

ASSEMBLY, No. 376

STATE OF NEW JERSEY

214th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2010 SESSION

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. (New section) This act shall be known and may be cited as
9 the "Life Settlements Act."

10
11 2. (New section) 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;

- 1 (vii) The solicitation, offer, or effectuation of a life settlement
- 2 contract or insurance policy;
- 3 (viii) The issuance of written evidence of a life settlement
- 4 contract or insurance policy;
- 5 (ix) Any application for, or the existence of, or any payments
- 6 related to, a loan secured directly or indirectly by any interest in a
- 7 life insurance policy; or
- 8 (x) Entering into any practice or plan which involves stranger-
- 9 originated life insurance or STOLI.
- 10 (b) If the insurer has requested such disclosure, failing to
- 11 disclose to the insurer that the prospective insured has undergone a
- 12 life expectancy evaluation by any person or entity other than the
- 13 insurer or its authorized representatives in connection with the
- 14 issuance of the policy.
- 15 (c) Employing any device, scheme, or artifice to defraud in the
- 16 business of life settlements.
- 17 (d) In the solicitation, application or issuance of a life insurance
- 18 policy, employing any device, scheme or artifice in violation of
- 19 state insurable interest laws.
- 20 (2) In the furtherance of a fraud or to prevent the detection of a
- 21 fraud, any person commits or permits its employees or its agents to:
- 22 (a) Remove, conceal, alter, destroy or sequester from the
- 23 commissioner the assets or records of a licensee or other person
- 24 engaged in the business of life settlements;
- 25 (b) Misrepresent or conceal the financial condition of a licensee,
- 26 financing entity, insurer or other person;
- 27 (c) Transact the business of life settlements in violation of laws
- 28 requiring a license, certificate of authority or other legal authority
- 29 for the transaction of the business of life settlements;
- 30 (d) File with the commissioner or the chief insurance regulatory
- 31 official of another jurisdiction a document containing false
- 32 information or otherwise concealing information about a material
- 33 fact from the commissioner;
- 34 (e) Engage in embezzlement, theft, misappropriation or
- 35 conversion of monies, funds, premiums, credits or other property of
- 36 a provider, insurer, insured, owner, insurance policy owner or any
- 37 other person engaged in the business of life settlements or
- 38 insurance;
- 39 (f) Knowingly and with intent to defraud, enter into, broker, or
- 40 otherwise deal in a life settlement contract, the subject of which is a
- 41 life insurance policy that was obtained by presenting false
- 42 information concerning any fact material to the policy or by
- 43 concealing, for the purpose of misleading another, information
- 44 concerning any fact material to the policy, if the owner or the
- 45 owner's agent intended to defraud the policy's issuer;

1 (g) Attempt to commit, assist, aid or abet in the commission of,
2 or conspiracy to commit the acts or omissions specified in this
3 subsection; or

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

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

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

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

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

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

30 (1) "Life settlement contract" also includes the transfer for
31 compensation or value of ownership or beneficial interest in a trust
32 or other entity that owns that policy if the trust or other entity was
33 formed or availed of for the principal purpose of acquiring one or
34 more life insurance policies, which life insurance policy insures the
35 life of a person residing in this State.

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

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

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

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

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

- 1 (iii) The owner agrees on the date of the premium finance loan to
2 sell the policy or any portion of its death benefit on any date
3 following the issuance of the policy.
- 4 (3) "Life settlement contract" does not include:
- 5 (a) A policy loan by a life insurance company pursuant to the
6 terms of the life insurance policy or accelerated death provisions
7 contained in the life insurance policy, whether issued with the
8 original policy or as a rider;
- 9 (b) A premium finance loan, as defined in this section, or any
10 loan made by a licensed financial institution, provided that neither
11 default on that loan nor the transfer of the policy in connection with
12 that default is made pursuant to an agreement or understanding with
13 any other person for the purpose of evading regulation under this
14 act;
- 15 (c) A collateral assignment of a life insurance policy by an
16 owner;
- 17 (d) A loan made by a lender that does not violate the "Insurance
18 Premium Finance Company Act," P.L.1968, c.221 (C.17:16D-1 et
19 seq.) so long as that loan is not described in paragraph (1) above,
20 and is not otherwise within the definition of a life settlement
21 contract;
- 22 (e) An agreement in which all the parties:
- 23 (i) Are closely related to the insured by blood or law; or
24 (ii) Have a lawful substantial economic interest in the continued
25 life, health and bodily safety of the person insured; or
26 (iii) Are trusts established primarily for the benefit of such
27 parties;
- 28 (f) Any designation, consent or agreement by an insured who is
29 an employee of an employer in connection with the purchase by the
30 employer, or trust established by the employer, of life insurance on
31 the life of the employee;
- 32 (g) A bona fide business succession planning arrangement:
- 33 (i) Between one or more shareholders in a corporation or
34 between a corporation and one or more of its shareholders or one or
35 more trusts established by its shareholders;
- 36 (ii) Between one or more partners in a partnership or between a
37 partnership and one or more of its partners or one or more trusts
38 established by its partners; or
- 39 (iii) Between one or more members in a limited liability
40 company or between a limited liability company and one or more of
41 its members or one or more trusts established by its members;
- 42 (h) An agreement entered into by a service recipient, or a trust
43 established by the service recipient, and a service provider, or a
44 trust established by the service provider, who performs significant
45 services for the service recipient's trade or business; or

1 (i) Any other contract, transaction or arrangement that the
2 commissioner determines is not of the type intended to be regulated
3 by this act.

4 "Net death benefit" means the amount of the life insurance policy
5 or certificate to be settled, less any outstanding debts or liens.

6 "Owner" means the owner of a life insurance policy or a
7 certificate holder under a group policy, with or without a terminal
8 illness, who enters or seeks to enter into a life settlement contract.
9 For the purposes of this act, an owner shall not be limited to an
10 owner of a life insurance policy or a certificate holder under a group
11 policy that insures the life of an individual with a terminal or
12 chronic illness or condition except where specifically addressed.

13 The term "owner" does not include:

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

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

18 (3) A financing entity;

19 (4) A special purpose entity; or

20 (5) A related provider trust.

21 "Patient identifying information" means an insured's address,
22 telephone number, facsimile number, electronic mail address,
23 photograph or likeness, employer, employment status, Social
24 Security number, or any other information that is likely to lead to
25 the identification of the insured.

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

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

33 "Person" means any natural person or legal entity, including but
34 not limited to, a partnership, a limited liability partnership, limited
35 liability company, association, trust or corporation.

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

38 A "provider" does not include:

39 (1) Any bank, savings bank, savings and loan association, credit
40 union;

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

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

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

6 (5) A purchaser;

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

10 (7) A financing entity;

11 (8) A special purpose entity;

12 (9) A related provider trust;

13 (10) A broker; or

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

20 "Purchased policy" means a life insurance policy or group
21 certificate that has been acquired by a provider pursuant to a life
22 settlement contract.

