

# STATE OF NEW YORK

S. 9

A. 9

Twentieth Extraordinary Session

## SENATE - ASSEMBLY

November 16, 2009

IN SENATE -- Introduced by Sen. BRESLIN -- (at request of the Governor)  
-- read twice and ordered printed, and when printed to be committed to  
the Committee on Rules

IN ASSEMBLY -- Introduced by COMMITTEE ON RULES -- (at request of M. of  
A. Morelle, Spano, Weprin, Robinson, Fields, Destito, Hayes, Latimer,  
John) -- (at request of the Governor) -- read once and referred to the  
Committee on Insurance

AN ACT to amend the insurance law, in relation to the licensure of life  
settlement brokers and life settlement providers; to amend the penal  
law, in relation to life settlement fraud; to amend the banking law,  
in relation to premium finance agreements; and to repeal article 78 of  
the insurance law relating to viatical settlements

The People of the State of New York, represented in Senate and Assem-  
bly, do enact as follows:

1 Section 1. Subsection (a) of section 308 of the insurance law, as  
2 amended by chapter 11 of the laws of 2008, is amended to read as  
3 follows:

4 (a) (1) The superintendent may also address to any health maintenance  
5 organization, life settlement provider, life settlement intermediary or  
6 its officers, or any authorized insurer or rate service organization, or  
7 officers thereof, any inquiry in relation to its transactions or condi-  
8 tion or any matter connected therewith. Every corporation or person so  
9 addressed shall reply in writing to such inquiry promptly and truthful-  
10 ly, and such reply shall be, if required by the superintendent,  
11 subscribed by such individual, or by such officer or officers of a  
12 corporation, as [~~he~~] the superintendent shall designate, and affirmed by  
13 them as true under the penalties of perjury.

14 (2) In the event any corporation or person does not provide a good  
15 faith response to an inquiry from the superintendent pursuant to this  
16 section relating to accident insurance, health insurance, accident and

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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1 health insurance or health maintenance organization coverage or with  
2 respect to life settlements, within a time period specified by the  
3 superintendent of not less than fifteen business days, the superinten-  
4 dent is authorized to levy a civil penalty, after notice and hearing,  
5 against such corporation or person not to exceed five hundred dollars  
6 per day for each day beyond the date specified by the superintendent for  
7 response, but in no event shall such penalty exceed seven thousand five  
8 hundred dollars.

9 § 2. Section 2101 of the insurance law is amended by adding a new  
10 subsection (v) to read as follows:

11 (v) In this article, "life settlement broker" shall have the meaning  
12 contained in subsection (j) of section seven thousand eight hundred two  
13 of this chapter.

14 § 3. Paragraph 1 of subsection (a) of section 2102 of the insurance  
15 law, as amended by chapter 687 of the laws of 2003, is amended to read  
16 as follows:

17 (1) No person, firm, association or corporation shall act as an insur-  
18 ance producer [~~or~~], insurance adjuster or life settlement broker in this  
19 state without having authority to do so by virtue of a license issued  
20 and in force pursuant to the provisions of this chapter.

21 § 4. The section heading and subsections (a) and (b) of section 2110  
22 of the insurance law, as amended by chapter 687 of the laws of 2003, are  
23 amended to read as follows:

24 Revocation or suspension of license of insurance producer, insurance  
25 consultant [~~or~~], adjuster or life settlement broker. (a) The superinten-  
26 dent may refuse to renew, revoke, or may suspend for a period the super-  
27 intendent determines the license of any insurance producer, insurance  
28 consultant [~~or~~], adjuster or life settlement broker, if, after notice  
29 and hearing, the superintendent determines that the licensee or any  
30 sub-licensee has:

31 (1) violated any insurance laws, or violated any regulation, subpoena  
32 or order of the superintendent [~~of insurance~~] or of another state's  
33 insurance commissioner, or has violated any law in the course of his or  
34 her dealings in such capacity;

35 (2) provided materially incorrect, materially misleading, materially  
36 incomplete or materially untrue information in the license application;

37 (3) obtained or attempted to obtain a license through misrepresen-  
38 tation or fraud;

39 (4)(A) used fraudulent, coercive or dishonest practices;

40 (B) demonstrated incompetence;

41 (C) demonstrated untrustworthiness; or

42 (D) demonstrated financial irresponsibility in the conduct of business  
43 in this state or elsewhere;

44 (5) improperly withheld, misappropriated or converted any monies or  
45 properties received in the course of business in this state or else-  
46 where;

47 (6) intentionally misrepresented the terms of an actual or proposed  
48 insurance contract, life settlement contract or application for insur-  
49 ance;

50 (7) has been convicted of a felony;

51 (8) admitted or been found to have committed any insurance unfair  
52 trade practice or fraud;

53 (9) had an insurance producer license, a life settlement broker  
54 license, or its equivalent, denied, suspended or revoked in any other  
55 state, province, district or territory;

1 (10) forged another's name to an application for insurance or life  
2 settlement contract or to any document related to an insurance or life  
3 settlement transaction;

4 (11) improperly used notes or any other reference material to complete  
5 an examination for an insurance license or life settlement broker  
6 license;

7 (12) knowingly accepted insurance business from an individual who is  
8 not licensed;

9 (13) failed to comply with an administrative or court order imposing a  
10 child support obligation; [~~or~~]

11 (14) failed to pay state income tax or comply with any administrative  
12 or court order directing payment of state income tax[~~ing~~];

13 (15) while acting as a life settlement broker, failed to protect the  
14 privacy of the insured or owner or other person for whom the life  
15 settlement broker was required to provide protection pursuant to article  
16 seventy-eight of this chapter; or

17 (16) ceased to meet the requirements for licensure under this chapter.

18 (b) Before revoking or suspending the license of any insurance produc-  
19 er, life settlement broker or other licensee pursuant to the provisions  
20 of this article, the superintendent shall, except when proceeding pursu-  
21 ant to subsection (f) of this section, give notice to the licensee and  
22 to every sub-licensee and shall hold, or cause to be held, a hearing not  
23 less than ten days after the giving of such notice.

24 § 5. The section heading of section 2119 of the insurance law is  
25 amended and a new subsection (e) is added to read as follows:

26 Insurance agents, brokers, consultants, and life settlement brokers;  
27 written contract for compensation; excess charges prohibited.

28 (e)(1) No person licensed as a life settlement broker may receive any  
29 compensation for examining, appraising, reviewing or evaluating any life  
30 settlement contract or for making recommendations or giving advice with  
31 regard to such contract; or receive any compensation from any owner or  
32 proposed owner for or on account of the solicitation or negotiation of,  
33 or other services in connection with, any life settlement contract  
34 subject to this chapter or for any other services on account of such  
35 contract; unless such compensation is based upon a written memorandum  
36 signed by the party to be charged and specifying or clearly defining the  
37 amount or extent of such compensation. A copy of every such memorandum  
38 shall be retained by the licensee for not less than three years after  
39 such services have been fully performed.

40 (2) No person licensed as a life settlement broker may receive any  
41 compensation, direct or indirect, for or on account of the solicitation  
42 or negotiation of, or other services in connection with a life settle-  
43 ment contract subject to this chapter from any person for whom any such  
44 licensee has performed any related consulting service for which the  
45 licensee has received a fee or contracted to receive a fee within the  
46 preceding twelve months unless such compensation is provided for in the  
47 written memorandum required pursuant to paragraph one of this  
48 subsection.

49 (3) No person licensed as a life settlement broker may receive any  
50 compensation, direct or indirect, from a life settlement provider or any  
51 other person with respect to any life settlement contract if the life  
52 settlement broker has already received or will receive compensation,  
53 direct or indirect from, or on behalf of, the owner with respect to that  
54 life settlement contract.

1 § 6. Subsections (a) and (b) of section 2132 of the insurance law, as  
2 added by chapter 656 of the laws of 1992, are amended to read as  
3 follows:

4 (a) This section shall apply to resident and non-resident persons  
5 licensed pursuant to this article with respect to [~~the following types~~  
6 ~~of insurance~~]:

7 (1) life insurance, annuity contracts, variable annuity contracts and  
8 variable life insurance;

9 (2) sickness, accident and health insurance; [~~and~~]

10 (3) all lines of property and casualty insurance; ~~and~~

11 (4) life settlements.

12 (b) This section shall not apply to:

13 (1) those persons holding licenses for which an examination is not  
14 required by the laws of this state; [~~or~~]

15 (2) any limited licensees or any other licensees as the superintendent  
16 may exempt subject to any continuing education requirements deemed  
17 appropriate by the superintendent[~~;~~]; ~~or~~

18 (3) for purposes of the continuing education requirements for life  
19 settlements, an insurance producer with a life line of authority who is  
20 acting as a life settlement broker pursuant to section two thousand one  
21 hundred thirty-seven of this article.

22 § 7. The insurance law is amended by adding a new section 2137 to  
23 read as follows:

24 § 2137. Life settlement brokers; licensing. (a) The superintendent  
25 may issue a license to any individual, firm, association or corporation  
26 who or that has complied with the requirements of this chapter, author-  
27 izing the licensee to act as a life settlement broker.

28 (b) Any such license issued to a firm or association shall authorize  
29 only the members thereof, named in such license as sub-licensees, to act  
30 individually as life settlement brokers thereunder, and any such license  
31 issued to a corporation shall authorize only the officers and directors  
32 thereof, who are named in such license as sub-licensees, to act individ-  
33 ually as life settlement brokers thereunder. Every sub-licensee, acting  
34 as a life settlement broker pursuant to such a license shall be author-  
35 ized so to act only in the name of the licensee.

36 (c) Every individual applicant for a license under this section and  
37 every proposed sub-licensee shall be eighteen years of age or over at  
38 the time of the issuance of such license.

39 (d)(1) Before any original life settlement broker's license is issued,  
40 there shall be on file in the office of the superintendent an applica-  
41 tion by the proposed licensee in such form or forms, and supplements  
42 thereto, and containing information the superintendent prescribes. For  
43 each business entity, the sub-licensee or sub-licensees named in the  
44 application shall be designated responsible for the business entity's  
45 compliance with this chapter and regulations promulgated thereunder. The  
46 applicant shall fully disclose the identity of all stockholders (except  
47 stockholders owning fewer than ten percent of the voting shares of a  
48 life settlement broker whose shares are publicly traded), partners,  
49 officers, members, directors and persons with a controlling interest and  
50 the superintendent may, in the exercise of the superintendent's  
51 discretion, refuse to issue a license in the name of a legal entity if  
52 not satisfied that any employee, stockholder, partner, officer, member,  
53 director or person with a controlling interest thereof who may mate-  
54 rially influence the applicant's conduct meets the standards of this  
55 article and article seventy-eight of this chapter. Thereafter, the  
56 applicant and, if a license has been issued, the licensee, shall provide

1 to the superintendent new or revised information about stockholders  
2 (except stockholders owning fewer than ten percent of the voting shares  
3 of a life settlement broker whose shares are publicly traded), partners,  
4 officers, members, directors and persons with a controlling interest  
5 within thirty days of the change. For purposes of this section,  
6 "controlling interest" means a person who directly or indirectly, has  
7 the power to cause to be directed the management, control or activities  
8 of such licensee.

9 (2) The superintendent may require any individual named in the appli-  
10 cation for such license to submit a set of fingerprints, unless such  
11 applicant is licensed as an insurance producer with a life line of  
12 authority. Such fingerprints shall be submitted to the division of crim-  
13 inal justice services for a state criminal history record check, as  
14 defined in subdivision one of section three thousand thirty-five of the  
15 education law, and may be submitted to the federal bureau of investi-  
16 gation for a national criminal history record check. All such criminal  
17 history records sent to the superintendent pursuant to this paragraph  
18 shall be confidential pursuant to the applicable federal and state laws,  
19 rules and regulations, and shall not be published or in any way  
20 disclosed to persons other than the superintendent, unless otherwise  
21 authorized by law. The superintendent shall provide such applicant with  
22 a copy of his or her criminal history record, if any, together with a  
23 copy of article twenty-three-A of the correction law, and inform such  
24 applicant of his or her right to seek correction of any incorrect infor-  
25 mation contained in such record pursuant to regulations and procedures  
26 established by the division of criminal justice services. All determi-  
27 nations to grant or deny clearance for licensure pursuant to this  
28 section shall be in accordance with subdivision sixteen of section two  
29 hundred ninety-six of the executive law and article twenty-three-A of  
30 the correction law. When the superintendent denies an application,  
31 written notice of such determination shall be given to the prospective  
32 applicant who shall be afforded notice and the right to be heard and  
33 offer proof in opposition to such determination.

