as otherwise provided in this act, all examination
35 reports, working papers, recorded information, documents and
36 copies thereof produced by, obtained by or disclosed to the
37 commissioner or any other person in the course of an examination
38 made under this act, or in the course of analysis or investigation by
39 the commissioner of the financial condition or market conduct of a
40 licensee shall be confidential by law and privileged, shall not be
41 subject to any State or federal freedom of information law, shall not
42 be subject to subpoena, and shall not be subject to discovery or
43 admissible in evidence in any private civil action. The
44 commissioner is authorized to use the documents, materials or other
45 information in the furtherance of any regulatory or legal action
46 brought as part of the commissioner's official duties. The licensee
47 being examined may have access to all documents used to make the
48 report.

1 h. (1) An examiner may not be appointed by the commissioner
2 if the examiner, either directly or indirectly, has a conflict of
3 interest or is affiliated with the management of or owns a pecuniary
4 interest in any person subject to examination under this act. This
5 section shall not be construed to automatically preclude an
6 examiner from being:

7 (a) An owner;

8 (b) An insured in a life settlement contract or insurance policy;
9 or

10 (c) A beneficiary in an insurance policy that is proposed for a
11 life settlement contract.

12 (2) Notwithstanding the requirements of this subsection, the
13 commissioner may retain from time to time, on an individual basis,
14 qualified actuaries, certified public accountants, or other similar
15 individuals who are independently practicing their professions, even
16 though these persons may from time to time be similarly employed
17 or retained by persons subject to examination under this act.

18 i. (1) No cause of action shall arise nor shall any liability be
19 imposed against the commissioner, the commissioner's authorized
20 representatives or any examiner appointed by the commissioner for
21 any statements made or conduct performed in good faith while
22 carrying out the provisions of this act.

23 (2) No cause of action shall arise, nor shall any liability be
24 imposed against any person for the act of communicating or
25 delivering information or data to the commissioner or the
26 commissioner's authorized representative or examiner pursuant to
27 an examination made under this act, if the act of communication or
28 delivery was performed in good faith and without fraudulent intent
29 or the intent to deceive. This paragraph shall not abrogate or modify
30 in any way any common law or statutory privilege or immunity
31 heretofore enjoyed by any person identified in paragraph (1) of this
32 subsection.

33 (3) A person identified in paragraph (1) or (2) of this subsection
34 shall be entitled to an award of attorney's fees and costs if that
35 person is the prevailing party in a civil cause of action for libel,
36 slander or any other relevant tort arising out of activities in carrying
37 out the provisions of this act and the party bringing the action was
38 not substantially justified in doing so. For purposes of this
39 paragraph a proceeding is "substantially justified" if it had a
40 reasonable basis in law or fact at the time that it was initiated.

41 j. The commissioner may investigate suspected fraudulent life
42 settlement acts and persons engaged in the business of life
43 settlements.

44
45 8. a. A broker or provider licensed pursuant to this act may
46 conduct or participate in advertisements within this State. These
47 advertisements shall comply with the provision of chapter 30 of
48 Title 17B of the New Jersey Statutes and all rules and regulations

1 promulgated by the commissioner that are applicable to life insurers
2 or to brokers and providers licensed pursuant to this act.

3 b. Advertisements shall be accurate, truthful and not
4 misleading in fact or by implication.

5 c. No person or trust shall:

6 (1) Directly or indirectly, market, advertise, solicit or otherwise
7 promote the purchase of a policy for the sole purpose of or with an
8 emphasis on settling the policy; or

9 (2) Use the words "free," "no cost" or words of similar import in
10 the marketing, advertising, soliciting or otherwise promoting of the
11 purchase of a policy.

12

13 9. a. The provider shall provide in writing, in a separate
14 document that is signed by the owner and provider, the following
15 information to the owner no later than the date the life settlement
16 contract is signed by all parties:

17 (1) The fact that possible alternatives to life settlement contracts
18 exist, including, but not limited to, accelerated benefits offered by
19 the issuer of the life insurance policy;

20 (2) The fact that some or all of the proceeds of a life settlement
21 contract may be taxable and that assistance should be sought from a
22 professional tax advisor;

23 (3) The fact that the proceeds from a life settlement contract
24 could be subject to the claims of creditors;

25 (4) The fact that receipt of proceeds from a life settlement
26 contract may adversely affect the recipients' eligibility for public
27 assistance or other government benefits or entitlements and that
28 advice should be obtained from the appropriate agencies;

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

40 (6) The fact that proceeds will be sent to the owner within three
41 business days after the provider has received the insurer or group
42 administrator's acknowledgement that ownership of the policy or
43 interest in the certificate has been transferred and the beneficiary
44 has been designated in accordance with the terms of the life
45 settlement contract;

46 (7) The fact that entering into a life settlement contract may
47 cause other rights or benefits, including conversion rights and
48 waiver of premium benefits that may exist under the policy or

1 certificate of a group policy, to be forfeited by the owner and that
2 assistance should be sought from a professional financial advisor;

3 (8) The amount and method of calculating the compensation
4 paid or to be paid to the broker, or any other person acting for the
5 owner in connection with the transaction, wherein the term
6 compensation includes anything of value paid or given;

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

9 (10) The fact that the commissioner shall require delivery of a
10 buyer's guide or a similar consumer advisory package in the form
11 prescribed by the commissioner to owners during the solicitation
12 process;

13 (11) The disclosure document shall contain the following
14 language:

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

27 (12) Separate signed fraud warnings by the provider and broker
28 on their respective applications and life settlement contracts as
29 follows:

30 "Any person who knowingly presents false
31 information in an application for insurance or life
32 settlement contract is guilty of a crime and may be
33 subject to fines and confinement in prison.";

34 (13) The fact that the insured may be contacted by either the
35 provider or broker or its authorized representative for the purpose of
36 determining the insured's health status or to verify the insured's
37 address. This contact is limited to once every three months if the
38 insured has a life expectancy of more than one year, and no more
39 than once per month if the insured has a life expectancy of one year
40 or less;

41 (14) The affiliation, if any, between the provider and the issuer
42 of the insurance policy to be settled;

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

47 (16) The document shall include the name, address and telephone
48 number of the provider;

1 (17) The name, business address, and telephone number of the
2 independent third party escrow agent, and the fact that the owner
3 may inspect or receive copies of the relevant escrow or trust
4 agreements or documents;

5 (18) The fact that a change of ownership could in the future limit
6 the insured's ability to purchase future insurance on the insured's
7 life because there is a limit to how much coverage insurers will
8 issue on one life;

9 b. The written disclosures shall be conspicuously displayed in
10 any life settlement contract furnished to the owner by a provider,
11 including any affiliations or contractual arrangements between the
12 provider and the broker.