23 "Purchaser" means a person who pays compensation or anything
24 of value as consideration for a beneficial interest in a trust which is
25 vested with, or for the assignment, transfer or sale of, an ownership
26 or other interest in a life insurance policy or a certificate issued
27 pursuant to a group life insurance policy which has been the subject
28 of a life settlement contract.

29 "Related provider trust" means a titling trust or other trust
30 established by a licensed provider or a financing entity for the sole
31 purpose of holding the ownership or beneficial interest in purchased
32 policies in connection with a financing transaction. The trust shall
33 have a written agreement with the licensed provider under which
34 the licensed provider is responsible for ensuring compliance with
35 all statutory and regulatory requirements and under which the trust
36 agrees to make all records and files relating to life settlement
37 transactions available to the commissioner as if those records and
38 files were maintained directly by the licensed provider.

39 "Settled policy" means a life insurance policy or certificate that
40 has been acquired by a provider pursuant to a life settlement
41 contract.

42 "Special purpose entity" means a corporation, partnership,
43 limited liability partnership, trust, limited liability company, or
44 other legal entity formed solely to provide, either directly or
45 indirectly, access to institutional capital markets:

46 For a financing entity or provider; or

1 (1) In connection with a transaction in which the securities in
2 the special purpose entity are acquired by the owner or by a
3 qualified institutional buyer as defined in Rule 144A (17 C.F.R.
4 230.144A) of The federal "Securities Act of 1933," title I of
5 Pub.L.73-22 (15 U.S.C. s.77a et seq.) as amended; or

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

8 "Stranger-originated life insurance" or "STOLI" means an act,
9 practice, or plan to initiate a life insurance policy for the benefit of
10 a third party investor who, at the time of policy origination, has no
11 insurable interest in the life of the insured. STOLI practices include
12 but are not limited to cases in which life insurance is purchased
13 with resources or guarantees from or through a person, or entity,
14 who, at the time of policy inception, could not lawfully initiate the
15 policy himself or itself, and where, at the time of policy inception,
16 there exists an arrangement or agreement, whether verbal or written,
17 to transfer directly or indirectly, the ownership of that policy or the
18 policy benefits to a third party. Trusts that are created to give the
19 appearance of insurable interest, and are used to initiate policies for
20 investors, violate insurable interest laws and the prohibition against
21 wagering on life. STOLI arrangements do not include those
22 practices set forth in paragraph (2) of the definition of "life
23 settlement contract" in this section.

24 "Terminally ill" means having an illness or sickness that can
25 reasonably be expected to result in death in 24 months or less.
26

27 3. (New section) a. A person shall not act as a provider or
28 broker with an owner or multiple owners who is a resident of this
29 State, without first obtaining a license from the commissioner. If
30 there is more than one owner on a single policy and the owners are
31 residents of different states, the life settlement contract shall be
32 governed by the law of the state in which the owner having the
33 largest percentage ownership resides or, if the owners hold equal
34 ownership, the state of residence of one owner agreed upon in
35 writing by all owners.

36 b. Application for a provider, or broker, license shall be made
37 to the commissioner by the applicant on a form prescribed by the
38 commissioner, and the application shall be accompanied by a fee in
39 an amount established by the commissioner, provided, however,
40 that the license and renewal fees for a provider license shall be
41 reasonable and that the license and renewal fees for a broker license
42 shall not exceed those established for an insurance producer, as
43 those fees are otherwise provided for in this act.

44 c. A life insurance producer who has been duly licensed as a
45 resident insurance producer with a life insurance line of authority in
46 this State or his or her home state for at least one year and is
47 licensed as a nonresident producer in this State shall be deemed to

1 meet the licensing requirements of this section and shall be
2 permitted to operate as a broker.

3 d. Not later than 30 days from the first day of operating as a
4 broker, the life insurance producer shall notify the commissioner
5 that he or she is acting as a broker on a form prescribed by the
6 commissioner, and shall pay any applicable fee to be determined by
7 the commissioner. Notification shall include an acknowledgement
8 by the life insurance producer that he or she will operate as a broker
9 in accordance with this act.

10 e. The insurer that issued the policy that is the subject of a life
11 settlement contract shall not be responsible for any act or omission
12 of a broker or provider or purchaser arising out of or in connection
13 with the life settlement transaction, unless the insurer receives
14 compensation for the placement of a life settlement contract from
15 the provider or purchaser or broker in connection with the life
16 settlement contract.

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

23 g. Licenses may be renewed annually on the anniversary date
24 upon payment of the periodic renewal fee. Failure to pay the fee
25 within the terms prescribed shall result in the automatic revocation
26 of the license requiring periodic renewal.

27 h. The term of a provider license shall be equal to that of a
28 domestic stock life insurance company and the term of a broker
29 license shall be equal to that of an insurance producer license.
30 Licenses requiring periodic renewal may be renewed on their
31 anniversary date upon payment of the periodic renewal fee as
32 specified in subsection b. of this section. Failure to pay the fees on
33 or before the renewal date shall result in expiration of the license.

34 i. The applicant shall provide information as required by the
35 commissioner on forms prepared by the commissioner. The
36 commissioner shall have authority, at any time, to require an
37 applicant to fully disclose the identity of its stockholders (except
38 stockholders owning fewer than ten percent of the shares of an
39 applicant whose shares are publicly traded), partners, officers and
40 employees, and the commissioner may, in the exercise of the
41 commissioner's sole discretion, refuse to issue such a license in the
42 name of any person if not satisfied that any officer, employee,
43 stockholder or partner thereof who may materially influence the
44 applicant's conduct meets the standards of sections 1 to 14 of this
45 act.

46 j. A license issued to a partnership, corporation or other entity
47 authorizes all members, officers and designated employees to act as

1 a licensee under the license, if those persons are named in the
2 application and any supplements to the application.

3 k. Upon the filing of an application and the payment of the
4 license fee, the commissioner shall make an investigation of each
5 applicant and may issue a license if the commissioner finds that the
6 applicant:

7 (1) If a provider, has provided a detailed plan of operation;

8 (2) Is competent and trustworthy and intends to transact its
9 business in good faith;

10 (3) Has a good business reputation and has had experience,
11 training or education so as to be qualified in the business for which
12 the license is applied;

13 (4) If the applicant is a legal entity, is formed or organized
14 pursuant to the laws of this State or is a foreign legal entity
15 authorized to transact business in this State, or provides a certificate
16 of good standing from the state of its domicile; and

17 (5) Has provided to the commissioner an anti-fraud plan that
18 meets the requirements of section 13 of this act and includes:

19 (a) A description of the procedures for detecting and
20 investigating possible fraudulent acts and procedures for resolving
21 material inconsistencies between medical records and insurance
22 applications;

23 (b) A description of the procedures for reporting fraudulent
24 insurance acts to the commissioner;

25 (c) A description of the plan for anti-fraud education and
26 training of its underwriters and other personnel; and

27 (d) A written description or chart outlining the arrangement of
28 the anti-fraud personnel who are responsible for the investigation
29 and reporting of possible fraudulent insurance acts and investigating
30 unresolved material inconsistencies between medical records and
31 insurance applications.