34 (e) The superintendent shall, in order to determine the competency of  
35 every individual applicant and of every proposed sub-licensee for the  
36 life settlement broker license, require such individual to submit to a  
37 personal written examination and to pass the same to the satisfaction of  
38 the superintendent. The examination shall be held at such times and  
39 places as the superintendent shall from time to time determine. Every  
40 individual applying to take any written examination shall, at the time  
41 of applying therefor, pay to the superintendent or, at the discretion of  
42 the superintendent, directly to any organization that is under contract  
43 to provide examination services, an examination fee of an amount that is  
44 the actual documented administrative cost of conducting said qualifying  
45 examination as certified by the superintendent from time to time. An  
46 examination fee represents an administrative expense and is not refunda-  
47 ble. The superintendent may accept, in lieu of any such examination, the  
48 result of any previous written examination, given by the superintendent,  
49 which in the superintendent's judgment, is equivalent to the examination  
50 for which it is substituted. No individual shall be deemed qualified to  
51 take the examination unless he or she shall have successfully completed  
52 a course or courses, approved by the superintendent.

53 (f)(1) No such written examination or prelicensing education shall be  
54 required:

55 (A) of any insurance producer with a life line of authority licensed  
56 in this state for at least one year;

1 (B) in the discretion of the superintendent, of any individual whose  
2 license has been revoked or suspended;

3 (C) of any applicant who has passed the written examination given by  
4 the superintendent for a life settlement broker's license and was  
5 licensed as such, or of an applicant who was licensed as a life settle-  
6 ment broker but did not pass such an examination; provided the applicant  
7 applies within two years following the date of termination of the appli-  
8 cant's license;

9 (D) in the discretion of the superintendent, as to all or any part of  
10 the written examination or the prerequisite course specified in  
11 subsection (e) of this section, of any individual seeking to be named a  
12 licensee or sub-licensee, upon whom has been conferred the Chartered  
13 Life Underwriter (C.L.U.) or Chartered Life Underwriter Associate desig-  
14 nation by The American College; or

15 (E) any individual seeking to be named a licensee or sub-licensee, who  
16 is a nonresident and a life settlement broker or who is licensed as an  
17 insurance producer with a life line of authority in the individual's  
18 home state for at least one year; provided, however, that the individ-  
19 ual's home state grants nonresident licenses to residents of this state  
20 on the same basis.

21 (2) No prelicensing education shall be required of any individual  
22 regularly employed by a life settlement provider, life insurance compa-  
23 ny, life settlement broker, or an insurance producer with a life line of  
24 authority, for a period or periods aggregating not less than one year,  
25 during the three years next preceding the date of entrance into the  
26 service of the armed forces of the United States or immediately follow-  
27 ing his or her discharge therefrom, in responsible duties relating to  
28 the use of life insurance and annuity contracts in the design and admin-  
29 istration of plans for estate conservation and distribution, employee  
30 benefits and business continuation, and settlements of life insurance  
31 and annuity contracts; provided the application for such license is  
32 filed within one year following the date of discharge, and the applicant  
33 submits with the application a statement subscribed and affirmed as true  
34 under the penalties of perjury by such employer or employers stating  
35 facts which show compliance with this requirement.

36 (g) The superintendent may refuse to issue any life settlement  
37 broker's license if, in the superintendent's judgment, the proposed  
38 licensee or any sub-licensee: is not trustworthy and competent to act  
39 as a life settlement broker; has given cause for license revocation or  
40 suspension; or has failed to comply with any prerequisite for the iss-  
41 uance of such license.

42 (h)(1) Every license issued to a business entity pursuant to  
43 subsection (a) of this section shall expire on June thirtieth of odd-  
44 numbered years.

45 (2) Every license issued pursuant to this section to an individual who  
46 was born in an odd-numbered year shall expire on the individual's birth-  
47 day in each odd-numbered year. Every license issued pursuant to this  
48 section to an individual who was born in an even-numbered year shall  
49 expire on the individual's birthday in each even-numbered year. Every  
50 such license may be renewed for the ensuing period of twenty-four months  
51 upon the filing of an application in conformity with this subsection.

52 (3) The license may be issued for all of such two-year terms, or upon  
53 application made during any such term, for the balance thereof.

54 (4) Any license shall be considered in good standing within the  
55 license term unless:

1 (A) revoked or suspended by the superintendent pursuant to this arti-  
2 cle; or

3 (B) if at the expiration date of the license term, the licensee fails  
4 to file a renewal application, provided the license was in good standing  
5 during the term.

6 (5) Before the renewal of any life settlement broker's license shall  
7 be issued, the licensee shall have:

8 (A) filed a completed renewal application in such form or forms, and  
9 supplements thereto, and containing such information as the superinten-  
10 dent may prescribe; and

11 (B) paid such fees as are prescribed by the superintendent; provided,  
12 however, that such fee shall not exceed that which is required for the  
13 licensing or renewal for an insurance producer with a life line of  
14 authority.

15 (6) If an application for a renewal license shall have been filed with  
16 the superintendent before the expiration of such license, then the  
17 license sought to be renewed shall continue in full force and effect  
18 either until the issuance by the superintendent of the renewal license  
19 applied for or until five days after the superintendent shall have  
20 refused to issue such renewal license and shall have given notice of  
21 such refusal to the applicant and to each proposed sub-licensee. Before  
22 refusing to renew any such license, except on the ground of failure to  
23 pass a written examination, the superintendent shall notify the appli-  
24 cant of the superintendent's intention to do so and shall give the  
25 applicant a hearing.

26 (7)(A) The superintendent may, in issuing a renewal license, dispense  
27 with the requirements of a verified application by any individual licen-  
28 see or sub-licensee who, by reason of being engaged in any military  
29 service for the United States, is unable to make personal application  
30 for the renewal license, upon the filing of an application on behalf of  
31 such individual, in such form as the superintendent shall prescribe, by  
32 a person who, in the person's judgment, has knowledge of the facts and  
33 who makes affidavit showing such military service and the inability of  
34 the life settlement broker to make personal application.

35 (B) An individual licensee or sub-licensee who is unable to comply  
36 with license renewal procedures due to other extenuating circumstances,  
37 such as a long-term medical disability, may request a waiver of such  
38 procedures, in such form as the superintendent shall prescribe. The  
39 licensee or sub-licensee may also request a waiver of any examination  
40 requirement or any other fine or sanction imposed for failure to comply  
41 with renewal procedures.

42 (8) In addition to any examination fee required by subsection (e) of  
43 this section, there shall be paid to the superintendent for each indi-  
44 vidual license applicant and each proposed sub-licensee a licensing or  
45 renewal fee to be determined by the superintendent; provided, however  
46 that such fee shall not exceed that which is required for the licensing  
47 or renewal for an insurance producer with a life line of authority.

48 (9) An application for the renewal of a license shall be filed with  
49 the superintendent not less than sixty days prior to the date the  
50 license expires or the applicant shall be subject to a further fee of  
51 ten dollars for late filing.

52 (10) No license fee shall be required of any person who served as a  
53 member of the armed forces of the United States at any time and who  
54 shall have been discharged therefrom, under conditions other than  
55 dishonorable, in a current licensing period, for the duration of such  
56 period.

1 (11) Except where a corporation, association or firm licensed as a  
2 life settlement broker is applying to add a sub-licensee, there shall be  
3 no fee required for the issuance of an amended license.

4 (12) The license shall contain the licensee's name, address, personal  
5 identification number, the date of issuance, and any other information  
6 the superintendent deems necessary. The superintendent may issue the  
7 life settlement broker's license in conjunction with any other license,  
8 or its renewal, held by the applicant.

9 (i) If the superintendent deems it necessary, then the superintendent  
10 may require any licensed life settlement broker to submit a new applica-  
11 tion at any time.

12 (j) The superintendent may issue a replacement for a currently  
13 in-force license that has been lost or destroyed. Before such replace-  
14 ment license shall be issued, there shall be on file in the office of  
15 the superintendent a written application for such replacement license,  
16 affirming under penalty of perjury that the original license has been  
17 lost or destroyed, together with a fee of fifteen dollars.

18 § 8. Section 2401 of the insurance law is amended to read as follows:

19 § 2401. Purpose. The purpose of this article is to regulate trade  
20 practices in the business of insurance, including the business of life  
21 settlements, in accordance with the intent of congress as expressed in  
22 Public Law 15, 79th Congress, by defining, or providing for the determi-  
23 nation of, all such practices in this state [~~which~~] that constitute  
24 unfair methods of competition or unfair or deceptive acts or practices  
25 and by prohibiting the trade practices so defined or determined.

26 § 9. Subsections (a) and (b) of section 2402 of the insurance law,  
27 subsection (b) as amended by chapter 631 of the laws of 2007, are  
28 amended to read as follows:

29 (a) "Person" means any individual and any legal entity subject to any  
30 provision of this chapter, engaged in the business of insurance in this  
31 state, including any reciprocal exchange or Lloyds insurer, or in the  
32 business of life settlements.

33 (b) "Defined violation" means the commission by a person of an act  
34 prohibited by: section one thousand two hundred fourteen, one thousand  
35 two hundred seventeen, one thousand two hundred twenty, one thousand  
36 three hundred thirteen, subparagraph (B) of paragraph two of subsection  
37 (i) of section one thousand three hundred twenty-two, subparagraph (B)  
38 of paragraph two of subsection (i) of section one thousand three hundred  
39 twenty-four, two thousand one hundred twenty-two, two thousand one  
40 hundred twenty-three, subsection (p) of section two thousand three  
41 hundred thirteen, section two thousand three hundred twenty-four, two  
42 thousand five hundred two, two thousand five hundred three, two thousand  
43 five hundred four, two thousand six hundred one, two thousand six  
44 hundred two, two thousand six hundred three, two thousand six hundred  
45 four, two thousand six hundred six, two thousand seven hundred three,  
46 three thousand one hundred nine, three thousand two hundred  
47 twenty-four-a, three thousand four hundred twenty-nine, three thousand  
48 four hundred thirty-three, paragraph seven of subsection (e) of section  
49 three thousand four hundred twenty-six, four thousand two hundred twen-  
50 ty-four, four thousand two hundred twenty-five [~~or~~], four thousand two  
51 hundred twenty-six, seven thousand eight hundred nine, seven thousand  
52 eight hundred ten, seven thousand eight hundred eleven, seven thousand  
53 eight hundred thirteen, seven thousand eight hundred fourteen and seven  
54 thousand eight hundred fifteen of this chapter; or section 135.60,  
55 135.65, 175.05, 175.45, or 190.20, or article one hundred five of the  
56 penal law.

1 § 10. Subsection (c) of section 3220 of the insurance law is amended  
2 to read as follows:

3 (c) (1) Notwithstanding any provision of law, a person whose life is  
4 insured under any policy of group life insurance, whether or not such  
5 policy is otherwise subject to this section, is permitted to make an  
6 assignment of all or any part of his incidents of ownership in such  
7 insurance, including, without limitation, any right to designate a bene-  
8 ficiary or beneficiaries thereunder and any right to have an individual  
9 policy issued upon termination either of employment or of said policy of  
10 group life insurance, provided that the insurer and the group policy-  
11 holder may prohibit or restrict such assignment by appropriate policy  
12 provisions except as otherwise provided in paragraph three of this  
13 subsection.

14 (2) [~~This~~] Paragraph one of this subsection shall be construed as  
15 declaring the law as it existed prior to its enactment and not as modi-  
16 fying it.

17 (3) A group policy that permits assignment of an insured person's  
18 rights by gift shall also allow assignment for value to the same extent  
19 that it allows assignment by gift.