13 c. A broker shall provide the owner and the provider with at
14 least the following disclosures no later than the date the life
15 settlement contract is signed by all parties. The disclosures shall be
16 conspicuously displayed in the life settlement contract or in a
17 separate document signed by the owner and provide the following
18 information:

19 (1) The name, business address and telephone number of the
20 broker;

21 (2) A full, complete and accurate description of all the offers,
22 counter-offers, acceptances and rejections relating to the proposed
23 life settlement contract;

24 (3) A written disclosure of any affiliations or contractual
25 arrangements between the broker and any person making an offer in
26 connection with the proposed life settlement contracts;

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

31 (5) A complete reconciliation of the gross offer or bid by the
32 provider to the net amount of proceeds or value to be received by
33 the owner. For the purpose of this paragraph, "gross offer or bid"
34 means the total amount or value offered by the provider for the
35 purchase of one or more life insurance policies, including
36 commissions and fees; and

37 d. The failure to provide the disclosures or rights described in
38 this section shall be an unfair trade practice pursuant to section 17
39 of this act.
40

41 10. Without limiting the ability of an insurer to assess the
42 insurability of a policy applicant and determine whether to issue the
43 policy, and in addition to other questions an insurance carrier may
44 lawfully pose to a life insurance applicant, insurance carriers may
45 inquire in the application for insurance whether the proposed owner
46 intends to pay premiums with the assistance of financing from a
47 lender that will use the policy as collateral to support the financing.

- 1 a. If the loan provides funds which can be used for a purpose
- 2 other than paying for the premiums, costs, and expenses associated
- 3 with obtaining and maintaining the life insurance policy and loan,
- 4 the application shall be rejected as a violation of section 13 of this
- 5 act.
- 6 b. If the financing does not violate subsection a. of this section
- 7 in this manner, the insurance carrier may make disclosures,
- 8 including but not limited to the following, to the applicant and the
- 9 insured, either on the application or an amendment to the
- 10 application to be completed no later than the date of delivery of the
- 11 policy:
- 12 "If you have entered into a loan arrangement where
- 13 the policy is used as collateral, and the policy does
- 14 change ownership at some point in the future in
- 15 satisfaction of the loan, the following may be true:
- 16 (1) A change of ownership could lead to a stranger
- 17 owning an interest in the insured's life;
- 18 (2) A change of ownership could in the future limit
- 19 your ability to purchase future insurance on the
- 20 insured's life because there is a limit to how much
- 21 coverage insurers will issue on one life;
- 22 (3) Should there be a change of ownership and you
- 23 wish to obtain more insurance coverage on the
- 24 insured's life in the future, the insured's higher issue
- 25 age, a change in health status, or other factors may
- 26 reduce the ability to obtain coverage or may result in
- 27 significantly higher premiums;
- 28 (4) You should consult a professional advisor, since a
- 29 change in ownership in satisfaction of the loan may
- 30 result in tax consequences to the owner, depending
- 31 on the structure of the loan."; and
- 32 c. In addition to the disclosures in subsection b. of this section,
- 33 the insurance carrier may require the following certifications, from
- 34 the applicant or the insured:
- 35 "(1) I have not entered into any agreement or
- 36 arrangement providing for the future sale of this life
- 37 insurance policy;
- 38 (2) My loan arrangement for this policy provides
- 39 funds sufficient to pay for some or all of the
- 40 premiums, costs, and expenses associated with
- 41 obtaining and maintaining my life insurance policy,
- 42 but I have not entered into any agreement by which I
- 43 am to receive consideration in exchange for
- 44 procuring this policy; and
- 45 (3) The borrower has an insurable interest in the
- 46 insured."

1 11. a. A provider entering into a life settlement contract with
2 any owner of a policy, wherein the insured is terminally or
3 chronically ill, shall first obtain:

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

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

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

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

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

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

40 f. If a broker performs those verification of coverage activities
41 required of the provider, the provider is deemed to have fulfilled the
42 requirements of subsection a. of section 9 of this act.

43 g. Within 20 days after an owner executes the life settlement
44 contract, the provider shall give written notice to the insurer that
45 issued that insurance policy that the policy has become subject to a
46 life settlement contract. The notice shall be accompanied by the
47 documents required by subsection b. of section 10 of this act.

1 h. All medical information solicited or obtained by any
2 licensee shall be subject to the applicable provision of State law
3 relating to confidentiality of medical information, if not otherwise
4 provided in this act.

5 i. All life settlement contracts entered into in this State shall
6 provide that the owner may rescind the contract on or before the
7 15th day after the date it is executed by all parties to the contract.
8 Rescission, if exercised by the owner, is effective only if both
9 notice of the rescission is given, and the owner repays all proceeds
10 and any premiums, loans, and loan interest paid on account of the
11 provider within the rescission period. If the insured dies during the
12 rescission period, the contract shall be deemed to have been
13 rescinded subject to repayment by the owner or the owner's estate
14 of all proceeds and any premiums, loans, and loan interest to the
15 provider.

16 j. Within three business days after receipt from the owner of
17 documents to effect the transfer of the insurance policy, the
18 provider shall pay the proceeds of the settlement to an escrow or
19 trust account managed by a trustee or escrow agent in a state or
20 federally chartered financial institution pending acknowledgement
21 of the transfer by the issuer of the policy. The trustee or escrow
22 agent shall be required to transfer the proceeds due to the owner
23 within three business days of acknowledgement of the transfer from
24 the insurer.

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

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

38 m. The broker shall disclose to the owner anything of value
39 paid or given to a broker, which relate to a life settlement contract.