32 l. The commissioner shall not issue any license to any
33 nonresident applicant, unless a written designation of an agent for
34 service of process is filed and maintained with the commissioner or
35 the applicant has filed with the commissioner the applicant's written
36 irrevocable consent that any action against the applicant may be
37 commenced against the applicant by service of process on the
38 commissioner.

39 m. Each licensee shall file with the commissioner on or before
40 the first day of March of each year an annual statement containing
41 that information which the commissioner prescribes by rule.

42 n. A provider may not use any person to perform the functions
43 of a broker as defined in this act unless the person holds a current,
44 valid license as a broker.

45 o. A broker may not use any person to perform the functions of
46 a provider as defined in this act unless that person holds a current,
47 valid license as a provider.

1 p. A provider or broker shall provide to the commissioner new
2 or revised information about officers, stockholders holding ten
3 percent or more of the outstanding shares of the corporation,
4 partners, directors, members or designated employees within 30
5 days of the change.

6 q. An individual licensed as a broker shall complete on a
7 biennial basis 15 hours of training related to life settlements and life
8 settlement transactions, as required by the commissioner; provided,
9 however, that a life insurance producer who is operating as a broker
10 pursuant to this section shall not be subject to the requirements of
11 this subsection. Any person failing to meet the requirements of this
12 subsection shall be subject to the penalties imposed by the
13 commissioner.

14

15 4. (New section) a. The commissioner may refuse to issue,
16 suspend, revoke or refuse to renew the license of any licensee if the
17 commissioner finds that:

18 (1) There was any material misrepresentation in the application
19 for the license;

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

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

26 (4) The licensee no longer meets the requirements for initial
27 licensure;

28 (5) The licensee or any officer, partner, member or director has
29 been convicted of a felony, or of any misdemeanor of which
30 criminal fraud is an element; or the licensee has pleaded guilty or
31 nolo contendere with respect to any felony or any misdemeanor of
32 which criminal fraud or moral turpitude is an element, regardless of
33 whether a judgment of conviction has been entered by the court;

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

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

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

1 (9) The licensee or any officer, partner, member or key
2 management personnel has violated any of the provisions of this
3 act.

4 b. Before the commissioner denies a license application or
5 suspends, revokes or refuses to renew the license of any licensee
6 under this act, the commissioner shall conduct a hearing in
7 accordance with the "Administrative Procedure Act," P.L.1968,
8 c.410 (C.52:14B-1 et seq.).
9

10 5. (New section) a. A person shall not use any form of life
11 settlement contract in this State unless it has been filed with and
12 approved, if required, by the commissioner in a manner that
13 conforms with the filing procedures and any time restrictions or
14 deeming provisions, if any, for life insurance forms, policies and
15 contracts.

16 b. No insurer may, as a condition of responding to a request for
17 verification of coverage or in connection with the transfer of a
18 policy pursuant to a life settlement contract, require that the owner,
19 insured, provider or broker sign any form, disclosure, consent,
20 waiver or acknowledgment that has not been expressly approved by
21 the commissioner for use in connection with life settlement
22 contracts in this State.

23 c. A person shall not use a life settlement contract form or
24 provide to an owner a disclosure statement form in this State unless
25 first filed with and approved by the commissioner. The
26 commissioner shall disapprove a life settlement contract form or
27 disclosure statement form if, in the commissioner's opinion, the
28 contract or provisions contained therein fail to meet the
29 requirements of sections 9 through 11 and subsection d. of section
30 14 of this act, or are unreasonable, contrary to the interests of the
31 public, or otherwise misleading or unfair to the owner.

32 d. At the commissioner's discretion, the commissioner may
33 require the submission of advertising material to determine
34 compliance with section 8 of this act.
35

36 6. (New section) a. For any policy settled within five years of
37 policy issuance, each provider shall file with the commissioner on
38 or before March 1 of each year an annual statement containing that
39 information as to settled policies which the commissioner may
40 prescribe by regulation. In addition to any other requirements, the
41 annual statement shall specify the total number, aggregate face
42 amount and life settlement proceeds of policies settled during the
43 immediately preceding calendar year, together with a breakdown of
44 the information by policy issue year. The annual statement shall
45 also include the names of the insurance companies whose policies
46 have been settled and the brokers that have settled said policies.

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

6 (2) Every provider that willfully fails to file an annual statement
7 as required in this section, or willfully fails to reply within 30 days
8 to a written inquiry by the commissioner in connection therewith,
9 shall, in addition to other penalties provided by this act, be subject,
10 upon due notice and opportunity to be heard, to a penalty of up to
11 \$250 per day of delay, not to exceed \$25,000 in the aggregate, for
12 each such failure.

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

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

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

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

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

35 (5) Is necessary to allow the provider or broker or their
36 authorized representatives to make contacts for the purpose of
37 determining health status. For the purposes of this paragraph, the
38 term "authorized representative" shall not include any person who
39 has or may have any financial interest in the settlement contract
40 other than a provider, licensed broker, financing entity, related
41 provider trust or special purpose entity. A provider or broker shall
42 require its authorized representative to agree in writing to adhere to
43 the privacy provisions of this act; or

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

45 c. Non-public personal information solicited or obtained in
46 connection with a proposed or actual life settlement contract shall
47 be subject to the provisions applicable to financial institutions under

1 the federal "Gramm-Leach-Bliley Act," title V of Pub.L.106-102,
2 (15 U.S.C. s.6801 et seq.) and all other state and federal laws
3 relating to confidentiality of non-public personal information.
4

5 7. (New section) a. The commissioner may, when he deems it
6 reasonably necessary to protect the interests of the public, examine
7 the business and affairs of any licensee or applicant for a license.
8 The commissioner may order any licensee or applicant to produce
9 any records, books, files or other information reasonably necessary
10 to ascertain whether that licensee or applicant is acting or has acted
11 in violation of the law or otherwise contrary to the interests of the
12 public. The expenses incurred in conducting any examination shall
13 be paid by the licensee or applicant.

14 b. In lieu of an examination under this act of any foreign or
15 alien licensee licensed in this State, the commissioner may, at his
16 discretion, accept an examination report on the licensee as prepared
17 by the commissioner for the licensee's state of domicile or port-of-
18 entry state.

19 c. Names and individual identification data, for all owners and
20 insureds shall be considered private and confidential information
21 and shall not be disclosed by the commissioner unless required by
22 law.

23 d. Records of all consummated transactions and life settlement
24 contracts shall be maintained by the provider for three years after
25 the death of the insured and shall be available to the commissioner
26 for inspection during reasonable business hours.

27 e. (1) Upon determining that an examination should be
28 conducted, the commissioner shall issue an examination warrant
29 appointing one or more examiners to perform the examination and
30 instructing them as to the scope of the examination. In conducting
31 the examination, the examiner shall use methods common to the
32 examination of any life settlement licensee and should use those
33 guidelines and procedures set forth in an examiners' handbook
34 adopted by a national organization.