20 § 11. Article 78 of the insurance law is REPEALED and a new article 78  
21 is added to read as follows:

22 ARTICLE 78  
23 LIFE SETTLEMENTS

- 24 Section 7801. Short title.
- 25 7802. Definitions.
- 26 7803. License requirements for life settlement providers.
- 27 7804. Registration requirements for life settlement interme-
- 28 diaries.
- 29 7805. License and registration revocation.
- 30 7806. Life settlement contract forms.
- 31 7807. Reporting requirements.
- 32 7808. Examinations or investigations.
- 33 7809. Advertising.
- 34 7810. Privacy.
- 35 7811. Disclosures to owners and insureds.
- 36 7812. Life insurance applications.
- 37 7813. General rules.
- 38 7814. Prohibited practices.
- 39 7815. Stranger-originated life insurance.
- 40 7816. Penalties and civil remedies.
- 41 7817. Authority to promulgate regulations.
- 42 7818. Nonconforming contracts.
- 43 7819. Applicability and choice of law.
- 44 7820. Severability.

45 § 7801. Short title. This article shall be known and may be cited as  
46 the "life settlements act".

47 § 7802. Definitions. In this article:

48 (a) "Accredited investors" shall be as defined in regulation D, rule  
49 501 of the Federal Securities Act of 1933, as amended.

50 (b) "Advertisement" means any written, electronic or printed communi-  
51 cation or any communication by means of recorded telephone messages or  
52 transmitted on radio, television, the Internet or similar communications  
53 media, including film strips, motion pictures and videos, published,  
54 disseminated, circulated or placed before the public, directly or indi-  
55 rectly, for the purpose of creating an interest in or inducing a person  
56 to purchase, sell, assign, devise, bequest or transfer the death benefit

1 or ownership of, a life insurance policy or an interest in a life insur-  
2 ance policy pursuant to a life settlement contract.

3 (c)(1) "Business of life settlements" means an activity involving, but  
4 not limited to, offering to enter into, soliciting, negotiating, procur-  
5 ing, effectuating, monitoring, or tracking life settlement contracts.

6 (2) For purposes of this article, "business of life settlements" shall  
7 also include:

8 (A) such acts or transactions effectuated in this state by mail or  
9 otherwise from outside this state; and

10 (B) doing or proposing to do any business in substance equivalent to  
11 the business of life settlements in a manner designed to evade the  
12 provisions of this chapter.

13 (d) "Compensation" means anything of value, including money, credits,  
14 loans, interest on premium, forgiveness of principal or interest,  
15 vacations, prizes, gifts or the payment of employee salaries or  
16 expenses, whether paid as commission or otherwise.

17 (e) "Financing entity" means an accredited investor:

18 (1) whose principal activity in connection with the transaction is  
19 providing funds to effect the life settlement contract or to purchase  
20 one or more policies; and

21 (2) who has an agreement in writing with a life settlement provider to  
22 finance the acquisition of a life settlement contract.

23 (f) "Financing transaction" means a transaction in which a licensed  
24 life settlement provider obtains financing from a financing entity,  
25 including any secured or unsecured financing, any securitization trans-  
26 action, or any securities offering which is registered or exempt from  
27 registration under federal and state securities laws.

28 (g) "Insured" means a person covered under a policy that is or may be  
29 the subject of a life settlement contract.

30 (h) "Insurer" means a life insurance company or a fraternal benefit  
31 society.

32 (i) "Life expectancy" means the arithmetic mean of the number of  
33 months the insured can be expected to live taking into consideration  
34 medical records and appropriate experiential data.

35 (j) "Life settlement broker" means a person who, for compensation,  
36 solicits, negotiates or offers to negotiate a life settlement contract;  
37 except that such term shall not include a licensed life settlement  
38 provider, or representative thereof, licensed attorney at law, certified  
39 public accountant, or financial planner that is accredited by a  
40 nationally recognized accreditation agency acceptable to the superinten-  
41 dent, who is retained in his or her professional capacity, does not  
42 advertise as being in the business of life settlements and is compen-  
43 sated without regard to whether a life settlement contract is effectuat-  
44 ed.

45 (k)(1) "Life settlement contract" means an agreement establishing the  
46 terms under which compensation is provided to an owner, which compen-  
47 sation is less than the expected death benefit of the policy, in return  
48 for the assignment, transfer, sale, release, devise or bequest of any  
49 portion of:

50 (A) the death benefit;

51 (B) the ownership of the policy; or

52 (C) any beneficial interest in the policy, or in a trust or any other  
53 entity that owns the policy, where a primary purpose of the transaction  
54 is to acquire the policy.

55 (2) "Life settlement contract" shall include an agreement, entered  
56 into after the effective date of this article, described in paragraph

1 one of this subsection regardless of the date the compensation is  
2 provided and regardless of the date the assignment, transfer, sale,  
3 devise or bequest is effectuated.

4 (3) "Life settlement contract" shall not include:

5 (A) an assignment of a policy as collateral for a loan by any deposi-  
6 tory institution insured by the Federal Deposit Insurance Corporation or  
7 the National Credit Union Administration;

8 (B) an assignment of a policy as collateral for a loan made by a  
9 licensed financial institution under which the lender takes an interest  
10 in a life insurance policy solely to secure repayment of a loan or, if  
11 there is a default on the loan and the policy is transferred, the trans-  
12 fer of the policy by the lender, provided that the default itself is not  
13 pursuant to an agreement or understanding with any other person for the  
14 purpose of evading regulation under this article;

15 (C) an assignment of a policy as collateral for a loan made by a lend-  
16 er that does not violate article twelve-B of the banking law;

17 (D) the making of a policy loan, or the paying of surrender benefits  
18 or other benefits, by the issuer of a policy with respect to that poli-  
19 cy;

20 (E) an exchange of life insurance policies in a transaction described  
21 by section 1035 of the Internal Revenue Code of 1986, as amended;

22 (F) an agreement made by an individual to take an assignment,  
23 purchase, or otherwise receive the death benefit or ownership of any  
24 portion of a policy or policies on the life of a single insured or lives  
25 of joint insureds; provided that, in a calendar year, the individual  
26 enters into no other agreement to take an assignment, purchase, or  
27 otherwise receive the death benefit or ownership of any portion of a  
28 policy or policies on the life of any other insured or lives of any  
29 other joint insureds;

30 (G) an agreement to assign, transfer or pledge a settled policy, or  
31 any interest therein, to a licensed life settlement provider, an accred-  
32 ited investor or qualified institutional buyer, financing entity,  
33 special purpose entity, or related provider trust;

34 (H) an agreement where all the parties are closely related to the  
35 insured by blood or law or have a lawful substantial economic interest  
36 in the continued life, health and bodily safety of the person insured,  
37 or are trusts established primarily for the benefit of such parties;

38 (I) any designation, consent or agreement by an insured who is an  
39 employee of an employer in connection with the purchase by the employer,  
40 or trust established by the employer, of life insurance on the life of  
41 the employee;

42 (J) a bona fide business succession planning arrangement between:

43 (i) one or more shareholders in a corporation or between a corporation  
44 and one or more of its shareholders or one or more trusts established by  
45 its shareholders;

46 (ii) one or more partners in a partnership or between a partnership  
47 and one or more of its partners or one or more trusts established by its  
48 partners; or

49 (iii) one or more members in a limited liability company or between a  
50 limited liability company and one or more of its members or one or more  
51 trusts established by its members;

52 (K) legitimate corporate or pension benefit plans, as determined by  
53 the superintendent; or

54 (L) any other agreement that the superintendent determines is substan-  
55 tially similar to any of the foregoing.

1 (1) "Life settlement intermediary" means a person who maintains an  
2 electronic or other facility or system, for the disclosure, through a  
3 forum of offers and counteroffers, to sell or purchase a policy pursuant  
4 to a life settlement contract; and delivers to:

5 (1) a life settlement provider an offer from a life settlement broker  
6 or owner to sell a policy; or

7 (2) an owner or life settlement broker an offer from a life settlement  
8 provider to purchase a policy.

9 (m) "Life settlement provider" means a person who enters, or offers to  
10 enter, into a life settlement contract with the owner.

11 (n) "Owner" means the owner of a policy who enters or seeks to enter  
12 into a life settlement contract.

13 (o) "Person" means any natural person or legal entity, including a  
14 partnership, limited liability company, association, trust or corpo-  
15 ration.

16 (p) "Policy" means an individual or group life insurance policy or  
17 certificate.

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

21 (r) "Qualified institutional buyer" shall be as defined in rule 144A  
22 of the Federal Securities Act of 1933, as amended.

23 (s) "Related provider trust" means a trust established by a licensed  
24 life settlement provider or a financing entity for the sole purpose of  
25 holding the ownership or beneficial interest in settled policies in  
26 connection with a financing transaction; provided that the trust has a  
27 written agreement with the licensed life settlement provider under  
28 which:

29 (1) the licensed life settlement provider is responsible for ensuring  
30 compliance with all statutory and regulatory requirements; and

31 (2) the trust agrees to make all records and files relating to life  
32 settlement transactions available to the superintendent as if those  
33 records and files were maintained directly by the licensed life settle-  
34 ment provider.

35 (t) "Settled policy" means a policy that at any time has been acquired  
36 by a life settlement provider pursuant to a life settlement contract.

37 (u) "Special purpose entity" means a corporation, partnership, trust,  
38 limited liability company, or other legal entity formed solely to  
39 provide, either directly or indirectly, access to institutional capital  
40 markets for a financing entity or licensed life settlement provider.

41 § 7803. License requirements for life settlement providers. (a) No  
42 person shall engage in the business of life settlements as a life  
43 settlement provider in this state without having authority to do so by  
44 virtue of a life settlement provider license issued and in force pursu-  
45 ant to this article.

46 (b)(1) The superintendent may issue a life settlement provider license  
47 to any person who is deemed by the superintendent to be trustworthy and  
48 competent to act as a life settlement provider and who is otherwise  
49 qualified as required in this article and who has complied with the  
50 prerequisites prescribed in this article.

51 (2) Every license issued pursuant to this section shall expire on June  
52 thirtieth of odd-numbered years.

53 (c)(1) Application for a life settlement provider license shall be  
54 made to the superintendent by the applicant on a form prescribed by the  
55 superintendent, and the application shall be accompanied by a fee in an  
56 amount to be established by the superintendent.

1     (2) The applicant for a life settlement provider license shall:  
2     (A) fully disclose the identity of all stockholders (except stockhold-  
3 ers owning fewer than ten percent of the voting shares of a life settle-  
4 ment provider whose shares are publicly traded), partners, officers,  
5 members, directors and persons with a controlling interest. For purposes  
6 of this section, "controlling interest" means a person who directly or  
7 indirectly, has the power to cause to be directed the management,  
8 control or activities of such licensee;  
9     (B) provide a detailed plan of operation;  
10    (C) provide, if a legal entity, a certificate of good standing from  
11 the state of its domicile;  
12    (D) provide an anti-fraud plan that meets the requirements of article  
13 four of this chapter;  
14    (E) demonstrate financial accountability as evidenced by a bond or  
15 other method for financial accountability as determined by the super-  
16 intendent pursuant to regulation; and  
17    (F) provide any other information required by the superintendent.  
18    (d) The superintendent may require an applicant for such license to  
19 submit a set of fingerprints. Such fingerprints shall be submitted to  
20 the division of criminal justice services for a state criminal history  
21 record check, as defined in subdivision one of section three thousand  
22 thirty-five of the education law, and may be submitted to the federal  
23 bureau of investigation for a national criminal history record check.  
24 All such criminal history records sent to the superintendent pursuant to  
25 this paragraph shall be confidential pursuant to the applicable federal  
26 and state laws, rules and regulations, and shall not be published or in  
27 any way disclosed to persons other than the superintendent, unless  
28 otherwise authorized by law. The superintendent shall provide such  
29 applicant with a copy of his or her criminal history record, if any,  
30 together with a copy of article twenty-three-A of the correction law,  
31 and inform such applicant of his or her right to seek correction of any  
32 incorrect information contained in such record pursuant to regulations  
33 and procedures established by the division of criminal justice services.  
34 All determinations to grant or deny clearance for licensure pursuant to  
35 this section shall be in accordance with subdivision sixteen of section  
36 two hundred ninety-six of the executive law and article twenty-three-A  
37 of the correction law. When the superintendent denies an application,  
38 written notice of such determination shall be given to the prospective  
39 applicant who shall be afforded notice and the right to be heard and  
40 offer proof in opposition to such determination.  
41    (e)(1) As part of the application, the applicant shall submit a power  
42 of attorney designating the superintendent as agent for the purpose of  
43 receiving service of legal documents or process.  
44    (2) The power of attorney shall include the name and address of the  
45 officer, agent, or other person to whom such legal documents or process  
46 shall be forwarded by the superintendent or his or her deputy on behalf  
47 of such life settlement provider.  
48    (3) Service of legal documents or process upon a life settlement  
49 provider pursuant to this subsection shall be made by serving the super-  
50 intendent, any deputy superintendent or any salaried employee of the  
51 department whom the superintendent designates for such purpose with two  
52 copies thereof and the payment of a fee of forty dollars. The super-  
53 intendent shall forward a copy of such legal documents or process by  
54 registered or certified mail to the life settlement provider at the  
55 address given in its written certificate of registration, and shall keep  
56 a record of all legal documents or process so served. Service of legal

1 documents or process so made shall be deemed made within the territorial  
2 jurisdiction of any court in this state.