40 n. No person, at any time prior to, or at the time of, the
41 application for, or issuance of, a policy, or during a two-year period
42 commencing with the date of issuance of the policy, shall enter into
43 a life settlement contract regardless of the date the compensation is
44 to be provided and regardless of the date the assignment, transfer,
45 sale, devise, bequest or surrender of the policy is to occur. This
46 prohibition shall not apply if the owner certifies to the provider that:

47 (1) The policy was issued upon the owner's exercise of
48 conversion rights arising out of a group or individual policy, if the

1 total of the time covered under the conversion policy plus the time
2 covered under the prior policy is at least 24 months. The time
3 covered under a group policy shall be calculated without regard to a
4 change in insurance carriers, so long as the coverage has been
5 continuous and under the same group sponsorship; or

6 (2) The owner submits independent evidence to the provider that
7 one or more of the following conditions have been met within the
8 two-year period:

9 (a) The owner or insured is terminally or chronically ill;

10 (b) The owner or insured disposes of his ownership interests in a
11 closely held corporation, pursuant to the terms of a buyout or other
12 similar agreement in effect at the time the insurance policy was
13 initially issued;

14 (c) The owner's spouse dies;

15 (d) The owner divorces his or her spouse;

16 (e) The owner retires from full-time employment;

17 (f) The owner becomes physically or mentally disabled and a
18 physician determines that the disability prevents the owner from
19 maintaining full-time employment; or

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

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

34 (4) If the provider submits to the insurer a copy of independent
35 evidence provided for in item subparagraph (a) of paragraph (2) of
36 this subsection, when the provider submits a request to the insurer
37 to effect the transfer of the policy to the provider, the copy is
38 deemed to establish that the settlement contract satisfies the
39 requirements of this section.

40

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

1 b. A provider from this State who enters into a life settlement
2 contract with an owner who is a resident of another state that has
3 enacted statutes or adopted regulations governing a life settlement
4 contract shall be governed in the effectuation of that life settlement
5 contract by the statutes and regulations of the owner's state of
6 residence. If the state in which the owner is a resident has not
7 enacted statutes or regulations governing life settlement contracts,
8 the provider shall give the owner notice that neither state regulates
9 the transaction upon which he or she is entering. For transactions in
10 those states, however, the provider shall maintain all records
11 required if the transactions were executed in the state of residence.
12 The forms used in those states need not be approved by the
13 department.

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

18

19 13. It shall be a fraudulent life settlement act for any person to:

20 a. Commit a fraudulent life settlement act as defined in section
21 2 of this act;

22 b. Enter into a life settlement contract if that person knows or
23 reasonably should have known that the life insurance policy was
24 obtained by means of a false, deceptive or misleading application
25 for such policy;

26 c. Engage in any transaction, practice or course of business if
27 that person knows or reasonably should have known that the intent
28 was to avoid the notice requirements of this section;

29 d. Engage in any fraudulent act or practice in connection with
30 any transaction relating to any settlement involving an owner who
31 is a resident of this State;

32 e. Issue, solicit, market or otherwise promote the purchase of
33 an insurance policy for the purpose of or with an emphasis on
34 settling the policy;

35 f. Enter into a premium finance agreement with any person or
36 agency, or any person affiliated with that person or agency,
37 pursuant to which that person shall receive any proceeds, fees or
38 other consideration, directly or indirectly, from the policy or owner
39 of the policy or any other person with respect to the premium
40 finance agreement or any settlement contract or other transaction
41 related to that policy that are in addition to the amounts required to
42 pay the principal, interest and service charges related to policy
43 premiums pursuant to the premium finance agreement or
44 subsequent sale of that agreement; provided, further, that any
45 payments, charges, fees or other amounts in addition to the amounts
46 required to pay the principal, interest and service charges related to
47 policy premiums paid under the premium finance agreement shall
48 be remitted to the original owner of the policy or to the estate of the

1 owner if he or she is not living at the time of the determination of
2 the overpayment;

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

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

15 i. With respect to a provider, enter into a life settlement
16 contract unless the life settlement promotional, advertising and
17 marketing materials, as may be prescribed by regulation, have been
18 filed with the commissioner. In no event shall any marketing
19 materials expressly reference that the insurance is "free" for any
20 period of time. The inclusion of any reference in the marketing
21 materials that would cause an owner to reasonably believe that the
22 insurance is free for any period of time shall be considered a
23 violation of this act; or

24 j. With respect to any life insurance producer, insurance
25 company, broker, or provider make any statement or representation
26 to the applicant or policyholder in connection with the sale or
27 financing of a life insurance policy to the effect that the insurance is
28 free or without cost to the policyholder for any period of time
29 unless provided in the policy.

30

31 14. a. A person shall not commit a fraudulent life settlement
32 act.

33 b. A person shall not knowingly and intentionally interfere
34 with the enforcement of the provisions of this act or investigations
35 of suspected or actual violations of this act.

36 c. A person in the business of life settlements shall not
37 knowingly or intentionally permit any person convicted of a crime
38 involving dishonesty or breach of trust to participate in the business
39 of life settlements.

40 d. (1) Life settlement contracts and applications for life
41 settlement contracts, regardless of the form of transmission, shall
42 contain the following statement or a substantially similar statement:

43 "Any person who knowingly presents false
44 information in an application for insurance or life
45 settlement contract is guilty of a crime and may be
46 subject to fines and confinement in prison."

1 (2) The absence of a statement as required in paragraph (1) of
2 this subsection does not constitute a defense in any prosecution for
3 a fraudulent life settlement act.

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

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

13 f. (1) No civil liability shall be imposed on and no cause of
14 action shall arise from a person's furnishing information concerning
15 suspected, anticipated or completed fraudulent life settlement acts
16 or suspected or completed fraudulent insurance acts, if the
17 information is provided to or received from:

18 (a) The commissioner or the commissioner's employees, agents
19 or representatives;

20 (b) Federal, state or local law enforcement or regulatory
21 officials or their employees, agents or representatives;

22 (c) A person involved in the prevention and detection of
23 fraudulent life settlement acts or that person's agents, employees or
24 representatives;

25 (d) Any regulatory body or their employees, agents or
26 representatives, overseeing life insurance, life settlements,
27 securities or investment fraud;

28 (e) The life insurer that issued the life insurance policy covering
29 the life of the insured; or

30 (f) The licensee and any agents, employees or representatives.

31 (2) Paragraph (1) of this subsection shall not apply to statements
32 made with actual malice. In an action brought against a person for
33 filing a report or furnishing other information concerning a
34 fraudulent life settlement act or a fraudulent insurance act, the party
35 bringing the action shall plead specifically any allegation that
36 paragraph (1) of the subsection does not apply because the person
37 filing the report or furnishing the information did so with actual
38 malice.

39 (3) A person identified in paragraph (1) of this subsection shall
40 be entitled to an award of attorney's fees and costs if he or she is
41 the prevailing party in a civil cause of action for libel, slander or
42 any other relevant tort arising out of activities in carrying out the
43 provisions of this act and the party bringing the action was not
44 substantially justified in doing so. For purposes of this paragraph a
45 proceeding is "substantially justified" if it had a reasonable basis in
46 law or fact at the time that it was initiated.