35 (2) Every licensee or person from whom information is sought,
36 its officers, directors and agents, shall provide to the examiners
37 timely, convenient and free access at all reasonable hours at its
38 offices to all books, records, accounts, papers, documents, assets
39 and computer or other recordings relating to the property, assets,
40 business and affairs of the licensee being examined. The officers,
41 directors, employees and agents of the licensee or person shall
42 facilitate the examination and aid in the examination so far as it is
43 in their power to do. The refusal of a licensee, by its officers,
44 directors, employees or agents, to submit to examination or to
45 comply with any reasonable written request of the commissioner
46 shall be grounds for suspension or refusal of, or nonrenewal of any
47 license or authority held by the licensee to engage in the life

1 settlement business or other business subject to the commissioner's
2 jurisdiction. Any proceedings for suspension, revocation or refusal
3 of any license or authority shall be conducted pursuant to the
4 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
5 seq.).

6 (3) The commissioner shall have the power to issue subpoenas,
7 to administer oaths and to examine under oath any person as to any
8 matter pertinent to the examination. Upon the failure or refusal of a
9 person to obey a subpoena, the commissioner may petition a court
10 of competent jurisdiction, and upon proper showing, the court may
11 enter an order compelling the witness to appear and testify or
12 produce documentary evidence.

13 (4) When making an examination under this act, the
14 commissioner may retain attorneys, appraisers, independent
15 actuaries, independent certified public accountants or other
16 professionals and specialists as examiners, the reasonable cost of
17 which shall be borne by the licensee that is the subject of the
18 examination.

19 (5) Nothing contained in this act shall be construed to limit the
20 commissioner's authority to terminate or suspend an examination in
21 order to pursue other legal or regulatory action pursuant to the
22 insurance laws of this State. Findings of fact and conclusions made
23 pursuant to any examination shall be prima facie evidence in any
24 legal or regulatory action.

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

32 f. (1) Examination reports shall be comprised of only facts
33 appearing upon the books, from the testimony of its officers or
34 agents or other persons examined concerning its affairs, and those
35 conclusions and recommendations which the examiners find
36 reasonably warranted from the facts.

37 (2) No later than 60 days following completion of the
38 examination, the examiner in charge shall file with the
39 commissioner a verified written report of examination under oath.
40 Upon receipt of the verified report, the commissioner shall transmit
41 the report to the licensee examined, together with a notice that shall
42 afford the licensee examined a reasonable opportunity of not more
43 than 30 days to make a written submission or rebuttal with respect
44 to any matters contained in the examination report and which shall
45 become part of the report or to request a hearing on any matter in
46 dispute.

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

4 g. (1) Names and individual identification data for all owners,
5 purchasers, and insureds shall be considered private and
6 confidential information and shall not be disclosed by the
7 commissioner, unless the disclosure is to another regulator or is
8 required by law.

9 (2) Except as otherwise provided in this act, all examination
10 reports, working papers, recorded information, documents and
11 copies thereof produced by, obtained by or disclosed to the
12 commissioner or any other person in the course of an examination
13 made under this act, or in the course of analysis or investigation by
14 the commissioner of the financial condition or market conduct of a
15 licensee shall be confidential by law and privileged, shall not be
16 subject to any State or federal freedom of information law, shall not
17 be subject to subpoena, and shall not be subject to discovery or
18 admissible in evidence in any private civil action. The
19 commissioner is authorized to use the documents, materials or other
20 information in the furtherance of any regulatory or legal action
21 brought as part of the commissioner's official duties. The licensee
22 being examined may have access to all documents used to make the
23 report.

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

30 (a) An owner;

31 (b) An insured in a life settlement contract or insurance policy;
32 or

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

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

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

46 (2) No cause of action shall arise, nor shall any liability be
47 imposed against any person for the act of communicating or

1 delivering information or data to the commissioner or the
2 commissioner's authorized representative or examiner pursuant to
3 an examination made under this act, if the act of communication or
4 delivery was performed in good faith and without fraudulent intent
5 or the intent to deceive. This paragraph shall not abrogate or modify
6 in any way any common law or statutory privilege or immunity
7 heretofore enjoyed by any person identified in paragraph (1) of this
8 subsection.

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

17 j. The commissioner may investigate suspected fraudulent life
18 settlement acts and persons engaged in the business of life
19 settlements.
20

21 8. (New section) a. A broker or provider licensed pursuant to
22 this act may conduct or participate in advertisements within this
23 State. These advertisements shall comply with the provision of
24 chapter 30 of Title 17B of the New Jersey Statutes and all rules and
25 regulations promulgated by the commissioner that are applicable to
26 life insurers or to brokers and providers licensed pursuant to this
27 act.

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

30 c. No person or trust shall:

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

34 (2) Use the words "free," "no cost" or words of similar import in
35 the marketing, advertising, soliciting or otherwise promoting of the
36 purchase of a policy.
37

38 9. (New section) a. The provider shall provide in writing, in a
39 separate document that is signed by the owner and provider, the
40 following information to the owner no later than the date the life
41 settlement contract is signed by all parties:

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

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

- 1 (3) The fact that the proceeds from a life settlement contract
2 could be subject to the claims of creditors;
- 3 (4) The fact that receipt of proceeds from a life settlement
4 contract may adversely affect the recipients' eligibility for public
5 assistance or other government benefits or entitlements and that
6 advice should be obtained from the appropriate agencies;
- 7 (5) The fact that the owner has a right to terminate a life
8 settlement contract within 15 days of the date it is executed by all
9 parties and the owner has received the disclosures contained herein.
10 Rescission, if exercised by the owner, is effective only if both
11 notice of the rescission is given, and the owner repays all proceeds
12 and any premiums, loans, and loan interest paid on account of the
13 provider within the rescission period. If the insured dies during the
14 rescission period, the contract shall be deemed to have been
15 rescinded subject to repayment by the owner or the owner's estate
16 of all proceeds and any premiums, loans, and loan interest to the
17 provider;
- 18 (6) The fact that proceeds will be sent to the owner within three
19 business days after the provider has received the insurer or group
20 administrator's acknowledgement that ownership of the policy or
21 interest in the certificate has been transferred and the beneficiary
22 has been designated in accordance with the terms of the life
23 settlement contract;
- 24 (7) The fact that entering into a life settlement contract may
25 cause other rights or benefits, including conversion rights and
26 waiver of premium benefits that may exist under the policy or
27 certificate of a group policy, to be forfeited by the owner and that
28 assistance should be sought from a professional financial advisor;
- 29 (8) The amount and method of calculating the compensation
30 paid or to be paid to the broker, or any other person acting for the
31 owner in connection with the transaction, wherein the term
32 compensation includes anything of value paid or given;
- 33 (9) The date by which the funds will be available to the owner
34 and the transmitter of the funds;
- 35 (10) The fact that the commissioner shall require delivery of a
36 buyer's guide or a similar consumer advisory package in the form
37 prescribed by the commissioner to owners during the solicitation
38 process;
- 39 (11) The disclosure document shall contain the following
40 language:
- 41 "All medical, financial or personal information
42 solicited or obtained by a provider or broker about an
43 insured, including the insured's identity or the
44 identity of family members, a spouse or a significant
45 other may be disclosed as necessary to effect the life
46 settlement contract between the owner and provider.
47 If you are asked to provide this information, you will

1 be asked to consent to the disclosure. The
2 information may be provided to someone who buys
3 the policy or provides funds for the purchase. You
4 may be asked to renew your permission to share
5 information every two years.";

6 (12) Separate signed fraud warnings by the provider and broker
7 on their respective applications and life settlement contracts as
8 follows:

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

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

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

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

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

28 (17) The name, business address, and telephone number of the
29 independent third party escrow agent, and the fact that the owner
30 may inspect or receive copies of the relevant escrow or trust
31 agreements or documents;

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

36 b. The written disclosures shall be conspicuously displayed in
37 any life settlement contract furnished to the owner by a provider,
38 including any affiliations or contractual arrangements between the
39 provider and the broker.