3 (f) The superintendent, in the exercise of the superintendent's  
4 discretion, may refuse to issue a life settlement provider license in  
5 the name of any person if not satisfied that any officer, employee,  
6 stockholder, partner, director, member, agent, or responsible person  
7 thereof, who may materially influence the applicant's conduct, meets the  
8 standards of this article.

9 (g) Every license issued pursuant to this section may be renewed for  
10 the ensuing period of twenty-four months upon the filing of an applica-  
11 tion in conformity with this section.

12 (h)(1) Before the renewal of any life settlement provider license  
13 shall be issued, an application for renewal of the license shall be made  
14 to the superintendent by the applicant on a form prescribed by the  
15 superintendent and containing such information as the superintendent may  
16 prescribe. The application shall be accompanied by a fee in an amount to  
17 be established by the superintendent.

18 (2) If an application for a renewal license shall have been filed with  
19 the superintendent before the expiration of the license, then the  
20 license sought to be renewed shall continue in full force and effect  
21 either until the issuance by the superintendent of the renewal license  
22 applied for or until five days after the superintendent shall have  
23 refused to issue such renewal license and shall have given notice of  
24 such refusal to the applicant. Before refusing to renew any such  
25 license, the superintendent shall notify the applicant of the super-  
26 intendent's intention to do so and shall give such applicant a hearing.

27 (3) An application for the renewal of a license shall be filed with  
28 the superintendent not less than sixty days prior to the date the  
29 license expires or the applicant may be subject to a further fee for  
30 late filing, as prescribed by the superintendent.

31 (i) A life settlement provider licensee shall provide to the super-  
32 intendent new or revised information about stockholders (except stock-  
33 holders owning fewer than ten percent of the voting shares of a life  
34 settlement provider whose shares are publicly traded), partners, offi-  
35 cers, members, directors, designated employees or persons with a  
36 controlling interest within thirty days of the change.

37 (j) Every individual applicant for a license under this section shall  
38 be eighteen years of age or older at the time of the issuance of such  
39 license.

40 § 7804. Registration requirements for life settlement intermediaries.

41 (a) No person shall act as a life settlement intermediary in this state  
42 without having authority to do so by virtue of a registration issued and  
43 in force pursuant to this article.

44 (b)(1) The superintendent may issue a life settlement intermediary  
45 registration to any person who:

46 (A) is deemed by the superintendent to be trustworthy and competent to  
47 act as a life settlement intermediary;

48 (B) is otherwise qualified as required in this article; and

49 (C) has complied with the prerequisites prescribed in this article.

50 (2) Every registration issued pursuant to this section shall expire on  
51 June thirtieth of odd-numbered years.

52 (c)(1) Application for a life settlement intermediary registration  
53 shall be made to the superintendent by the applicant on a form  
54 prescribed by the superintendent, and the application shall be accompa-  
55 nyed by a fee in an amount established by the superintendent.

1     (2) The applicant for a life settlement intermediary registration  
2 shall provide:

3     (A) the state in which the life settlement intermediary is domiciled  
4 or resident;

5     (B) the principal place of business of the life settlement interme-  
6 diary;

7     (C) all other states in which the life settlement intermediary is  
8 doing or intends to do business;

9     (D) a detailed plan of operation; and

10    (E) the identities of the life settlement intermediary executive offi-  
11 cer or officers directly responsible for such business, and all stock-  
12 holders (except stockholders owning fewer than ten percent of the voting  
13 shares of a life settlement intermediary whose shares are publicly trad-  
14 ed), partners, officers, members, directors and persons with a control-  
15 ling interest. For purposes of this section, "controlling interest"  
16 means a person who directly or indirectly, has the power to cause to be  
17 directed the management, control or activities of such registrant.

18    (d) Each life settlement intermediary that is required to register  
19 pursuant to this section shall also furnish such information as may be  
20 required by the superintendent to:

21    (1) verify that the person or persons qualify as a life settlement  
22 intermediary; and

23    (2) determine compliance with any applicable state law.

24    (e)(1) As part of the application, the applicant shall submit a power  
25 of attorney designating the superintendent as agent for the purpose of  
26 receiving service of legal documents or process.

27    (2) The power of attorney shall include the name and address of the  
28 officer, agent, or other person to whom such legal documents or process  
29 shall be forwarded by the superintendent or his or her deputy on behalf  
30 of such life settlement provider.

31    (3) Service of legal documents or process upon a life settlement  
32 provider pursuant to this subsection shall be made by serving the super-  
33 intendent, any deputy superintendent or any salaried employee of the  
34 department whom the superintendent designates for such purpose with two  
35 copies thereof and the payment of a fee of forty dollars. The super-  
36 intendent shall forward a copy of such legal documents or process by  
37 registered or certified mail to the life settlement provider at the  
38 address given in its written certificate of registration, and shall keep  
39 a record of all legal documents or process so served. Service of legal  
40 documents or process so made shall be deemed made within the territorial  
41 jurisdiction of any court in this state.

42    (f) The superintendent may require an applicant for such registration  
43 to submit a set of fingerprints. Such fingerprints shall be submitted  
44 to the division of criminal justice services for a state criminal histo-  
45 ry record check, as defined in subdivision one of section three thousand  
46 thirty-five of the education law, and may be submitted to the federal  
47 bureau of investigation for a national criminal history record check.  
48 All such criminal history records sent to the superintendent pursuant to  
49 this paragraph shall be confidential pursuant to the applicable federal  
50 and state laws, rules and regulations, and shall not be published or in  
51 any way disclosed to persons other than the superintendent, unless  
52 otherwise authorized by law. The superintendent shall provide such  
53 applicant with a copy of his or her criminal history record, if any,  
54 together with a copy of article twenty-three-A of the correction law,  
55 and inform such applicant of his or her right to seek correction of any  
56 incorrect information contained in such record pursuant to regulations

1 and procedures established by the division of criminal justice services.  
2 All determinations to grant or deny clearance for registration pursuant  
3 to this section shall be in accordance with subdivision sixteen of  
4 section two hundred ninety-six of the executive law and article twenty-  
5 three-A of the correction law. When the superintendent denies an appli-  
6 cation, written notice of such determination shall be given to the  
7 prospective applicant who shall be afforded notice and the right to be  
8 heard and offer proof in opposition to such determination.

9 (g) The superintendent, in the exercise of the superintendent's  
10 discretion, may refuse to issue a life settlement intermediary registra-  
11 tion in the name of any person if not satisfied that any officer,  
12 employee, stockholder, partner, director, member, agent, or responsible  
13 person thereof who may materially influence the applicant's conduct  
14 meets the standards of this article.

15 (h) Every registration issued pursuant to this section may be renewed  
16 for the ensuing period of twenty-four months upon the filing of an  
17 application in conformity with this section.

18 (i)(1) Before the renewal of any life settlement intermediary regis-  
19 tration shall be issued, an application for renewal of the registration  
20 shall be made to the superintendent by the applicant on a form  
21 prescribed by the superintendent and containing such information as the  
22 superintendent may prescribe, and the application shall be accompanied  
23 by a fee in an amount to be established by the superintendent.

24 (2) If an application for renewal registration shall have been filed  
25 with the superintendent before the expiration of the registration, the  
26 registration sought to be renewed shall continue in full force and  
27 effect either until the issuance by the superintendent of the renewal  
28 registration applied for or until five days after the superintendent  
29 shall have refused to issue such renewal registration and shall have  
30 given notice of such refusal to the applicant. Before refusing to renew  
31 any such registration, the superintendent shall notify the applicant of  
32 the superintendent's intention to do so and shall give such applicant a  
33 hearing.

34 (3) An application for the renewal of a registration shall be filed  
35 with the superintendent not less than sixty days prior to the date the  
36 registration expires or the applicant may be subject to a further fee  
37 for late filing, as prescribed by the superintendent.

38 (j) A life settlement intermediary shall, as to any subsequent changes  
39 in any of the items set forth in paragraph two of subsection (c) and  
40 paragraph one of subsection (d) of this section, notify the superinten-  
41 dent in writing within thirty days of any such change.

42 (k) Every individual applicant for registration under this section  
43 shall be eighteen years of age or older at the time of the issuance of  
44 such registration.

45 § 7805. License and registration revocation. (a) The superintendent  
46 may suspend, revoke or refuse to renew the license of any life settle-  
47 ment provider or the registration of any life settlement intermediary,  
48 if, after notice and hearing, the superintendent determines that the  
49 life settlement provider or life settlement intermediary, or any offi-  
50 cer, partner, member, or key management personnel thereof, has:

51 (1) violated any insurance laws or any regulation promulgated there-  
52 under, any subpoena or order of the superintendent or of another state's  
53 insurance commissioner, or any other law in the course of the licensee's  
54 dealings in such capacity;

1 (2) provided materially incorrect, materially misleading, materially  
2 incomplete or materially untrue information in the license or registra-  
3 tion application;

4 (3) obtained or attempted to obtain a license or registration through  
5 misrepresentation or fraud;

6 (4)(A) used fraudulent, coercive or dishonest practices;

7 (B) demonstrated incompetence;

8 (C) demonstrated untrustworthiness; or

9 (D) demonstrated financial irresponsibility in the conduct of business  
10 in this state or elsewhere;

11 (5) improperly withheld, misappropriated or converted any monies or  
12 properties received in the course of business in this state or else-  
13 where;

14 (6) intentionally misrepresented the terms of any insurance contract  
15 or life settlement contract or any application therefor;

16 (7) been convicted of a felony, or has been guilty of fraudulent or  
17 dishonest practices or other misconduct or malfeasance;

18 (8) admitted or been found to have committed any insurance unfair  
19 trade practice or fraud;

20 (9) had a life settlement provider license or life settlement interme-  
21 diary registration, or an equivalent denied, suspended or revoked in any  
22 other state, province, district or territory;

23 (10) forged another person's name to an application for insurance or  
24 life settlement contract or to any document related to an insurance or  
25 life settlement transaction;

26 (11) knowingly conducted the business of life settlements with a  
27 person who is not licensed or registered unless such person is not  
28 required to be licensed or registered;

29 (12) demonstrated a pattern of unreasonable payments to owners or  
30 insureds;

31 (13) failed to honor contractual obligations set out in a life settle-  
32 ment contract;

33 (14) sold, assigned, pledged or otherwise transferred the ownership of  
34 a settled policy to a person other than as provided in this article; or

35 (15) failed to protect the privacy of the insured or owner or other  
36 person for whom the licensee or registrant was required to provide  
37 protection pursuant to this article.

38 (b)(1) Before the superintendent suspends, revokes or refuses to renew  
39 the license of a life settlement provider or the registration of a life  
40 settlement intermediary, the superintendent shall give notice to the  
41 licensee or registrant and shall hold, or cause to be held, a hearing  
42 not less than ten days after the giving of such notice, except that  
43 where, in the judgment of the superintendent, the public health, safety  
44 or welfare so requires, a license or registration may be suspended for  
45 up to ten days prior to a hearing.

46 (2) In lieu of revoking or suspending the license or registration for  
47 any of the causes enumerated in subsection (a) of this section, the  
48 superintendent may impose a civil penalty not to exceed ten thousand  
49 dollars for each violation.

50 (3) Upon the failure of such licensee or registrant to pay such penal-  
51 ty ordered pursuant to paragraph two of this subsection within twenty  
52 days after the mailing of such order, postage prepaid, registered, and  
53 addressed to the last known place of business of such licensee or regis-  
54 trant, unless such order is stayed by a court of competent jurisdiction,  
55 the superintendent may revoke the license of such licensee or the regis-

1 tration of such registrant, or may suspend the same for such period as  
2 the superintendent determines.