1 (4) This subsection shall not abrogate or modify common law or
2 statutory privileges or immunities enjoyed by a person described in
3 paragraph (1) of this subsection.

4 g. (1) The documents and evidence provided pursuant to
5 subsection e. of this section or obtained by the commissioner in an
6 investigation of suspected or actual fraudulent life settlement acts
7 shall be privileged and confidential and shall not be a public record
8 and shall not be subject to discovery or subpoena in a civil or
9 criminal action.

10 (2) Paragraph (1) of this subsection does not prohibit release by
11 the commissioner of documents and evidence obtained in an
12 investigation of suspected or actual fraudulent life settlement acts:

13 (a) In administrative or judicial proceedings to enforce laws
14 administered by the commissioner;

15 (b) To federal, State or local law enforcement or regulatory
16 agencies, to an organization established for the purpose of detecting
17 and preventing fraudulent life settlement acts or to the National
18 Association of Insurance Commissioners; or

19 (c) At the discretion of the commissioner, to a person in the
20 business of life settlements that is aggrieved by a fraudulent life
21 settlement act.

22 (3) Release of documents and evidence under paragraph (2) of
23 this subsection does not abrogate or modify the privilege granted in
24 paragraph (1) of this subsection.

25 h. Nothing in this act shall:

26 (1) Preempt the authority or relieve the duty of other law
27 enforcement or regulatory agencies to investigate, examine and
28 prosecute suspected violations of law;

29 (2) Preempt, supersede, or limit any provision of any State
30 securities law or any rule, order, or notice issued thereunder;

31 (3) Prevent or prohibit a person from disclosing voluntarily
32 information concerning life settlement fraud to a law enforcement
33 or regulatory agency other than the department; or

34 (4) Limit the powers granted elsewhere by the laws of this State
35 to the commissioner or an insurance fraud unit to investigate and
36 examine possible violations of law and to take appropriate action
37 against wrongdoers.

38 i. Providers and brokers shall have in place antifraud
39 initiatives reasonably calculated to detect, prosecute and prevent
40 fraudulent life settlement acts. At the discretion of the
41 commissioner, the commissioner may order, or a licensee may
42 request and the commissioner may grant, such modifications of the
43 following required initiatives as necessary to ensure an effective
44 antifraud program. The modifications may be more or less
45 restrictive than the required initiatives so long as the modifications
46 may reasonably be expected to accomplish the purpose of this
47 section. Antifraud initiatives shall include:

- 1 (1) Fraud investigators, who may be provider or broker
2 employees or independent contractors; and
- 3 (2) An antifraud plan, which shall be submitted to the
4 commissioner. The antifraud plan shall include, but not be limited
5 to:
- 6 (a) A description of the procedures for detecting and
7 investigating possible fraudulent life settlement acts and procedures
8 for resolving material inconsistencies between medical records and
9 insurance applications;
- 10 (b) A description of the procedures for reporting possible
11 fraudulent life settlement acts to the commissioner;
- 12 (c) A description of the plan for antifraud education and training
13 of underwriters and other personnel; and
- 14 (d) A description or chart outlining the organizational
15 arrangement of the antifraud personnel who are responsible for the
16 investigation and reporting of possible fraudulent life settlement
17 acts and investigating unresolved material inconsistencies between
18 medical records and insurance applications.
- 19 (3) Antifraud plans submitted to the commissioner shall be
20 privileged and confidential and shall not be a public record and
21 shall not be subject to discovery or subpoena in a civil or criminal
22 action.
- 23
- 24 15. a. In addition to the penalties and other enforcement
25 provisions of this act, if any person violates this act or any rule or
26 regulation implementing this act, the commissioner may seek an
27 injunction in a court of competent jurisdiction in the county in
28 which the person resides or has a principal place of business and
29 may apply for temporary and permanent orders that the
30 commissioner determines are necessary to restrain the person from
31 further committing the violation.
- 32 b. Any person damaged by the acts of another person in
33 violation of this act, or any rule or regulation implementing this act,
34 may bring a civil action for damages against the person committing
35 the violation in a court of competent jurisdiction. In the event of a
36 willful violation of this act, the trial court may award statutory
37 damages in an amount up to three times the actual damage award, in
38 addition to actual damages.
- 39 c. The commissioner may issue a cease and desist order upon a
40 person who violates any provision of this act, any rule or order
41 adopted by the commissioner, or any written agreement entered into
42 with the commissioner, in accordance with the "Administrative
43 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).
- 44 d. When the commissioner finds that such an action presents an
45 immediate danger to the public and requires an immediate final
46 order, he may issue an emergency cease and desist order reciting
47 with particularity the facts underlying those findings. The
48 emergency cease and desist order shall be effective immediately

1 upon service of a copy of the order on the respondent and shall
2 remain in effect for 90 days. If the department begins non-
3 emergency cease and desist proceedings under subsection a. of this
4 section, the emergency cease and desist order shall remain in effect,
5 absent an order by a court of competent jurisdiction pursuant to the
6 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
7 seq.).

8
9 16. a. It shall be a violation of this act for any person, provider,
10 broker, or any other party related to the business of life settlements,
11 to commit a fraudulent life settlement act.

12 b. For criminal liability purposes, a person that commits a
13 fraudulent life settlement act is guilty of committing insurance
14 fraud and shall be subject to additional penalties under sections 72
15 through 74 of P.L.2003, c.89 (C.2C:21-4.5 through 2C:21-4.7).

16 c. The commissioner shall be empowered to levy a civil
17 penalty not exceeding \$10,000 and the amount of the claim for each
18 violation upon any person, including those persons and their
19 employees licensed pursuant to this act, who is found to have
20 committed a fraudulent life settlement act or violated any other
21 provision of this act. This penalty may be collected in a summary
22 proceeding pursuant to the "Penalty Enforcement Law of 1999,"
23 P.L.1999, c.274 (C.2A:58-10 et seq.).

24 d. The license of a person licensed under this act that commits
25 a fraudulent life settlement act shall be revoked for a period of at
26 least one year.

27
28 17. A violation of this act shall be considered an unfair trade
29 practice pursuant to N.J.S.17B:30-1 et seq. and shall be subject to
30 the penalties contained in N.J.S.17B:30-17.

31
32 18. The provisions of this act may not be waived by agreement.
33 No choice of law provision in a life settlement contract may be
34 utilized to prevent the application of this act to any settlement in
35 which a party to the settlement is a resident of this State.