40 c. A broker shall provide the owner and the provider with at
41 least the following disclosures no later than the date the life
42 settlement contract is signed by all parties. The disclosures shall be
43 conspicuously displayed in the life settlement contract or in a
44 separate document signed by the owner and provide the following
45 information:

46 (1) The name, business address and telephone number of the
47 broker;

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

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

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

11 (5) A complete reconciliation of the gross offer or bid by the
12 provider to the net amount of proceeds or value to be received by
13 the owner. For the purpose of this paragraph, "gross offer or bid"
14 means the total amount or value offered by the provider for the
15 purchase of one or more life insurance policies, including
16 commissions and fees; and

17 d. The failure to provide the disclosures or rights described in
18 this section shall be an unfair trade practice pursuant to section 17
19 of this act.
20

21 10. (New section) Without limiting the ability of an insurer to
22 assess the insurability of a policy applicant and determine whether
23 to issue the policy, and in addition to other questions an insurance
24 carrier may lawfully pose to a life insurance applicant, insurance
25 carriers may inquire in the application for insurance whether the
26 proposed owner intends to pay premiums with the assistance of
27 financing from a lender that will use the policy as collateral to
28 support the financing.

29 a. If the loan provides funds which can be used for a purpose
30 other than paying for the premiums, costs, and expenses associated
31 with obtaining and maintaining the life insurance policy and loan,
32 the application shall be rejected as a violation of section 13 of this
33 act.

34 b. If the financing does not violate subsection a. of this section
35 in this manner, the insurance carrier may make disclosures,
36 including but not limited to the following, to the applicant and the
37 insured, either on the application or an amendment to the
38 application to be completed no later than the date of delivery of the
39 policy:

40 "If you have entered into a loan arrangement where
41 the policy is used as collateral, and the policy does
42 change ownership at some point in the future in
43 satisfaction of the loan, the following may be true:

44 (1) A change of ownership could lead to a stranger
45 owning an interest in the insured's life;

46 (2) A change of ownership could in the future limit
47 your ability to purchase future insurance on the

- 1 insured's life because there is a limit to how much
2 coverage insurers will issue on one life;
- 3 (3) Should there be a change of ownership and you
4 wish to obtain more insurance coverage on the
5 insured's life in the future, the insured's higher issue
6 age, a change in health status, or other factors may
7 reduce the ability to obtain coverage or may result in
8 significantly higher premiums;
- 9 (4) You should consult a professional advisor, since a
10 change in ownership in satisfaction of the loan may
11 result in tax consequences to the owner, depending
12 on the structure of the loan."; and
- 13 c. In addition to the disclosures in subsection b. of this section,
14 the insurance carrier may require the following certifications, from
15 the applicant or the insured:
- 16 "(1) I have not entered into any agreement or
17 arrangement providing for the future sale of this life
18 insurance policy;
- 19 (2) My loan arrangement for this policy provides
20 funds sufficient to pay for some or all of the
21 premiums, costs, and expenses associated with
22 obtaining and maintaining my life insurance policy,
23 but I have not entered into any agreement by which I
24 am to receive consideration in exchange for
25 procuring this policy; and
- 26 (3) The borrower has an insurable interest in the
27 insured."
28
- 29 11. (New section) a. A provider entering into a life settlement
30 contract with any owner of a policy, wherein the insured is
31 terminally or chronically ill, shall first obtain:
- 32 (1) If the owner is the insured, a written statement from a
33 licensed attending physician that the owner is of sound mind and
34 under no constraint or undue influence to enter into a life settlement
35 contract; and
- 36 (2) A document in which the insured consents to the release of
37 his medical records to a provider, broker, or insurance producer
38 and, if the policy was issued less than two years from the date of
39 application for a life settlement contract, to the insurance company
40 that issued the policy.
- 41 b. The insurer shall respond to a request for verification of
42 coverage submitted by a provider, broker, or life insurance producer
43 not later than 30 calendar days after the date the request is received.
44 The request for verification of coverage shall be made on a form
45 approved by the commissioner. The insurer shall complete and
46 issue the verification of coverage or indicate in which respects it is
47 unable to respond. In its response, the insurer shall indicate

1 whether, based on the medical evidence and documents provided,
2 the insurer intends to pursue an investigation at that time regarding
3 the validity of the insurance contract.

4 c. Before or at the time of execution of the life settlement
5 contract, the provider shall obtain a witnessed document in which
6 the owner consents to the settlement contract, represents that the
7 owner has a full and complete understanding of the settlement
8 contract, that the owner has a full and complete understanding of
9 the benefits of the policy, acknowledges that the owner is entering
10 into the settlement contract freely and voluntarily, and, for persons
11 with a terminal or chronic illness or condition, acknowledges that
12 the insured has a terminal or chronic illness and that the terminal or
13 chronic illness or condition was diagnosed after the policy was
14 issued.

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

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

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

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

29 h. All medical information solicited or obtained by any
30 licensee shall be subject to the applicable provision of State law
31 relating to confidentiality of medical information, if not otherwise
32 provided in this act.

33 i. All life settlement contracts entered into in this State shall
34 provide that the owner may rescind the contract on or before the
35 15th day after the date it is executed by all parties to the contract.
36 Rescission, if exercised by the owner, is effective only if both
37 notice of the rescission is given, and the owner repays all proceeds
38 and any premiums, loans, and loan interest paid on account of the
39 provider within the rescission period. If the insured dies during the
40 rescission period, the contract shall be deemed to have been
41 rescinded subject to repayment by the owner or the owner's estate
42 of all proceeds and any premiums, loans, and loan interest to the
43 provider.

44 j. Within three business days after receipt from the owner of
45 documents to effect the transfer of the insurance policy, the
46 provider shall pay the proceeds of the settlement to an escrow or
47 trust account managed by a trustee or escrow agent in a state or

1 federally chartered financial institution pending acknowledgement
2 of the transfer by the issuer of the policy. The trustee or escrow
3 agent shall be required to transfer the proceeds due to the owner
4 within three business days of acknowledgement of the transfer from
5 the insurer.