3 § 7806. Life settlement contract forms. (a) No licensed life settle-  
4 ment provider shall enter into a life settlement contract subject to  
5 this chapter unless the life settlement contract form, application form,  
6 and any other form as may be prescribed by regulation, has been filed  
7 with and approved by the superintendent. The superintendent may disap-  
8 prove any such form if the superintendent finds the form or any  
9 provisions contained therein to be unreasonable, contrary to law or the  
10 interests of the people of this state, or otherwise misleading or  
11 unfair.

12 (b) Whenever, by the provisions of this chapter, the superintendent  
13 has approved any life settlement contract form, application form, or any  
14 other form, the superintendent may, after notice and hearing given to  
15 the life settlement provider that submitted the form for approval, with-  
16 draw an approval previously given if:

17 (1) the use of the form is contrary to the requirements applicable to  
18 the form at the time of such withdrawal, or

19 (2) it contains provisions that are unjust, unfair or inequitable.

20 Any withdrawal of approval shall be effective at the expiration of  
21 such period, at least ninety days after the giving of notice of with-  
22 drawal or as the superintendent shall in such notice prescribe.

23 § 7807. Reporting requirements. (a)(1) Every licensed life settlement  
24 provider shall file in the office of the superintendent, annually on or  
25 before the first day of March, a statement, to be known as its annual  
26 statement, verified by the oath of at least two of its principal offi-  
27 cers, showing its condition at the end of the preceding calendar year.  
28 The statement shall be in such form and shall contain such other matters  
29 as the superintendent shall prescribe. In addition to any other require-  
30 ments, the annual statement shall specify the total number, aggregate  
31 face amount and life settlement proceeds of policies settled during the  
32 immediately preceding calendar year, together with a breakdown of the  
33 information by policy issue year. The information shall not include  
34 individual transaction data regarding the business of life settlements  
35 or information if there is a reasonable basis to believe the information  
36 could be used to identify the owner or the insured.

37 (2) Every life settlement provider that willfully fails to file an  
38 annual statement as required in this section, or willfully fails to  
39 reply within thirty days to a written inquiry by the superintendent in  
40 connection therewith, shall, in addition to other penalties provided by  
41 this chapter, be subject, upon due notice and opportunity to be heard,  
42 to a penalty not to exceed five hundred dollars per day of delay, not to  
43 exceed fifty thousand dollars in the aggregate, for each such failure.

44 § 7808. Examinations or investigations. The superintendent may make an  
45 examination or investigation into the affairs of any life settlement  
46 provider, life settlement broker, life settlement intermediary, appli-  
47 cant for licensure as a life settlement provider or life settlement  
48 broker, or applicant for registration as a life settlement intermediary  
49 as prescribed under article three of this chapter.

50 § 7809. Advertising. (a) A life settlement provider, life settlement  
51 intermediary or life settlement broker licensed pursuant to this article  
52 may conduct or participate in advertisements within this state. The  
53 advertisements shall comply with all advertising and marketing laws or  
54 rules and regulations as may be promulgated by the superintendent.

55 (b) Advertisements shall be accurate, truthful and not misleading in  
56 fact or by implication.

1 (c) No life settlement provider, life settlement intermediary, life  
2 settlement broker, or any person acting on behalf thereof shall:

3 (1) directly or indirectly, market, advertise, solicit or otherwise  
4 promote the purchase of a policy for the primary purpose of, or with an  
5 emphasis on, settling the policy; or

6 (2) use the words "free", "no cost" or words of similar import in the  
7 marketing, advertising, soliciting or otherwise promoting of the  
8 purchase of a policy.

9 (d) The failure to follow the provisions of this section shall be a  
10 defined violation under article twenty-four of this chapter.

11 § 7810. Privacy. (a) Except as otherwise permitted or required by  
12 law, no life settlement provider, life settlement broker, or life  
13 settlement intermediary, or any authorized representative thereof,  
14 insurer, information bureau, rating agency or company, or any other  
15 person with actual knowledge of an insured or owner's identity, shall  
16 disclose the identity of the insured or owner, or any information that  
17 there is a reasonable basis to believe could be used to identify the  
18 insured or owner, or the insured's financial or medical information, to  
19 any person unless the disclosure is:

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

23 (2) necessary to effectuate the sale or transfer of a life settlement  
24 contract or a settled policy, or interest therein, provided that every  
25 sale is conducted in accordance with applicable state and federal law  
26 and provided further that the owner and the insured have both provided  
27 prior written consent to the disclosure;

28 (3) provided in response to an investigation or examination by the  
29 superintendent, any other governmental officer or agency, or a self-re-  
30 gulating entity established pursuant to federal securities law;

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

35 (5) necessary to allow the life settlement provider or life settlement  
36 broker, or any authorized representative thereof to administer the  
37 insurance policy, or to make contacts for the purpose of determining  
38 health status as authorized by subsection (k) of section seven thousand  
39 eight hundred thirteen of this article. For the purposes of this arti-  
40 cle, the term "authorized representative" shall not include any person  
41 who has or may have any financial interest in the life settlement  
42 contract other than a licensed life settlement provider, licensed life  
43 settlement broker, financing entity, related provider trust or special  
44 purpose entity; further, a life settlement provider or life settlement  
45 broker shall require its authorized representative to agree in writing  
46 to adhere to the privacy provisions of this article;

47 (6) required to purchase insurance; or

48 (7) otherwise permitted by regulation promulgated by the superinten-  
49 dent.

50 (b) Any person who obtains or may obtain a settled policy, or any  
51 interest therein, pursuant to a transfer, sale, conveyance or assignment  
52 of a settled policy, or any interest therein, shall:

53 (1) comply with the provisions of this chapter and regulations promul-  
54 gated thereunder and all other applicable laws, governing the protection  
55 of the identity and privacy of the insured or owner; and

1     (2) protect against the unlawful release of all information concerning  
2 the identity of any insured or owner, which information would or could  
3 reasonably be expected to be used to identify or contact such insured or  
4 owner, including the name, address (except the state of residence) or  
5 social security number of the insured or the owner, or representative  
6 thereof, the related insurance policy number or the insured's medical  
7 information.

8     (c) Non-public personal information solicited or obtained in  
9 connection with a proposed or executed life settlement contract shall be  
10 subject to the provisions applicable to financial institutions under the  
11 Gramm Leach Bliley Act, P.L. 106-102 (1999), and all other applicable  
12 laws relating to confidentiality of non-public personal information.

13     (d) The failure to follow the provisions of this section shall be a  
14 defined violation under article twenty-four of this chapter.

15     § 7811. Disclosures to owners and insureds. (a) The life settlement  
16 provider or life settlement broker shall provide the owner with a sepa-  
17 rate written document conspicuously displaying the information and  
18 disclosures required by this subsection. The separate document shall be  
19 signed by the owner and life settlement provider, no later than the date  
20 the life settlement contract is signed by all parties. At a minimum, the  
21 document shall state:

22     (1) that there are possible alternatives to life settlement contracts,  
23 including accelerated benefits offered by the issuer of the policy;

24     (2) that some or all of the proceeds of a life settlement contract may  
25 be taxable and that advice should be sought from a professional tax  
26 advisor;

27     (3) that the proceeds from a life settlement contract could be subject  
28 to the claims of creditors;

29     (4) that receipt of proceeds from a life settlement contract may  
30 adversely affect the recipients' eligibility for public assistance or  
31 other government benefits or entitlements and that advice should be  
32 obtained from the appropriate agencies;

33     (5) that the owner has a right to rescind a life settlement contract  
34 from the time of execution of the contract until fifteen days after the  
35 receipt of the life settlement proceeds by the owner;

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

41     (7) that entering into a life settlement contract may cause other  
42 rights or benefits, including conversion rights and waiver of premium  
43 benefits, that may exist under the policy or certificate of a group  
44 policy to be forfeited by the owner and that assistance should be sought  
45 from a professional financial advisor;

46     (8) the gross offer or bid that the life settlement provider shall pay  
47 pursuant to the life settlement contract; the net amount to be paid to  
48 the owner pursuant to the life settlement contract; the name of each  
49 life settlement broker, life settlement intermediary, insurance produc-  
50 er or insurance consultant that will be compensated by the life settle-  
51 ment provider, or any affiliate, parent corporation, or subsidiary of  
52 the life settlement provider; and the amount of compensation that the  
53 life settlement provider, or any affiliate, parent corporation or  
54 subsidiary of the life settlement provider, shall provide to a life  
55 settlement broker, life settlement intermediary, insurance producer or  
56 insurance consultant, or any affiliate, parent corporation or subsidiary

1 of such broker, intermediary, producer, or consultant, pursuant to the  
2 life settlement contract. For the purposes of this paragraph, "gross  
3 offer or bid" means the total amount or value offered by the life  
4 settlement provider for the purchase of one or more life insurance poli-  
5 cies, inclusive of commissions and fees;

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

8 (10) that the life settlement provider or life settlement broker is  
9 required to provide an owner during the solicitation process with a  
10 consumer information booklet in a form prescribed by the superintendent,  
11 or other similar material, subject to the approval of the superinten-  
12 dent;

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

20 (12) any affiliations or contractual arrangements between the life  
21 settlement provider and the issuer of the policy to be settled;

22 (13) any affiliations or contractual arrangements with any other life  
23 settlement provider, life settlement broker, life settlement interme-  
24 diary or party financing the transaction;

25 (14) that a life settlement broker represents exclusively the owner,  
26 and not the insurer or the life settlement provider or any other person,  
27 and owes a fiduciary duty to the owner, including a duty to act accord-  
28 ing to the owner's instructions and in the best interest of the owner;

29 (15) the name, business address, telephone number and e-mail address  
30 of the independent, third party escrow agent and that the owner has the  
31 right to inspect or receive copies of the relevant escrow or trust  
32 agreements or documents;

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

37 (17) the name, business address, telephone number and e-mail address  
38 of the life settlement provider.

39 (b) The life settlement provider or life settlement broker shall  
40 provide to the insured in a separate written document conspicuously  
41 displaying the information and disclosures required by this subsection.  
42 The separate document shall be signed by the insured no later than the  
43 date the life settlement contract is signed by all parties. The document  
44 shall:

45 (1) state that the insured may be contacted by either the life settle-  
46 ment provider or life settlement broker or any authorized representative  
47 thereof, for the purpose of determining the insured's health status or  
48 to verify the insured's address, and that the contact shall be limited  
49 to once every three months if the insured has a life expectancy of more  
50 than one year, and no more than once per month if the insured has a life  
51 expectancy of one year or less;

52 (2) state that a change of ownership could in the future limit the  
53 insured's ability to purchase additional insurance on the insured's life  
54 because there is a limit to how much coverage insurers will issue on one  
55 life; and

1     (3) contain the following language, or such other language required by  
2 the superintendent by regulation: "All medical, financial or personal  
3 information solicited or obtained by a life settlement provider or life  
4 settlement broker about an insured, including the insured's identity or  
5 the identity of family members, a spouse or a significant other may be  
6 disclosed as necessary to effect the life settlement contract between  
7 the owner and provider. If you are asked to provide this information,  
8 you will be asked to consent to the disclosure. The information may be  
9 provided to someone who buys the policy or provides funds for the  
10 purchase. You may be asked to renew your permission to share information  
11 every two years".

12     (c) The life settlement broker shall provide the owner with a separate  
13 written document conspicuously displaying the information and disclo-  
14 sures required by this subsection. The separate document shall be signed  
15 by the owner and life settlement broker, no later than the date the life  
16 settlement contract is signed by all parties. At a minimum, the document  
17 shall state:

18     (1) the name, business address, telephone number and e-mail address of  
19 the life settlement broker;

20     (2) a full, complete and accurate description of all the offers, coun-  
21 ter-offers, acceptances and rejections relating to the proposed life  
22 settlement contract;

23     (3) any affiliations or contractual arrangements with any life settle-  
24 ment provider, other life settlement broker, life settlement interme-  
25 diary or any financing entity;

26     (4) the gross amount to be paid pursuant to the life settlement  
27 contract, the net amount of the proceeds to be paid to the owner pursu-  
28 ant to the life settlement contract, the amount of compensation to be  
29 paid to the life settlement broker pursuant to the life settlement  
30 contract, and the name of such life settlement broker. For purposes of  
31 this paragraph, "gross amount to be paid" means the total amount or  
32 value to be paid by the life settlement provider for the purchase of one  
33 or more life insurance policies, inclusive of commissions and fees; and

34     (5) a complete reconciliation of the gross offer or bid by the life  
35 settlement provider to the net amount of proceeds or value to be  
36 received by the owner, provided that for the purpose of this section,  
37 "gross offer or bid" shall mean the total amount or value offered by the  
38 life settlement provider for the purchase of one or more life insurance  
39 policies, inclusive of commissions and fees.