36
37 19. a. A provider lawfully transacting business in this State prior
38 to the effective date of this act may continue to do so pending
39 approval or disapproval of that person's application for a license as
40 long as the application is filed with the commissioner not later than
41 30 days after publication by the commissioner of an application
42 form and instructions for licensure of providers pursuant to this act.
43 If the publication of the application form and instructions is prior to
44 the effective date of this act, then the filing of the application shall
45 not be later than 30 days after the effective date of this act. During
46 the time that an application is pending with the commissioner, the
47 applicant may use any form of life settlement contract that has been
48 filed with the commissioner pending approval thereof, so long as

1 that form is otherwise in compliance with the provisions of this act.
2 Any person transacting business in this State under this subsection
3 shall be obligated to comply with all other requirements of this act.

4 b. A person who has lawfully negotiated life settlement
5 contracts between any owner residing in this State and one or more
6 providers for at least one year immediately prior to the effective
7 date of this act may continue to do so pending approval or
8 disapproval of that person's application for a license as long as the
9 application is filed with the commissioner not later than 30 days
10 after publication by the commissioner of an application form and
11 instructions for licensure of brokers. If the publication of the
12 application form and instructions is prior to the effective date of this
13 act, then the filing of the application shall not be later than 30 days
14 after the effective date of this act. Any person transacting business
15 in this State under this subsection shall be obligated to comply with
16 all other requirements of this act.

17 c. A viatical settlement provider licensed and operating
18 pursuant to the "Viatical Settlements Act," P.L.2005, c.229
19 (C.17B:30B-1 et seq.) immediately prior to the effective date of this
20 act may continue to do so pending approval or disapproval of an
21 application for a license pursuant to this act.

22

23 20. The commissioner shall promulgate regulation
24 implementation of the provisions of this act pursuant to the
25 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
26 seq.).

27

28 21. Section 2 of P.L.1967, c.93 (C.49:3-49) is amended to read
29 as follows:

30 2. When used in this act, unless the context requires otherwise:

31 (a) "Bureau" means the agency designated in subsection (a) of
32 section 19 of P.L.1967, c.93 (C.49:3-66);

33 (b) "Agent" means any individual other than a broker-dealer,
34 who represents a broker-dealer or issuer in effecting or attempting
35 to effect purchases or sales of securities. "Agent" does not include
36 an individual who represents an issuer in (1) effecting transactions
37 in a security exempted by paragraph (1), (2), (3), or (11) of
38 subsection (a) of section 3 of P.L.1967, c.93 (C.49:3-50); (2)
39 effecting transactions exempted by subsection (b) of section 3 of
40 P.L.1967, c.93 (C.49:3-50); (3) effecting transactions with existing
41 employees, partners, or directors of the issuer, if no commission or
42 other remuneration is paid or given directly or indirectly for
43 soliciting any person in this State; or (4) a broker-dealer in effecting
44 transactions in this State limited to those transactions described in
45 paragraph (2) of subsection (h) of section 15 of the "Securities
46 Exchange Act of 1934," 15 U.S.C. s.78o(h)(2); or (5) such other
47 persons not otherwise within the intent of this subsection (b), as the
48 bureau chief may by rule or order designate. A partner, officer, or

1 director of a broker-dealer or issuer, or a person occupying a similar
2 status or performing similar functions, is an agent only if he
3 otherwise comes within this definition. The bureau chief may by
4 rule or order, as to any transaction, waive the requirement of agent
5 registration. The bureau chief may by rule define classes of persons
6 as "agents," if those persons are regulated as "agents" by the
7 Securities and Exchange Commission or any self-regulatory
8 organization established pursuant to the laws of the United States;

9 (c) "Broker-dealer" means any person engaged in the business
10 of effecting or attempting to effect transactions in securities for the
11 accounts of others or for his own account. "Broker-dealer" does not
12 include (1) an agent, (2) an issuer, (3) a person who effects
13 transactions in this State exclusively in securities described in
14 paragraphs (1) and (2) of subsection (a) of section 3 of P.L.1967,
15 c.93 (C.49:3-50), (4) a bank, savings institution, or trust company,
16 or (5) a person who effects transactions in this State exclusively
17 with or through (i) the issuers of the securities involved in the
18 transactions, (ii) other broker-dealers, (iii) banks, savings
19 institutions, trust companies, insurance companies, investment
20 companies as defined in the "Investment Company Act of 1940,"
21 pension or profit-sharing trusts, or other financial institutions or
22 institutional buyers, whether acting for themselves or as trustees or
23 (iv) such other persons not otherwise within the intent of this
24 subsection (c), as the bureau chief may by rule or order designate;

25 (d) "Capital" shall mean net capital, as defined and adjusted
26 under the formula established by the Securities and Exchange
27 Commission in Rule 15c3-1, 17 C.F.R. s.240.15c3-1, made pursuant
28 to the "Securities Exchange Act of 1934," prescribing a minimum
29 permissible ratio of aggregate indebtedness to net capital as such
30 formula presently exists or as it may hereafter be amended;

31 (e) "Fraud," "deceit," and "defraud" are not limited to common-
32 law fraud or deceit. "Fraud," "deceit" and "defraud" in addition to
33 the usual construction placed on these terms and accepted in courts
34 of law and equity, shall include the following, provided, however,
35 that any promise, representation, misrepresentation or omission be
36 made with knowledge and with intent to deceive or with reckless
37 disregard for the truth and results in a detriment to the purchaser or
38 client of an investment adviser:

39 (1) Any misrepresentation by word, conduct or in any manner of
40 any material fact, either present or past, and any omission to
41 disclose any such fact;

42 (2) Any promise or representation as to the future which is
43 beyond reasonable expectation or is unwarranted by existing
44 circumstances;

45 (3) The gaining of, or attempt to gain, directly or indirectly,
46 through a trade in any security, a commission, fee or gross profit so
47 large and exorbitant as to be unconscionable, unreasonable or in
48 violation of any law, regulation, rule, order or decision of the

1 Securities and Exchange Commission, or the bureau chief; or to the
2 extent that such law, regulation, rule or order directly applies to the
3 person involved, the gaining of, or attempt to gain, directly or
4 indirectly, through a trade in any security, a commission, fee or
5 gross profit so large and exorbitant as to be in violation of any law,
6 regulation, rule, order or decision of any other state or Canadian
7 securities administrator, or any self-regulatory organization
8 established pursuant to the laws of the United States;

9 (4) Generally any course of conduct or business which is
10 calculated or put forward with intent to deceive the public or the
11 purchaser of any security or investment advisory services as to the
12 nature of any transaction or the value of such security;

13 (5) Any artifice, agreement, device or scheme to obtain money,
14 profit or property by any of the means herein set forth or otherwise
15 prohibited by this act;

16 (f) "Guaranteed" means guaranteed as to payment of principal,
17 interest or dividends;

18 (g) (1) "Investment adviser" means:

19 (i) any person who, for direct or indirect compensation, engages
20 in the business of advising others, either directly or through
21 publications or writings, as to the value of securities or as to the
22 advisability of investing in, purchasing, selling or holding
23 securities, or who, for compensation and as a part of a regular
24 business, issues or promulgates analyses or reports concerning
25 securities; and

26 (ii) any financial planner and other person who provides
27 investment advisory services to others for compensation and as part
28 of a business or who holds himself out as providing investment
29 advisory services to others for compensation.