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

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

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

21 n. No person, at any time prior to, or at the time of, the
22 application for, or issuance of, a policy, or during a two-year period
23 commencing with the date of issuance of the policy, shall enter into
24 a life settlement contract regardless of the date the compensation is
25 to be provided and regardless of the date the assignment, transfer,
26 sale, devise, bequest or surrender of the policy is to occur. This
27 prohibition shall not apply if the owner certifies to the provider that:

28 (1) The policy was issued upon the owner's exercise of
29 conversion rights arising out of a group or individual policy, if the
30 total of the time covered under the conversion policy plus the time
31 covered under the prior policy is at least 24 months. The time
32 covered under a group policy shall be calculated without regard to a
33 change in insurance carriers, so long as the coverage has been
34 continuous and under the same group sponsorship; or

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

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

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

43 (c) The owner's spouse dies;

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

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

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

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

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

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

24

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

34 b. A provider from this State who enters into a life settlement
35 contract with an owner who is a resident of another state that has
36 enacted statutes or adopted regulations governing a life settlement
37 contract shall be governed in the effectuation of that life settlement
38 contract by the statutes and regulations of the owner's state of
39 residence. If the state in which the owner is a resident has not
40 enacted statutes or regulations governing life settlement contracts,
41 the provider shall give the owner notice that neither state regulates
42 the transaction upon which he or she is entering. For transactions in
43 those states, however, the provider shall maintain all records
44 required if the transactions were executed in the state of residence.
45 The forms used in those states need not be approved by the
46 department.

1 c. If there is a conflict in the laws that apply to an owner and a
2 purchaser in any individual transaction, the laws of the state that
3 apply to the owner shall take precedence and the provider shall
4 comply with those laws.

5
6 13. (New section) It shall be a fraudulent life settlement act for
7 any person to:

8 a. Commit a fraudulent life settlement act as defined in section
9 2 of this act;

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

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

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

20 e. Issue, solicit, market or otherwise promote the purchase of
21 an insurance policy for the purpose of or with an emphasis on
22 settling the policy;

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

39 g. With respect to any settlement contract or insurance policy
40 and a broker, knowingly solicit an offer from, effectuate a life
41 settlement contract with, or make a sale to, any provider, financing
42 entity or related provider trust that is controlling, controlled by, or
43 under common control with that broker;

44 h. With respect to any life settlement contract or insurance
45 policy and a provider, knowingly enter into a life settlement
46 contract with an owner, if, in connection with that life settlement
47 contract, anything of value will be paid to a broker that is

1 controlling, controlled by, or under common control with, that
2 provider or the financing entity or related provider trust that is
3 involved in that settlement contract;

4 i. With respect to a provider, enter into a life settlement
5 contract unless the life settlement promotional, advertising and
6 marketing materials, as may be prescribed by regulation, have been
7 filed with the commissioner. In no event shall any marketing
8 materials expressly reference that the insurance is "free" for any
9 period of time. The inclusion of any reference in the marketing
10 materials that would cause an owner to reasonably believe that the
11 insurance is free for any period of time shall be considered a
12 violation of this act; or

13 j. With respect to any life insurance producer, insurance
14 company, broker, or provider make any statement or representation
15 to the applicant or policyholder in connection with the sale or
16 financing of a life insurance policy to the effect that the insurance is
17 free or without cost to the policyholder for any period of time
18 unless provided in the policy.

19
20 14. (New section) a. A person shall not commit a fraudulent
21 life settlement act.

22 b. A person shall not knowingly and intentionally interfere
23 with the enforcement of the provisions of this act or investigations
24 of suspected or actual violations of this act.

25 c. A person in the business of life settlements shall not
26 knowingly or intentionally permit any person convicted of a crime
27 involving dishonesty or breach of trust to participate in the business
28 of life settlements.

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

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

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

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

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

- 1 f. (1) No civil liability shall be imposed on and no cause of
2 action shall arise from a person's furnishing information concerning
3 suspected, anticipated or completed fraudulent life settlement acts
4 or suspected or completed fraudulent insurance acts, if the
5 information is provided to or received from:
- 6 (a) The commissioner or the commissioner's employees, agents
7 or representatives;
- 8 (b) Federal, state or local law enforcement or regulatory
9 officials or their employees, agents or representatives;
- 10 (c) A person involved in the prevention and detection of
11 fraudulent life settlement acts or that person's agents, employees or
12 representatives;
- 13 (d) Any regulatory body or their employees, agents or
14 representatives, overseeing life insurance, life settlements,
15 securities or investment fraud;
- 16 (e) The life insurer that issued the life insurance policy covering
17 the life of the insured; or
- 18 (f) The licensee and any agents, employees or representatives.
- 19 (2) Paragraph (1) of this subsection shall not apply to statements
20 made with actual malice. In an action brought against a person for
21 filing a report or furnishing other information concerning a
22 fraudulent life settlement act or a fraudulent insurance act, the party
23 bringing the action shall plead specifically any allegation that
24 paragraph (1) of the subsection does not apply because the person
25 filing the report or furnishing the information did so with actual
26 malice.
- 27 (3) A person identified in paragraph (1) of this subsection shall
28 be entitled to an award of attorney's fees and costs if he or she is
29 the prevailing party in a civil cause of action for libel, slander or
30 any other relevant tort arising out of activities in carrying out the
31 provisions of this act and the party bringing the action was not
32 substantially justified in doing so. For purposes of this paragraph a
33 proceeding is "substantially justified" if it had a reasonable basis in
34 law or fact at the time that it was initiated.
- 35 (4) This subsection shall not abrogate or modify common law or
36 statutory privileges or immunities enjoyed by a person described in
37 paragraph (1) of this subsection.
- 38 g. (1) The documents and evidence provided pursuant to
39 subsection e. of this section or obtained by the commissioner in an
40 investigation of suspected or actual fraudulent life settlement acts
41 shall be privileged and confidential and shall not be a public record
42 and shall not be subject to discovery or subpoena in a civil or
43 criminal action.
- 44 (2) Paragraph (1) of this subsection does not prohibit release by
45 the commissioner of documents and evidence obtained in an
46 investigation of suspected or actual fraudulent life settlement acts:

- 1 (a) In administrative or judicial proceedings to enforce laws
- 2 administered by the commissioner;
- 3 (b) To federal, State or local law enforcement or regulatory
- 4 agencies, to an organization established for the purpose of detecting
- 5 and preventing fraudulent life settlement acts or to the National
- 6 Association of Insurance Commissioners; or
- 7 (c) At the discretion of the commissioner, to a person in the
- 8 business of life settlements that is aggrieved by a fraudulent life
- 9 settlement act.
- 10 (3) Release of documents and evidence under paragraph (2) of
- 11 this subsection does not abrogate or modify the privilege granted in
- 12 paragraph (1) of this subsection.
- 13 h. Nothing in this act shall:
- 14 (1) Preempt the authority or relieve the duty of other law
- 15 enforcement or regulatory agencies to investigate, examine and
- 16 prosecute suspected violations of law;
- 17 (2) Preempt, supersede, or limit any provision of any State
- 18 securities law or any rule, order, or notice issued thereunder;
- 19 (3) Prevent or prohibit a person from disclosing voluntarily
- 20 information concerning life settlement fraud to a law enforcement
- 21 or regulatory agency other than the department; or
- 22 (4) Limit the powers granted elsewhere by the laws of this State
- 23 to the commissioner or an insurance fraud unit to investigate and
- 24 examine possible violations of law and to take appropriate action
- 25 against wrongdoers.
- 26 i. Providers and brokers shall have in place antifraud
- 27 initiatives reasonably calculated to detect, prosecute and prevent
- 28 fraudulent life settlement acts. At the discretion of the
- 29 commissioner, the commissioner may order, or a licensee may
- 30 request and the commissioner may grant, such modifications of the
- 31 following required initiatives as necessary to ensure an effective
- 32 antifraud program. The modifications may be more or less
- 33 restrictive than the required initiatives so long as the modifications
- 34 may reasonably be expected to accomplish the purpose of this
- 35 section. Antifraud initiatives shall include:
- 36 (1) Fraud investigators, who may be provider or broker
- 37 employees or independent contractors; and
- 38 (2) An antifraud plan, which shall be submitted to the
- 39 commissioner. The antifraud plan shall include, but not be limited
- 40 to:
- 41 (a) A description of the procedures for detecting and
- 42 investigating possible fraudulent life settlement acts and procedures
- 43 for resolving material inconsistencies between medical records and
- 44 insurance applications;
- 45 (b) A description of the procedures for reporting possible
- 46 fraudulent life settlement acts to the commissioner;