40     § 7812. Life insurance applications. (a) Without limiting the ability  
41 of an insurer to assess the insurability of a policy applicant and to  
42 determine whether or not to issue the policy, and in addition to other  
43 questions an insurer may lawfully pose to a life insurance applicant,  
44 insurers may inquire in the application for insurance whether the  
45 proposed owner intends to pay premiums with the assistance of financing  
46 from a lender that will use the policy as collateral to support the  
47 financing.

48     (b) The insurer may include the following notice to the applicant and  
49 the insured, or other notice acceptable to the superintendent, on the  
50 application or as an amendment thereto: "If you enter into a loan  
51 arrangement where the policy is used as collateral, and the policy  
52 changes ownership at some point in the future in satisfaction of the  
53 loan, then the following may be true:

54     (1) a change of ownership may lead to a person unknown to you owning  
55 an interest in the insured's life;

1 (2) a change of ownership may limit your ability to purchase insurance  
2 in the future on the insured's life because there is a limit to how much  
3 coverage insurers will issue on one life;

4 (3) if ownership of the life insurance policy changes, and you wish to  
5 obtain more insurance coverage on the insured's life in the future, the  
6 insured's higher issue age, a change in health status, and/or other  
7 factors may reduce the ability to obtain coverage and/or may result in  
8 significantly higher premiums; and

9 (4) you should consult a professional advisor, since a change in  
10 ownership in satisfaction of the loan may result in tax consequences to  
11 the owner."

12 § 7813. General rules. (a) A life settlement provider entering into a  
13 life settlement contract shall first obtain a written consent from the  
14 insured to the release of the insured's medical records subject to the  
15 limitations contained in section seven thousand eight hundred ten of  
16 this article.

17 (b) The insurer shall respond to a request for verification of cover-  
18 age submitted by a life settlement provider, life settlement broker or  
19 life settlement intermediary within fifteen days after the date the  
20 request is received. The insurer shall complete and issue the verifica-  
21 tion of coverage or indicate the specific reasons why it is unable to  
22 respond. In its response, the insurer shall indicate whether, based on  
23 the medical evidence and documents provided, the insurer is pursuing or  
24 intends to pursue an investigation regarding the validity of the policy.

25 (c) The life settlement provider shall give written notice to the  
26 insurer that issued the policy within ten days after the life settlement  
27 contract is executed by all parties.

28 (d) Unless the insurer is pursuing or intends to pursue an investi-  
29 gation, the insurer shall, within fifteen days of receipt of a request  
30 for a change of ownership or assignment used to effectuate the transfer  
31 or assignment of the owner's rights or benefits under a policy to a life  
32 settlement provider, process the change of ownership or assignment and  
33 notify the life settlement provider and the owner that the transfer or  
34 assignment has been effectuated.

35 (e) If a life settlement broker performs any activity required of the  
36 life settlement provider in this section or provides any disclosures  
37 required by section seven thousand eight hundred eleven of this article,  
38 then the life settlement provider is deemed to have performed that  
39 activity or provided that disclosure.

40 (f) All medical information solicited or obtained by any licensee or  
41 any other person shall be subject to the provisions applicable to health  
42 care providers under the public health law and all applicable laws  
43 relating to confidentiality of medical information, provided that, to  
44 the extent that this chapter provides for greater confidentiality of  
45 medical information, this chapter shall govern.

46 (g)(1) Every life settlement contract shall provide that the owner has  
47 an unconditional right to rescind the life settlement contract from the  
48 time of execution of the contract until fifteen days after the receipt  
49 of the life settlement proceeds by the owner by giving notice of rescis-  
50 sion to the life settlement provider by midnight of the fifteenth day.

51 (2) Within five days after receipt of the notice of rescission, the  
52 life settlement provider shall provide a written statement to the owner  
53 itemizing the amount of all life settlement proceeds and any premiums,  
54 loans and loan interest paid or to be paid as of a date certain as may  
55 be requested by the owner.

1     (3) Within fifteen days after the receipt of the written, itemized  
2 statement by the owner, the owner must repay all such life settlement  
3 proceeds and any premiums, loans and loan interest paid by the life  
4 settlement provider.

5     (4) If the insured dies during the rescission period, the life settle-  
6 ment contract shall be deemed to have been rescinded, subject to repay-  
7 ment of all life settlement proceeds and any premiums, loans and loan  
8 interest paid by the life settlement provider.

9     (5) Within five days after receipt of notice of the insured's death  
10 during the rescission period, the life settlement provider shall provide  
11 a written statement to the owner or, if the owner is deceased, to the  
12 legal representative of the owner's estate, itemizing the amount of all  
13 life settlement proceeds and any premiums, loans and loan interest paid  
14 or to be paid as of a date certain as may be requested by the owner or  
15 the legal representative of the owner's estate. As soon as practicable,  
16 the owner or the owner's estate shall repay all such proceeds and any  
17 premiums, loans and loan interest paid by the life settlement provider.

18     (h) Within three business days after receipt from the owner of docu-  
19 ments to effect the transfer of the policy that is the subject of a life  
20 settlement contract, the life settlement provider shall deposit the  
21 proceeds of the life settlement contract into an escrow or trust account  
22 in a state or federally chartered financial institution. The escrow  
23 agent or trustee shall be required to transfer the proceeds due to the  
24 owner within three business days of acknowledgement of the transfer from  
25 the insurer.

26     (i) Failure to tender the life settlement contract proceeds to the  
27 owner by the date disclosed to the owner shall render the life settle-  
28 ment contract voidable by the owner for lack of consideration until the  
29 time the proceeds are tendered to and accepted by the owner. A failure  
30 to give written notice of the right of rescission hereunder shall toll  
31 the right of rescission until thirty days after the written notice of  
32 the right of rescission has been given.

33     (j)(1) No person, at any time prior to, or at the time of, the appli-  
34 cation for, or issuance of, a policy, or during the two-year period  
35 commencing with the date of issuance of the policy, shall enter into a  
36 life settlement contract, regardless of the date the compensation is to  
37 be provided and regardless of the date the assignment, transfer, sale,  
38 devise or bequest of the policy is to occur. This prohibition shall not  
39 apply if the owner certifies to the life settlement provider that:

40     (A) the policy was issued upon the owner's exercise of conversion  
41 rights arising out of a policy, provided the total of the time covered  
42 under the conversion policy plus the time covered under the prior policy  
43 is at least twenty-four months. The time covered under a group policy  
44 shall be calculated without regard to a change in insurers, provided the  
45 coverage has been continuous and under the same group sponsorship; or

46     (B) one or more of the following conditions, for which the owner  
47 submits independent evidence to the life settlement provider, have been  
48 met within the two-year period:

49     (i) the owner or insured is terminally or chronically ill;

50     (ii) the owner or insured disposes of ownership interests in a closely  
51 held corporation, pursuant to the terms of a buyout or other similar  
52 agreement in effect at the time the insurance policy was initially  
53 issued;

54     (iii) the owner's spouse dies;

55     (iv) the owner divorces his or her spouse;

1 (v) the owner retires from full-time employment or involuntarily ceases  
2 employment;

3 (vi) the owner becomes physically or mentally disabled and a physician  
4 determines that the disability prevents the owner from maintaining full-  
5 time employment;

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

11 (viii) any other condition that the superintendent may determine by  
12 regulation to be an extraordinary circumstance for the owner or the  
13 insured.

14 (2) Copies of the independent evidence required by subparagraph (B) of  
15 paragraph one of this subsection shall be submitted to the insurer when  
16 the life settlement provider submits a request to the insurer for  
17 verification of coverage. The copies shall be accompanied by a letter of  
18 attestation from the life settlement provider that the copies are true  
19 and correct copies of the documents received by the life settlement  
20 provider. Nothing in this section shall prohibit an insurer from exer-  
21 cising its right to contest the validity of any policy.

22 (3) For the purposes of this section a person is:

23 (A) terminally ill if the individual has an illness, sickness or phys-  
24 ical condition that can reasonably be expected to result in death in  
25 twenty-four months or less; or

26 (B) chronically ill if that individual has been certified by a  
27 licensed health care practitioner as:

28 (i) being unable to perform without substantial assistance from another  
29 individual at least two activities of daily living (i.e., eating,  
30 toileting, transferring, bathing, dressing or continence) for a period  
31 of at least ninety days, due to a loss of functional capacity;

32 (ii) requiring substantial supervision to protect the individual from  
33 threats to health and safety due to severe cognitive impairment for a  
34 period of at least ninety days, due to a loss of functional capacity; or

35 (iii) having a level of disability similar to that described in clause  
36 (i) of this subparagraph, as determined by the United States Secretary  
37 of Health and Human Services.

38 (k) Contacts with the insured for the purpose of determining the  
39 health status of the insured by a licensed life settlement provider  
40 after the life settlement contract has been executed shall be made only  
41 by the licensed life settlement provider or licensed life settlement  
42 broker, or any authorized representative thereof, and shall be limited  
43 to once every three months for an insured with a life expectancy of more  
44 than one year, and to no more than once per month for an insured with a  
45 life expectancy of one year or less.

46 (l) The life settlement broker shall represent only the owner and owes  
47 a fiduciary duty to the owner, including a duty to act according to the  
48 owner's instructions and in the best interest of the owner.

49 (m) A life settlement provider, life settlement broker, or life  
50 settlement intermediary shall be responsible for the actions of its  
51 authorized representative.

52 (n)(1) A life settlement intermediary's services shall not be limited  
53 to life settlement providers or life settlement brokers that are affil-  
54 iates, parents, or subsidiaries of the life settlement intermediary.

55 (2) A life settlement intermediary shall establish and maintain  
56 systems, practices and procedures to ensure that:

1 (A) every transaction with an affiliate, parent or subsidiary of the  
2 life settlement intermediary is fair and equitable and conducted on an  
3 arms-length basis; and

4 (B) an affiliate, parent or subsidiary of the life settlement interme-  
5 diary is not granted or provided with preferential treatment or access  
6 to information or services that are not granted or provided to an unaf-  
7 filiated life settlement provider or life settlement broker that  
8 conducts business with the life settlement intermediary.

9 (o) A life settlement provider may sell, assign, pledge or otherwise  
10 transfer the ownership of a settled policy only to a licensed life  
11 settlement provider, an accredited investor or qualified institutional  
12 buyer, financing entity, special purpose entity, or related provider  
13 trust; provided, however, a life settlement provider may sell, assign,  
14 pledge or otherwise transfer a beneficial interest in a settled policy  
15 to someone other than a life settlement provider licensed in this state,  
16 an accredited investor or qualified institutional buyer, financing enti-  
17 ty, special purpose entity, or related provider trust if a licensed life  
18 settlement provider continues to administer and service the settled  
19 policy and protects the privacy of the insured and owner pursuant to  
20 section seven thousand eight hundred ten of this article.

21 (p) The failure to follow the provisions of this section shall be a  
22 defined violation under article twenty-four of this chapter.