30 (2) "Investment adviser " does not include:

31 (i) a bank, savings institution, or trust company;

32 (ii) a lawyer, accountant, engineer, or teacher whose
33 performance of these services is solely incidental to the practice or
34 conduct of the profession and who does not hold himself out as
35 providing investment advisory or financial planning services, and
36 who receives no special compensation for those investment
37 advisory or financial planning services;

38 (iii) a broker-dealer registered under this act;

39 (iv) a publisher of any bona fide newspaper, news magazine, or
40 business or financial publication of general, regular, and paid
41 circulation;

42 (v) a person whose advice, analyses, or reports relate only to
43 securities exempted by paragraphs (1) and (2) of subsection (a) of
44 section 3 of P.L.1967, c.93 (C.49:3-50);

45 (vi) a person whose only clients in this State are other investment
46 advisers, any person that is registered as an "investment adviser"
47 under section 203 of the "Investment Advisers Act of 1940," 15
48 U.S.C. s.80b-3, or excluded from the definition of an "investment

1 adviser" under paragraph (11) of subsection (a) of section 202 of
2 the "Investment Advisers Act of 1940," 15 U.S.C. s.80b-2(a)(11),
3 broker-dealers, banks, bank holding companies, savings institutions,
4 trust companies, insurance companies, investment companies as
5 defined in the "Investment Company Act of 1940," pension or
6 profit-sharing trusts, or other financial institutions or institutional
7 buyers, whether acting for themselves or as trustees;

8 (vii) any person that is registered as an "investment adviser"
9 under section 203 of the "Investment Advisers Act of 1940," 15
10 U.S.C. s.80b-3, or excluded from the definition of an "investment
11 adviser" under paragraph (11) of subsection (a) of section 202 of
12 the "Investment Advisers Act of 1940," 15 U.S.C. s.80b-2(a)(11);

13 (viii) an investment adviser representative; or

14 (ix) such other persons not otherwise within the intent of this
15 subsection (g) as the bureau chief may by rule or order designate.

16 Subject to applicable federal law, the bureau chief may by rule
17 limit the exclusions set out in this paragraph (2), except for those
18 exclusions provided in subparagraph (i) of paragraph (2).

19 For purposes of this act, "investment advisory services" means
20 those services rendered by an "investment adviser" as defined in
21 this subsection;

22 (h) "Issuer" means any person who issues or proposes to issue
23 any security, except that (1) with respect to certificates of deposit,
24 voting-trust certificates, or collateral-trust certificates, or with
25 respect to certificates of interest or shares in an unincorporated
26 investment trust not having a board of directors (or persons
27 performing similar functions) or of the fixed, restricted
28 management, or unit type, the term "issuer" means the person or
29 persons performing the acts and assuming the duties of depositor or
30 manager pursuant to the provisions of the trust or other agreement
31 or instrument under which the security is issued; and (2) with
32 respect to certificates of interest in oil, gas, or mining titles or
33 leases, there is not considered to be any "issuer";

34 (i) "Person" means an individual, a corporation, a partnership,
35 an association, a joint-stock company, a trust where the interests of
36 the beneficiaries are evidenced by a security, an unincorporated
37 organization, a government, or a political subdivision of a
38 government;

39 (j) (1) "Sale" or "sell" includes every contract of sale of, contract
40 to sell, or disposition of, a security or interest in a security or
41 investment advisory services for value;

42 (2) "Offer" or "offer to sell" includes every attempt or offer to
43 dispose of, or solicitation of any offer to buy, a security or interest
44 in a security or investment advisory services for value;

45 (3) Any security given or delivered with, or as a bonus on
46 account of, any purchase of securities or any other thing is
47 considered to constitute part of the subject of the purchase and to
48 have been offered and sold for value;

1 (4) A purported gift of assessable stock is considered to involve
2 an offer and sale;

3 (5) Every sale or offer of a warrant or right to purchase or
4 subscribe to another security of the same or another issuer, as well
5 as every sale or offer of a security which gives the holder a present
6 or future right or privilege to convert into another security of the
7 same or another issuer, is considered to include an offer of the other
8 security;

9 (6) The terms defined in this subsection (j) do not include (i)
10 any bona fide pledge or loan; (ii) any stock dividend, whether the
11 corporation distributing the dividend is the issuer of the stock or
12 not, if nothing of value is given by stockholders for the dividend
13 other than the surrender of a right to a cash or property dividend
14 when each stockholder may elect to take the dividend in cash or
15 property or in stock; (iii) any act incident to a class vote by
16 stockholders, pursuant to the certificate of incorporation or the
17 applicable corporation statute, on a merger, consolidation,
18 reclassification of securities, or sale of corporate assets in
19 consideration of the issuance of securities of another corporation; or
20 (iv) any act incident to a judicially approved reorganization in
21 which a security is issued in exchange for one or more outstanding
22 securities, claims, or property interests, or partly in such exchange
23 and partly for cash;

24 (k) "Savings institutions" shall mean any savings and loan
25 association or building and loan association operating pursuant to
26 the "Savings and Loan Act (1963)," P.L.1963, c.144 (C.17:12B-2 et
27 seq.), and any federal savings and loan association and any
28 association or credit union organized under the laws of the United
29 States or of any state whose accounts are insured by a federal
30 corporation or agency;