1 (c) A description of the plan for antifraud education and training
2 of underwriters and other personnel; and

3 (d) A description or chart outlining the organizational
4 arrangement of the antifraud personnel who are responsible for the
5 investigation and reporting of possible fraudulent life settlement
6 acts and investigating unresolved material inconsistencies between
7 medical records and insurance applications.

8 (3) Antifraud plans submitted to the commissioner shall be
9 privileged and confidential and shall not be a public record and
10 shall not be subject to discovery or subpoena in a civil or criminal
11 action.

12

13 15. (New section) a. In addition to the penalties and other
14 enforcement provisions of this act, if any person violates this act or
15 any rule or regulation implementing this act, the commissioner may
16 seek an injunction in a court of competent jurisdiction in the county
17 in which the person resides or has a principal place of business and
18 may apply for temporary and permanent orders that the
19 commissioner determines are necessary to restrain the person from
20 further committing the violation.

21 b. Any person damaged by the acts of another person in
22 violation of this act, or any rule or regulation implementing this act,
23 may bring a civil action for damages against the person committing
24 the violation in a court of competent jurisdiction. In the event of a
25 willful violation of this act, the trial court may award statutory
26 damages in an amount up to three times the actual damage award, in
27 addition to actual damages.

28 c. The commissioner may issue a cease and desist order upon a
29 person who violates any provision of this act, any rule or order
30 adopted by the commissioner, or any written agreement entered into
31 with the commissioner, in accordance with the "Administrative
32 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

33 d. When the commissioner finds that such an action presents an
34 immediate danger to the public and requires an immediate final
35 order, he may issue an emergency cease and desist order reciting
36 with particularity the facts underlying those findings. The
37 emergency cease and desist order shall be effective immediately
38 upon service of a copy of the order on the respondent and shall
39 remain in effect for 90 days. If the department begins non-
40 emergency cease and desist proceedings under subsection a. of this
41 section, the emergency cease and desist order shall remain in effect,
42 absent an order by a court of competent jurisdiction pursuant to the
43 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
44 seq.).

1 16. (New section) a. It shall be a violation of this act for any
2 person, provider, broker, or any other party related to the business
3 of life settlements, to commit a fraudulent life settlement act.

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

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

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

19
20 17. (New section) A violation of this act shall be considered an
21 unfair trade practice pursuant to N.J.S.17B:30-1 et seq. and shall be
22 subject to the penalties contained in N.J.S.17B:30-17.

23
24 18. (New section) The provisions of this act may not be waived
25 by agreement. No choice of law provision in a life settlement
26 contract may be utilized to prevent the application of this act to any
27 settlement in which a party to the settlement is a resident of this
28 State.

29
30 19. (New section) a. A provider lawfully transacting business in
31 this State prior to the effective date of this act may continue to do
32 so pending approval or disapproval of that person's application for
33 a license as long as the application is filed with the commissioner
34 not later than 30 days after publication by the commissioner of an
35 application form and instructions for licensure of providers pursuant
36 to this act. If the publication of the application form and
37 instructions is prior to the effective date of this act, then the filing
38 of the application shall not be later than 30 days after the effective
39 date of this act. During the time that an application is pending with
40 the commissioner, the applicant may use any form of life settlement
41 contract that has been filed with the commissioner pending approval
42 thereof, so long as that form is otherwise in compliance with the
43 provisions of this act. Any person transacting business in this State
44 under this subsection shall be obligated to comply with all other
45 requirements of this act.

46 b. A person who has lawfully negotiated life settlement
47 contracts between any owner residing in this State and one or more

1 providers for at least one year immediately prior to the effective
2 date of this act may continue to do so pending approval or
3 disapproval of that person's application for a license as long as the
4 application is filed with the commissioner not later than 30 days
5 after publication by the commissioner of an application form and
6 instructions for licensure of brokers. If the publication of the
7 application form and instructions is prior to the effective date of this
8 act, then the filing of the application shall not be later than 30 days
9 after the effective date of this act. Any person transacting business
10 in this State under this subsection shall be obligated to comply with
11 all other requirements of this act.

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

17
18 20. (New section) The commissioner shall promulgate
19 regulation implementation of the provisions of this act pursuant to
20 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
21 seq.).

22
23 21. Section 2 of P.L.1967, c.93 (C.49:3-49) is amended to read
24 as follows:

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

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

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

1 registration. The bureau chief may by rule define classes of persons
2 as "agents," if those persons are regulated as "agents" by the
3 Securities and Exchange Commission or any self-regulatory
4 organization established pursuant to the laws of the United States;

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

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

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

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

38 (2) Any promise or representation as to the future which is
39 beyond reasonable expectation or is unwarranted by existing
40 circumstances;

41 (3) The gaining of, or attempt to gain, directly or indirectly,
42 through a trade in any security, a commission, fee or gross profit so
43 large and exorbitant as to be unconscionable, unreasonable or in
44 violation of any law, regulation, rule, order or decision of the
45 Securities and Exchange Commission, or the bureau chief; or to the
46 extent that such law, regulation, rule or order directly applies to the
47 person involved, the gaining of, or attempt to gain, directly or