23 § 7814. Prohibited practices. (a) No person shall:

24 (1) enter into a life settlement contract if the person knows or  
25 reasonably should have known that the policy was obtained in a false,  
26 deceptive or misleading way;

27 (2) engage in any transaction, practice or course of business if the  
28 person knows or reasonably should have known that the intent was to  
29 avoid the disclosure or other notice requirements of this article;

30 (3) engage in any fraudulent act or practice in connection with any  
31 transaction relating to any life settlement;

32 (4)(A) enter into a premium finance loan with an applicant for a new  
33 policy or an owner, pursuant to which the person providing premium  
34 financing, or any affiliate, parent corporation or subsidiary of the  
35 person, shall receive any proceeds, fees or other consideration, direct-  
36 ly or indirectly, from the policy or owner of the policy or any other  
37 person, other than commissions earned by a licensed insurance producer  
38 on the policy, with respect to the premium finance loan, that are in  
39 addition to the amounts required to pay the principal, interest and any  
40 reasonable costs, fees or expenses incurred by the lender or borrower  
41 related to the premium finance loan or subsequent sale of such loan;  
42 provided, further, that any payments, charges, fees or other amounts in  
43 addition to the amounts required to pay the principal, interest and any  
44 reasonable costs or expenses incurred by the lender or borrower related  
45 to the premium finance loan shall be remitted to the original owner of  
46 the policy or to the original owner's estate if the original owner is  
47 not living at the time of the determination of the overpayment. For  
48 purposes of this paragraph, "owner" means the owner of a policy whether  
49 or not entering into, or offering to enter into, a life settlement  
50 contract;

51 (B) If, at any time, a policy that is the subject of a premium finance  
52 loan specified in subparagraph (A) of this paragraph is sold, assigned,  
53 transferred, devised or bequeathed pursuant to the terms of a premium  
54 finance loan, any proceeds or other consideration received other than  
55 the amounts specified in subparagraph (A) of this paragraph shall be

1 remitted to the original owner of the policy or to the original owner's  
2 estate if the original owner is not then living;

3 (5) with respect to any life settlement contract, knowingly fail to  
4 disclose any affiliation or contractual arrangement as required by this  
5 article;

6 (6) directly or indirectly, purchase or obtain an interest in any  
7 policy that is the subject of a life settlement contract where the  
8 person has acted as a life settlement broker or life settlement interme-  
9 diary with respect to the policy, unless such affiliation has been  
10 disclosed to the owner pursuant to paragraph three of subsection (c) of  
11 section seven thousand eight hundred eleven of this article; and (A) if  
12 a life settlement broker, the broker has provided all offers and counter  
13 offers pursuant to paragraph two of subsection (c) of section seven  
14 thousand eight hundred eleven of this article, and has conducted the  
15 transaction on a fair and equitable arm-length basis; or (B) with  
16 respect to a life settlement intermediary, the intermediary complies  
17 with subsection (o) of section seven thousand eight hundred thirteen of  
18 this article;

19 (7) directly or indirectly provide any compensation to any person  
20 acting in this state as a life settlement broker, and no person shall  
21 accept any such compensation, unless the person is a licensed life  
22 settlement broker pursuant to the provisions of section two thousand one  
23 hundred thirty-seven of this chapter;

24 (8) directly or indirectly pay any referral or finder's fee or provide  
25 any other compensation to any owner's physician, attorney, accountant,  
26 insurance producer, insurance consultant, or other person providing  
27 medical, legal or financial planning services to the owner, or to any  
28 other person, other than a life settlement broker, representing the  
29 owner with respect to the life settlement contract, and no person shall  
30 accept any such fee or compensation;

31 (9) directly or indirectly provide compensation to a life settlement  
32 broker, except where the compensation is for a specific life settlement  
33 contract and is clearly disclosed to the owner as required in this arti-  
34 cle;

35 (10) directly or indirectly engage in any act determined by the super-  
36 intendent to be an unfair or deceptive act or practice pursuant to this  
37 chapter;

38 (11) remove, conceal, alter, destroy or sequester from the superinten-  
39 dent the assets or records of a life settlement provider, life settle-  
40 ment broker, life settlement intermediary or other person engaged in the  
41 business of life settlements;

42 (12) misrepresent or conceal the financial condition of a life settle-  
43 ment provider; or

44 (13) in relation to the business of life settlements, file with the  
45 superintendent a document containing materially false information  
46 concerning any fact material thereto or otherwise conceal information  
47 about a fact material thereto from the superintendent.

48 (b) No life settlement provider, life settlement broker, life settle-  
49 ment intermediary, owner or any other person, as a condition of entering  
50 into a life settlement contract, shall request or require an insured to  
51 submit to a medical examination at any time subsequent to the settlement  
52 of the policy.

53 (c) No life settlement provider shall enter into any life settlement  
54 contract in which payments of proceeds are made in installments.

55 (d) No life settlement provider, life settlement broker or life  
56 settlement intermediary shall directly or indirectly:

1     (1) be a party to or enter into an agreement or understanding limiting  
2 or restricting an owner's or life settlement broker's ability to seek  
3 competitive bids on policies to the extent that the agreement or under-  
4 standing unlawfully restrains trade or constitutes anti-competitive  
5 behavior;

6     (2) monopolize or attempt to monopolize, or combine or conspire with  
7 any other person or persons to monopolize, in this state, the business  
8 of life settlements;

9     (3) be a party to or enter into an agreement with a life settlement  
10 provider, life settlement broker or life settlement intermediary to the  
11 extent that the agreement fixes or limits the value paid to owners;

12     (4) be a party to or enter into any agreement or communication with a  
13 life settlement provider or life settlement intermediary with respect to  
14 the terms to be offered to an owner to the extent that the agreement or  
15 understanding unlawfully restrains trade or constitutes anti-competitive  
16 behavior;

17     (5) be a party to or enter into any agreement with a life settlement  
18 provider, life settlement broker, life settlement intermediary or other  
19 person to restrain trade or engage in any other anti-competitive behav-  
20 ior;

21     (6) be party to or enter into any agreement with a life settlement  
22 provider, life settlement broker, life settlement intermediary or other  
23 person the effect of which may be substantially to lessen competition in  
24 the business of life settlements subject to this chapter; or

25     (7) be a party to or enter into any agreement with a life settlement  
26 provider, life settlement broker, life settlement intermediary or other  
27 person to refuse to conduct business with any person in the business of  
28 life settlements.

29     (e) No life settlement intermediary shall:

30     (1) represent, solicit, negotiate or act on behalf of, an owner, a  
31 life settlement provider, or a life settlement broker; or

32     (2) act as a life settlement provider or life settlement broker.

33     (f) No insurer shall prohibit an insurance agent from disclosing to a  
34 client the availability of a life settlement contract.

35     (g) The failure to follow the provisions of this section shall be a  
36 defined violation under article twenty-four of this chapter.

37     § 7815. Stranger-originated life insurance. (a) In this chapter,  
38 "stranger-originated life insurance" means any act, practice or arrange-  
39 ment, at or prior to policy issuance, to initiate or facilitate the  
40 issuance of a policy for the intended benefit of a person who, at the  
41 time of policy origination, has no insurable interest in the life of the  
42 insured under the laws of this state, including:

43     (1) the purchase of life insurance with resources or guarantees from  
44 or through a person that, at the time of policy initiation, could not  
45 lawfully initiate the policy;

46     (2) an arrangement or other agreement to transfer the ownership of the  
47 policy or the policy benefits to another person; or

48     (3) a trust or similar arrangement that is used, directly or indirect-  
49 ly, for the purpose of purchasing one or more policies for the intended  
50 benefit of another person in a manner that violates the insurable inter-  
51 est laws of this state.

52     (b) Stranger-originated life insurance arrangements do not include  
53 lawful life settlement contracts as permitted by this article or those  
54 practices set forth in paragraph three of subsection (k) of section  
55 seven thousand eight hundred two of this article, provided that such

1 contracts or practices are not for the purpose of evading regulation  
2 under this article.

3 (c) No person shall directly or indirectly engage in any act, practice  
4 or arrangement that constitutes stranger-originated life insurance.

5 (d) The failure to follow the provision of subsection (c) of this  
6 section shall be a defined violation under article twenty-four of this  
7 chapter.

8 § 7816. Penalties and civil remedies. (a)(1) If, after notice and  
9 hearing, the superintendent determines that any information required by  
10 subsection (a) or (c) of section seven thousand eight hundred eleven of  
11 this article knowingly was not provided or knowingly was delayed in  
12 being provided by the life settlement broker to the material detriment  
13 of the owner, then the superintendent, in addition to any other penalty  
14 prescribed by law, may require the life settlement broker to pay to the  
15 people of this state an amount not to exceed the compensation due or  
16 provided to the life settlement broker.

17 (2) If, after notice and hearing, the superintendent determines that  
18 any information required by subsection (a) of section seven thousand  
19 eight hundred eleven of this article knowingly was not provided or know-  
20 ingly was delayed in being provided by the life settlement provider to  
21 the material detriment of the owner, then the superintendent, in addi-  
22 tion to any other penalty prescribed by law, may require the life  
23 settlement provider to pay to the people of this state an amount not to  
24 exceed forty-five thousand dollars.

25 (b) If, after notice and hearing, the superintendent determines any  
26 person knowingly violated subsection (c) of section seven thousand eight  
27 hundred fifteen of this article, then the superintendent, in addition to  
28 any other penalty prescribed by law, may require the person to pay to  
29 the people of this state an amount not to exceed one hundred thousand  
30 dollars.

31 (c) If, after notice and hearing, the superintendent determines that  
32 any person knowingly violated section seven thousand eight hundred ten  
33 of this article, then the superintendent, in addition to any other  
34 penalty prescribed by law, may require the person to pay the insured or  
35 owner an amount not to exceed twenty thousand dollars.

36 (d)(1) If, after notice and hearing, the superintendent determines  
37 that any person knowingly and willfully acted as a life settlement  
38 provider without a license in violation of subsection (a) of section  
39 seven thousand eight hundred three of this article, then the superinten-  
40 dent may impose a civil penalty payable to the people of this state not  
41 to exceed one hundred thousand dollars for each policy settled in  
42 violation thereof.

43 (2) If, after notice and hearing, the superintendent determines that  
44 any person knowingly and willfully acted as a life settlement broker  
45 without a license in violation of subsection (a) of section two thousand  
46 one hundred thirty-seven of this chapter, then the superintendent may  
47 impose a civil penalty payable to the people of this state not to exceed  
48 fifty thousand dollars for each policy settled in violation thereof.

49 (3) If, after notice and hearing, the superintendent determines that  
50 any person knowingly and willfully acted as a life settlement interme-  
51 diary without a registration in violation of subsection (a) of section  
52 seven thousand eight hundred four of this article, then the superinten-  
53 dent may impose a civil penalty payable to the people of this state not  
54 to exceed fifty thousand dollars for each transaction.

55 (e) Any person who has been injured by reason of a violation of  
56 subsection (a), (b) or (c) of this section may bring an action to

1 recover damages suffered by reason of such violation. In any action  
2 brought under this section, the court may award reasonable attorney's  
3 fees to a prevailing plaintiff.

4 (f) Nothing provided in this article shall limit or restrict any  
5 common law, contractual or other right of action.

6 § 7817. Authority to promulgate regulations. The superintendent may  
7 promulgate regulations implementing this article.

8 § 7818. Nonconforming contracts. (a) Except as otherwise specifically  
9 provided in this chapter, any life settlement contract subject to this  
10 chapter that is in violation of any of the provisions of this chapter  
11 shall be valid and binding upon the life settlement provider, but in all  
12 respects in which the contract's provisions are in violation of the  
13 requirements or prohibitions of this chapter it shall be enforceable as  
14 if it conformed with such requirements or prohibitions.

15 (b) In any action to recover under the provisions of any life settle-  
16 ment contract that the superintendent is authorized by this chapter to  
17 approve, if in the superintendent's opinion the provisions of this chap-  
18 ter are more favorable to owners, the court shall enforce such contract  
19 as if its provisions were the same as those specified in this chapter  
20 unless the court finds that the actual provisions of the contract were  
21 more favorable to owners at the date when the contract was entered into.

22 § 7819. Applicability and choice of law. (a) The provisions of this  
23 article shall apply to any life settlement contract made, proposed to be  
24 made, or solicited with a resident of this state or any owner physically  
25 in this state.

26 (b)(1) If there is more than one owner on a single policy, and the  
27 owners are residents of different states, then the state of residency  
28 shall be the state in which the owner having the largest percentage of  
29 ownership resides or, if the owners hold equal ownership, the state of  
30 residence of one owner, agreed upon in writing by all of the owners.

31 (2) A life settlement contract entered into with an owner who is a  
32 resident of another state may be governed by the laws of the other state  
33 provided that the owner elects in writing to be governed by the laws of  
34 the other state, and if the owner is also a resident of this state, the  
35 life settlement contract is made, proposed to be made and solicited  
36 outside this state.