31 (l) "Securities Act of 1933," 15 U.S.C. s.77a et seq.; "Securities
32 Exchange Act of 1934," 15 U.S.C. s.78a et seq.; "Public Utility
33 Holding Company Act of **[1935]** 2005," **[15 U.S.C. s.79 et seq.]**
34 42 U.S.C. 16451 et seq.; "Investment Advisers Act of 1940," 15
35 U.S.C. s.80b-1 et seq.; "Investment Company Act of 1940," 15
36 U.S.C. s.80a-1 et seq.; and "Commodity Exchange Act," 7 U.S.C.
37 s.1 et seq. mean the federal statutes of those names;

38 (m) "Security" means any note; stock; treasury stock; bond;
39 debenture; evidence of indebtedness; certificate of interest or
40 participation in any profit-sharing agreement, including, but not
41 limited to, certificates of interest or participation in real or personal
42 property; collateral-trust certificate; preorganization certificate or
43 subscription; transferable share; investment contract; voting-trust
44 certificate; certificate of deposit for a security; certificate of interest
45 in an oil, gas or mining title or lease; a viatical investment; or, in
46 general, any interest or instrument commonly known as a
47 "security," or any certificate of interest or participation in,
48 temporary or interim certificate for, guarantee of, or warrant or

1 right to subscribe to or purchase, any of the foregoing. "Security"
2 does not include any insurance or endowment policy or annuity
3 contract under which an insurance company promises to pay a fixed
4 or variable number of dollars either in a lump sum or periodically
5 for life or some other specified period;

6 (n) "State" means any state, territory, or possession of the
7 United States, as well as the District of Columbia and Puerto Rico;

8 (o) "Nonissuer" means secondary trading not involving the
9 issuer of the securities or any person in a control relationship with
10 the issuer;

11 (p) "Accredited investor" means any person who is an
12 "accredited investor" as defined by paragraph (15) of subsection
13 **[(15)] (a)** of section 2 of the "Securities Act of 1933," 15 U.S.C.
14 s.77b(a)(15), and 17 C.F.R. s.230.215 and s.230.501 or any
15 successor rule promulgated pursuant to that act.

16 The bureau chief may rule, or order, waive or modify the
17 conditions in this subsection (p) and shall interpret and apply this
18 subsection (p) so as to effectuate greater uniformity and
19 coordination in federal-state securities registration exemptions;

20 (q) "Direct participation security" means a security which
21 provides for flow-through tax consequences (tax shelter), regardless
22 of the structure of the legal entity or vehicle for distribution,
23 including, but not limited to, a security representing an interest in
24 gas, oil, real estate, agricultural property, cattle, a condominium, a
25 Subchapter S corporation, a limited liability company and all other
26 securities of a similar nature, regardless of the industry represented
27 by the security, or any combination thereof. Excluded from this
28 definition are real estate investment trusts, tax qualified pension and
29 profit-sharing plans pursuant to sections 401 and 403(a) of the
30 Internal Revenue Code of 1986, 26 U.S.C. ss.401 and 403(a), and
31 individual retirement plans under section 408 of the Internal
32 Revenue Code of 1986, 26 U.S.C. s.408, tax sheltered annuities
33 pursuant to the provisions of section 403(b) of the Internal Revenue
34 Code of 1986, 26 U.S.C. s.403(b), and any company including
35 separate accounts registered pursuant to the "Investment Company
36 Act of 1940;"

37 (r) "Blind pool" means an offering of securities in which, as to
38 65% or more of the proceeds of the offering, the prospectus
39 discloses no specific purpose to which the proceeds of the offering
40 will be put, or the prospectus discloses no specific assets to be
41 purchased, projects to be undertaken, or business to be conducted,
42 except for:

43 (1) an offering of securities to provide working capital for an
44 operating company (as opposed to a development stage company);

45 (2) an offering of securities by an investment company
46 registered under the "Investment Company Act of 1940," including
47 a business development company; or

1 (3) an offering of securities by a small business investment
2 company licensed by the Small Business Administration or a
3 business development company within the meaning of the
4 "Investment Advisers Act of 1940;"

5 (s) "Investment adviser representative" means any person,
6 including, but not limited to, a partner, officer, or director, or a
7 person occupying a similar status or performing similar functions,
8 or other individual, except clerical or ministerial personnel, who is
9 employed by or associated with an investment adviser registered
10 under this act, or who has a place of business located in this State
11 and is employed by or associated with a person registered or
12 required to be registered as an investment adviser under section 203
13 of the "Investment Advisers Act of 1940," 15 U.S.C. s.80b-3; and
14 who does any of the following:

15 (1) makes any recommendations or otherwise renders advice
16 regarding securities if the person has direct advisory client contact;

17 (2) manages accounts or portfolios of clients;

18 (3) determines recommendations or advice regarding securities;

19 (4) solicits, offers or negotiates for the sale of or sells
20 investment advisory services; or

21 (5) directly supervises any investment adviser representative or
22 the supervisors of those investment adviser representatives.
23 "Investment adviser representative" does not include a broker-
24 dealer or an agent;

25 (t) "Institutional buyer" includes, but is not limited to, a
26 "qualified institutional buyer" as defined in SEC Rule 144A, 17
27 C.F.R. s.230.144A;

28 (u) "Willful" or "willfully" means a person who acts
29 intentionally in the sense that the person is aware of what he is
30 doing;

31 (v) "Federal covered security" means any security described as a
32 covered security in subsection (b) of section 18 of the "Securities
33 Act of 1933," 15 U.S.C. s.77r(b);

34 (w) "Viatical investment" means the contractual right to receive
35 any portion of the death benefit or ownership of a life insurance
36 policy or certificate, for consideration that is less than the expected
37 death benefit of the life insurance policy or certificate. Viatical
38 investment does not include:

39 (1) (i) any transaction between a viator and a viatical settlement
40 provider as defined by the "Viatical Settlements Act", P.L.2005,
41 c.229 (C.17B:30B-1 et al.); or

42 (ii) any transaction between an owner and a provider as defined
43 by the "Life Settlements Act," P.L. , c. (C.) (pending
44 before the Legislature as this bill);

45 (2) (i) any transfer of ownership or beneficial interest in a life
46 insurance policy from a viatical settlement provider to another
47 viatical settlement provider as defined in the "Viatical Settlements
48 Act", P.L.2005, c.229 (C.17B:30B-1 et al.) or to any legal entity

1 formed solely for the purpose of holding ownership or beneficial
2 interest in a life insurance policy or policies; or

3 (ii) any transfer of ownership or beneficial interest in a life
4 insurance policy from one provider to another provider as defined
5 in the "Life Settlements Act," P.L. , c. (C.) (pending before
6 the Legislature as this bill) or to any legal entity formed solely for
7 the purpose of holding ownership or beneficial interest in a life
8 insurance policy or policies;

9 (3) the bona fide assignment of a life insurance policy to a bank,
10 savings bank, savings and loan association, credit union, or other
11 licensed lending institution as collateral for a loan;

12 (4) the exercise of accelerated benefits pursuant to the terms of a
13 life insurance policy issued in accordance with the provisions of
14 Title 17B of the New Jersey Statutes; or

15 (5) a loan by a life insurance company pursuant to the terms of
16 the life insurance contract.