- 1 indirectly, through a trade in any security, a commission, fee or
2 gross profit so large and exorbitant as to be in violation of any law,
3 regulation, rule, order or decision of any other state or Canadian
4 securities administrator, or any self-regulatory organization
5 established pursuant to the laws of the United States;
- 6 (4) Generally any course of conduct or business which is
7 calculated or put forward with intent to deceive the public or the
8 purchaser of any security or investment advisory services as to the
9 nature of any transaction or the value of such security;
- 10 (5) Any artifice, agreement, device or scheme to obtain money,
11 profit or property by any of the means herein set forth or otherwise
12 prohibited by this act;
- 13 (f) "Guaranteed" means guaranteed as to payment of principal,
14 interest or dividends;
- 15 (g) (1) "Investment adviser" means:
- 16 (i) any person who, for direct or indirect compensation, engages
17 in the business of advising others, either directly or through
18 publications or writings, as to the value of securities or as to the
19 advisability of investing in, purchasing, selling or holding
20 securities, or who, for compensation and as a part of a regular
21 business, issues or promulgates analyses or reports concerning
22 securities; and
- 23 (ii) any financial planner and other person who provides
24 investment advisory services to others for compensation and as part
25 of a business or who holds himself out as providing investment
26 advisory services to others for compensation.
- 27 (2) "Investment adviser " does not include:
- 28 (i) a bank, savings institution, or trust company;
- 29 (ii) a lawyer, accountant, engineer, or teacher whose
30 performance of these services is solely incidental to the practice or
31 conduct of the profession and who does not hold himself out as
32 providing investment advisory or financial planning services, and
33 who receives no special compensation for those investment
34 advisory or financial planning services;
- 35 (iii) a broker-dealer registered under this act;
- 36 (iv) a publisher of any bona fide newspaper, news magazine, or
37 business or financial publication of general, regular, and paid
38 circulation;
- 39 (v) a person whose advice, analyses, or reports relate only to
40 securities exempted by paragraphs (1) and (2) of subsection (a) of
41 section 3 of P.L.1967, c.93 (C.49:3-50);
- 42 (vi) a person whose only clients in this State are other investment
43 advisers, any person that is registered as an "investment adviser"
44 under section 203 of the "Investment Advisers Act of 1940," 15
45 U.S.C. s.80b-3, or excluded from the definition of an "investment
46 adviser" under paragraph (11) of subsection (a) of section 202 of
47 the "Investment Advisers Act of 1940," 15 U.S.C. s.80b-2(a)(11),

1 broker-dealers, banks, bank holding companies, savings institutions,
2 trust companies, insurance companies, investment companies as
3 defined in the "Investment Company Act of 1940," pension or
4 profit-sharing trusts, or other financial institutions or institutional
5 buyers, whether acting for themselves or as trustees;

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

11 (viii) an investment adviser representative; or

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

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

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

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

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

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

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

43 (3) Any security given or delivered with, or as a bonus on
44 account of, any purchase of securities or any other thing is
45 considered to constitute part of the subject of the purchase and to
46 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,

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

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

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

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

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

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

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

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

- 1 (2) an offering of securities by an investment company
2 registered under the "Investment Company Act of 1940," including
3 a business development company; or
- 4 (3) an offering of securities by a small business investment
5 company licensed by the Small Business Administration or a
6 business development company within the meaning of the
7 "Investment Advisers Act of 1940;"
- 8 (s) "Investment adviser representative" means any person,
9 including, but not limited to, a partner, officer, or director, or a
10 person occupying a similar status or performing similar functions,
11 or other individual, except clerical or ministerial personnel, who is
12 employed by or associated with an investment adviser registered
13 under this act, or who has a place of business located in this State
14 and is employed by or associated with a person registered or
15 required to be registered as an investment adviser under section 203
16 of the "Investment Advisers Act of 1940," 15 U.S.C. s.80b-3; and
17 who does any of the following:
- 18 (1) makes any recommendations or otherwise renders advice
19 regarding securities if the person has direct advisory client contact;
- 20 (2) manages accounts or portfolios of clients;
- 21 (3) determines recommendations or advice regarding securities;
- 22 (4) solicits, offers or negotiates for the sale of or sells
23 investment advisory services; or
- 24 (5) directly supervises any investment adviser representative or
25 the supervisors of those investment adviser representatives.
26 "Investment adviser representative" does not include a broker-
27 dealer or an agent;
- 28 (t) "Institutional buyer" includes, but is not limited to, a
29 "qualified institutional buyer" as defined in SEC Rule 144A, 17
30 C.F.R. s.230.144A;
- 31 (u) "Willful" or "willfully" means a person who acts
32 intentionally in the sense that the person is aware of what he is
33 doing;
- 34 (v) "Federal covered security" means any security described as a
35 covered security in subsection (b) of section 18 of the "Securities
36 Act of 1933," 15 U.S.C. s.77r(b);
- 37 (w) "Viatical investment" means the contractual right to receive
38 any portion of the death benefit or ownership of a life insurance
39 policy or certificate, for consideration that is less than the expected
40 death benefit of the life insurance policy or certificate. Viatical
41 investment does not include:
- 42 (1) (i) any transaction between a viator and a viatical settlement
43 provider as defined by the "Viatical Settlements Act", P.L.2005,
44 c.229 (C.17B:30B-1 et al.); or
- 45 (ii) any transaction between an owner and a provider as defined
46 by the "Life Settlements Act," P.L. , c. (C.) (pending
47 before the Legislature as this bill);

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

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

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

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

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

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

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

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

STATEMENT

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

A life settlement is a written agreement for the sale or transfer of an existing life insurance policy, while the insured or owner is still alive, for an amount less than the expected death benefit of the policy, but for more than the cash surrender value, or any accelerated death benefit available at that time. Stranger-originated life insurance, or STOLI, is a practice in which a life insurance policy is purchased for the benefit of a third party investor who, at the time of policy origination, has no insurable interest in the life of the insured. Insurable interest, under long standing insurance law, generally requires that a person applying for a life insurance policy have an interest in the continued life of the insured, usually because the insured is a blood relative or because an economic relationship exists between the parties. Thus, STOLI transactions offend traditional concepts of life insurance, and may in fact

1 involve fraud perpetrated against the insured, often a senior citizen,
2 and the life insurer.

3 Life settlements have also sometimes been referred to as
4 "viatical settlements." The bill also repeals the existing "Viatical
5 Settlements Act," P.L.2005, c.229 (C.17B:30B-1 et seq.) and
6 replaces it with this new statutory scheme.

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

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

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

28 Life settlement contract forms to be used in the State must be
29 filed with and approved by the Commissioner of Banking and
30 Insurance, in a manner consistent with that used for life insurance
31 forms.

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

39 The commissioner is authorized to investigate the business of
40 any licensee or licensee applicant, and may issue subpoenas,
41 administer oaths and examine persons under oath as to any matter
42 pertinent to an examination.

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

1 The bill requires certain disclosures concerning life settlement
2 contracts no later than the date the contract is signed. These include
3 disclosures by the provider to the owner/insured as to the
4 availability of any alternatives to a life settlement allowing for
5 access to a cash payout from the policy, possible tax ramifications,
6 and other consequences of entering into a life settlement. Brokers
7 are required to provide owners and providers with disclosures
8 concerning all offers, acceptances and rejections relating to the
9 proposed life settlement, any affiliation or contractual arrangement
10 between the broker and any and all providers, and a reconciliation
11 of the transaction, including commissions and fees. The bill also
12 allows insurers to inquire in an application for life insurance as to
13 whether the proposed owner intends to pay premiums with the
14 assistance of financing from a lender that will use the policy as
15 collateral to support the financing of the policy. In this way, the
16 proposed owner's disclosures can also become a tool in detecting
17 fraudulent life settlement practices, including STOLI.

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

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

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

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