17 (cf: P.L.2005, c.229, s.18)

18
19 22. Sections 1 through 17 of P.L.2005, c.229 (C.17B:30B-1 et
20 al.) are repealed.

21
22 23. This act shall take effect on the 90th day next following
23 enactment.

24 25 26 STATEMENT

27
28 This bill, the "Life Settlements Act," regulates the business of
29 life settlements in this State, and as part of that regulation, prohibits
30 stranger-originated life insurance or "STOLI."

31 A life settlement is a written agreement for the sale or transfer of
32 an existing life insurance policy, while the insured or owner is still
33 alive, for an amount less than the expected death benefit of the
34 policy, but for more than the cash surrender value, or any
35 accelerated death benefit available at that time. Stranger-originated
36 life insurance, or STOLI, is a practice in which a life insurance
37 policy is purchased for the benefit of a third party investor who, at
38 the time of policy origination, has no insurable interest in the life of
39 the insured. Insurable interest, under long standing insurance law,
40 generally requires that a person applying for a life insurance policy
41 have an interest in the continued life of the insured, usually
42 because the insured is a blood relative or because an economic
43 relationship exists between the parties. Thus, STOLI transactions
44 offend traditional concepts of life insurance, and may in fact
45 involve fraud perpetrated against the insured, often a senior citizen,
46 and the life insurer.

47 Life settlements have also sometimes been referred to as
48 "viatical settlements." The bill also repeals the existing "Viatical

1 Settlements Act," P.L.2005, c.229 (C.17B:30B-1 et seq.) and
2 replaces it with this new statutory scheme.

3 The bill defines a "life settlement contract" as a written
4 agreement between a provider and an owner of a life insurance
5 policy, establishing the terms of compensation. "Stranger-originated
6 life insurance" or "STOLI" is defined as an act or practice to
7 initiate the issuance of a life insurance policy for the benefit of a
8 third party investor who has no insurable interest in the life of the
9 insured at the time of policy origination.

10 The bill establishes licensing requirements for life settlement
11 brokers and providers. A broker negotiates life settlement contracts
12 between owners or insureds, and providers. A provider is the
13 person who is "buying" the policy and who enters into the life
14 settlement contract with the owner.

15 Life insurance producers licensed with a life insurance line of
16 authority in this State are considered to meet the licensing
17 qualifications under the bill to operate as a broker. Brokers, other
18 than life insurance producers, must complete 15 hours of training
19 relating to life settlements on a biennial basis. A viatical settlement
20 provider licensed and operating pursuant to the "Viatical
21 Settlements Act" immediately prior to the effective date of this bill
22 may continue to do so pending approval or disapproval of an
23 application for a license pursuant to this bill.

24 Life settlement contract forms to be used in the State must be
25 filed with and approved by the Commissioner of Banking and
26 Insurance, in a manner consistent with that used for life insurance
27 forms.

28 The bill requires life settlement providers to file an annual
29 statement with the commissioner which includes the total number,
30 aggregate face amount, and life settlement proceeds of policies
31 settled during the preceding calendar year, for all policies settled
32 within five years of policy issuance in which the insured is a
33 resident of this State. These reporting requirements are intended to
34 enable regulators to identify and stop STOLI transactions.

35 The commissioner is authorized to investigate the business of
36 any licensee or licensee applicant, and may issue subpoenas,
37 administer oaths and examine persons under oath as to any matter
38 pertinent to an examination.

39 Brokers and producers may advertise, so long as these
40 advertisements are accurate, truthful and not misleading. The
41 marketing of a life insurance policy for the sole purpose of settling
42 the policy is prohibited, as is the use of words such as "free" or "no
43 cost" in the marketing of life insurance policies.

44 The bill requires certain disclosures concerning life settlement
45 contracts no later than the date the contract is signed. These include
46 disclosures by the provider to the owner/insured as to the
47 availability of any alternatives to a life settlement allowing for
48 access to a cash payout from the policy, possible tax ramifications,

1 and other consequences of entering into a life settlement. Brokers
2 are required to provide owners and providers with disclosures
3 concerning all offers, acceptances and rejections relating to the
4 proposed life settlement, any affiliation or contractual arrangement
5 between the broker and any and all providers, and a reconciliation
6 of the transaction, including commissions and fees. The bill also
7 allows insurers to inquire in an application for life insurance as to
8 whether the proposed owner intends to pay premiums with the
9 assistance of financing from a lender that will use the policy as
10 collateral to support the financing of the policy. In this way, the
11 proposed owner's disclosures can also become a tool in detecting
12 fraudulent life settlement practices, including STOLI.

13 The bill generally prohibits entering into a life settlement
14 contract during the two-year period after the date of issuance of a
15 life insurance policy except under certain circumstances, such as the
16 result of the exercise of conversion rights from another policy, or if
17 the owner is terminally ill, the owner's spouse dies, the owner
18 divorces, or certain other similar circumstances.

19 The bill provides that the owner may terminate a life settlement
20 contract within 15 days of the date of execution of the contract and
21 receipt of all disclosures and requires the provider to pay the
22 proceeds of the settlement to an escrow or trust account within three
23 business days after receipt of documents necessary to effect the
24 transfer of the policy.

25 The bill defines a fraudulent life settlement act and enumerates
26 various practices that constitute fraudulent life settlement acts. It
27 establishes civil penalties for violations, as well as providing for
28 injunctions, and suspension and revocation of licenses, as
29 appropriate. In addition, a violation of the bill shall also be
30 considered an unfair trade practice and be subject to the penalties
31 established therefor. A civil action for damages may be maintained
32 by any person damaged as the result of a violation of the bill and in
33 the event of a willful violation, the court may award statutory
34 damages in an amount up to three times of the actual damage
35 award.

36 Through these licensing and reporting requirements, the
37 disclosures on the part of brokers, providers and owners, and its
38 investigation and enforcement provisions, the bill provides new
39 measures to detect and prevent STOLI. At the same time, it creates
40 a comprehensive regulatory scheme for the transaction of life
41 settlements.