37 (c) For the purposes of this section, with respect to any person other  
38 than a natural person, the state of residence shall be:

39 (1) the state in which the person maintains its principal place of  
40 business; or

41 (2) with respect to a trust, a state in which the grantor resides.

42 § 7820. Severability. If any clause, sentence, paragraph, section or  
43 part of this article shall be adjudged by any court of competent juris-  
44 isdiction to be invalid and after exhaustion of all further judicial  
45 review, the judgment shall not affect, impair or invalidate the remain-  
46 der thereof, but shall be confined in its operation to the clause,  
47 sentence, paragraph, section or part of this article directly involved  
48 in the controversy in which the judgment shall have been rendered.

49 § 12. Subsection (b) of section 403 of the insurance law, as amended  
50 by chapter 805 of the laws of 1984, is amended to read as follows:

51 (b) For the purpose of section one hundred nine of this chapter, it is  
52 a violation of this chapter for any individual, firm, association or  
53 corporation subject to the provisions of this chapter to commit a frau-  
54 dulent insurance act or a fraudulent life settlement act.

55 § 13. Section 403 of the insurance law is amended by adding a new  
56 subsection (f) to read as follows:

1 (f) In this article, "fraudulent life settlement act" means a fraud as  
2 defined in section 176.40 of the penal law.

3 § 14. Subsection (c) of section 403 of the insurance law, as amended  
4 by chapter 262 of the laws of 1998, is amended to read as follows:

5 (c) In addition to any criminal liability arising under the provisions  
6 of this section, the superintendent shall be empowered to levy a civil  
7 penalty not exceeding five thousand dollars and the amount of the claim  
8 for each violation upon any person, including those persons and their  
9 employees licensed pursuant to this chapter, who is found to have: (i)  
10 committed a fraudulent insurance act, fraudulent life settlement act or  
11 otherwise violates the provisions of this section; or (ii) knowingly and  
12 with intent to defraud files, makes, or assists, solicits or conspires  
13 with another to file or make an application for a premium reduction,  
14 pursuant to subsection (a) of section two thousand three hundred thir-  
15 ty-six of this chapter, containing any materially false information or  
16 which, for the purpose of misleading, conceals information concerning  
17 any fact material thereto.

18 § 15. Subsection (a) of section 404 of the insurance law is amended to  
19 read as follows:

20 (a) If the insurance frauds bureau has reason to believe that a person  
21 has engaged in, or is engaging in, an act defined in section 155.05 of  
22 the penal law, with respect to personal or commercial insurance trans-  
23 actions [~~or~~], the business of life settlements, section 176.05 or  
24 section 176.40 of such law, the superintendent may make such investi-  
25 gation within or without this state as [~~he~~] the superintendent deems  
26 necessary to aid in the enforcement of this chapter or to determine  
27 whether any person has violated or is about to violate any such  
28 provision of the penal law.

29 § 16. Section 405 of the insurance law, subsection (a) as amended by  
30 chapter 635 of the laws of 1996, subsection (d) as added by chapter 57  
31 of the laws of 1993, the opening paragraph of subsection (d) as amended  
32 by chapter 191 of the laws of 2008, paragraphs 9 and 10 of subsection  
33 (d) as amended and paragraph 11 of subsection (d) as added by chapter  
34 678 of the laws of 1997, is amended to read as follows:

35 § 405. Reports. (a) Any person licensed or registered pursuant to the  
36 provisions of this chapter, and any person engaged in the business of  
37 insurance or life settlement in this state who is exempted from compli-  
38 ance with the licensing requirements of this chapter, including the  
39 state insurance fund of this state, who has reason to believe that an  
40 insurance transaction or life settlement act may be fraudulent, or has  
41 knowledge that a fraudulent insurance transaction or fraudulent life  
42 settlement act is about to take place, or has taken place shall, within  
43 thirty days after determination by such person that the transaction  
44 appears to be fraudulent, send to the insurance frauds bureau on a form  
45 prescribed by the superintendent, the information requested by the form  
46 and such additional information relative to the factual circumstances of  
47 the transaction and the parties involved as the superintendent may  
48 require. The insurance frauds bureau shall accept reports of suspected  
49 fraudulent insurance transactions or fraudulent life settlement acts  
50 from any self insurer, including but not limited to self insurers  
51 providing health insurance coverage or those defined in section fifty of  
52 the workers' compensation law, and shall treat such reports as any other  
53 received pursuant to this section.

54 (b) The insurance frauds bureau shall review each report and undertake  
55 such further investigation as it deems necessary and proper to determine  
56 the validity of the allegations.

1 (c) Whenever the superintendent is satisfied that a material fraud,  
2 deceit, or intentional misrepresentation has been committed in an insur-  
3 ance transaction or in the business of life settlements or purported  
4 insurance transaction or business of life settlements, he or she shall  
5 report any such violation of law to the appropriate licensing agency,  
6 the district attorney of the county in which such acts were committed,  
7 when authorized by law, to the attorney general, and where appropriate,  
8 to the person who submitted the report of fraudulent activity, as  
9 provided by the provisions of this article. Within one hundred twenty  
10 days of receipt of the superintendent's report, the attorney general or  
11 the district attorney concerned shall inform the superintendent as to  
12 the status of the reported violations.

13 (d) No later than March fifteenth of each year, beginning in nineteen  
14 hundred ninety-four, the superintendent shall furnish to the governor,  
15 the speaker of the assembly and the president pro tem of the senate a  
16 report containing:

17 (1) a comprehensive summary and assessment of the frauds bureau's  
18 efforts in discovering, investigating and halting fraudulent activities  
19 and assisting in the prosecution of persons who are parties to insurance  
20 fraud or life settlement fraud;

21 (2) the number of reports received from any person or persons engaged  
22 in the business of insurance or life settlements, the number of investi-  
23 gations undertaken by the bureau pursuant to any reports received, the  
24 number of investigations undertaken not as a result of reports received,  
25 the number of investigations that resulted in a referral to a licensing  
26 agency, a local prosecutor or the attorney general, the number of such  
27 referrals pursued by a licensing agency, a local prosecutor or the  
28 attorney general, and the disposition of such cases;

29 (3) a delineation of the number of reported and investigated cases by  
30 line of insurance and those that relate to life settlements;

31 (4) a comparison of the frauds bureau's experience, with regard to  
32 paragraphs two and three of this [~~subdivision~~] subsection, to the  
33 bureau's experience of years past;

34 (5) the total number of employees assigned to the frauds bureau delin-  
35 eated by title and location of bureau assigned;

36 (6) an assessment of the activities of insurance [~~company~~] companies  
37 and life settlement providers activities in regard to detecting, inves-  
38 tigating and reporting fraudulent activities, including a list of compa-  
39 nies which maintain special investigative units for the sole purpose of  
40 detecting, investigating and reporting fraudulent activities and the  
41 number of investigators assigned to such units per every thirty thousand  
42 policies or life settlement contracts in force with such company or  
43 provider;

44 (7) the amount of technical and monetary assistance requested and  
45 received by the frauds bureau from any insurance company or companies,  
46 any life settlement provider or providers, or any organization funded by  
47 insurance companies or life settlement providers;

48 (8) the amount of money returned by the frauds bureau to insurance  
49 companies pursuant to any fraudulent claims that were recouped by the  
50 bureau;

51 (9) the number and amount of civil penalties levied by the frauds  
52 bureau pursuant to chapter four hundred eighty of the laws of nineteen  
53 hundred ninety-two;

54 (10) recommendations for further statutory or administrative changes  
55 designed to meet the objectives of this article; and

1 (11) an assessment of law enforcement and insurance company activities  
2 to detect and curtail the incidence of operating a motor vehicle without  
3 proper insurance coverage as required by this chapter.

4 § 17. Section 406 of the insurance law, as amended by chapter 6 of the  
5 laws of 2007, is amended to read as follows:

6 § 406. Immunity. In the absence of fraud or bad faith, no person  
7 shall be subject to civil liability, and no civil cause of action of any  
8 nature shall arise against such person [~~(i)~~] for any: (i) information  
9 relating to suspected fraudulent insurance transactions or fraudulent  
10 life settlement acts furnished to law enforcement officials, their  
11 agents and employees; [~~and (ii) for any~~] (ii) information relating to  
12 suspected fraudulent insurance transactions or fraudulent life settle-  
13 ment acts furnished to other persons subject to the provisions of this  
14 chapter; and [~~(iii) for any~~] (iii) such information furnished in reports  
15 to the insurance frauds bureau, its agents or employees or any state  
16 agency investigating fraud or misconduct relating to workers' compen-  
17 sation insurance, its agents or employees. Nor shall the superintendent  
18 or any employee of the insurance frauds bureau, in the absence of fraud  
19 or bad faith, be subject to civil liability and no civil cause of action  
20 of any nature shall arise against them by virtue of the publication of  
21 any report or bulletin related to the official activities of the insur-  
22 ance frauds bureau. Nothing herein is intended to abrogate or modify in  
23 any way any common law privilege of immunity heretofore enjoyed by any  
24 person.

25 § 18. The insurance law is amended by adding a new section 411 to read  
26 as follows:

27 § 411. Life settlements fraud prevention plans. (a) Every life  
28 settlement provider shall file with the superintendent a plan for the  
29 detection, investigation and prevention of fraudulent life settlement  
30 acts in this state and those fraudulent life settlement acts affecting  
31 life settlement contracts in this state.

32 (1) The plan shall provide the time and manner in which such plan  
33 shall be implemented, including provisions for a special investigations  
34 unit and staffing levels within such unit. Such investigators shall be  
35 responsible for investigating information on or cases of suspected frau-  
36 dulent activity and for effectively implementing fraud prevention and  
37 reduction activities pursuant to the plan filed with the superintendent.  
38 A life settlement provider shall include in such plan staffing levels  
39 and allocations of resources of such special investigations unit that  
40 shall be sufficient and appropriate for the proper implementation of the  
41 plan and approval of such plan pursuant to subsection (c) of this  
42 section.

43 (2) In lieu of a special investigations unit, a life settlement  
44 provider may contract with a provider of services related to the inves-  
45 tigation of information on or cases of suspected fraudulent activities;  
46 provided, however, that a life settlement provider that opts for  
47 contracting with a separate provider of services, shall provide to the  
48 superintendent a detailed plan therefor, pursuant to requirements set  
49 forth in regulation by the superintendent.

50 (3) A person employed by a special investigations unit or an independ-  
51 ent provider of investigative services under contract with a life  
52 settlement provider shall be qualified by education or experience to act  
53 in such capacity, subject to requirements established by the superinten-  
54 dent in a regulation.

55 (b) The plan shall provide for the following:

1 (1) interface of special investigations unit personnel with law  
2 enforcement and prosecutorial agencies, including the insurance frauds  
3 bureau in the department;

4 (2) reporting of fraud data to a central organization approved by the  
5 superintendent;

6 (3) in-service education and training for personnel in identifying and  
7 evaluating instances of suspected fraudulent activity;

8 (4) coordination with other units of a life settlement provider for  
9 the investigation and initiation of civil actions based upon information  
10 received by or through the special investigation unit;

11 (5) public awareness of the cost and frequency of fraudulent activ-  
12 ities, and the methods of preventing fraud;

13 (6) development and use of a fraud detection and procedures manual to  
14 assist in the detection and elimination of fraudulent activity; and

15 (7) the time and manner in which such plan shall be implemented and a  
16 demonstration that the fraud prevention and reduction measures outlined  
17 in the plan will be fully implemented.

18 (c)(1) A fraud detection and prevention plan filed by a life settle-  
19 ment provider with the superintendent pursuant to this section shall be  
20 deemed approved by the superintendent if not returned by the superinten-  
21 dent for revision within one hundred twenty days of the date of filing.  
22 If the superintendent returns a plan for revision, the superintendent  
23 shall state the points of objection with such plan, and any amendments  
24 as the superintendent may require consistent with the provisions of this  
25 section, including staffing levels, resource allocation, or other policy  
26 or operational considerations. An amended plan reflecting the changes  
27 shall be filed with the superintendent within forty-five days from the  
28 date of return.

29 (2) If the superintendent has returned a plan for revision more than  
30 one time, then the life settlement provider shall be entitled to a hear-  
31 ing pursuant to the provisions of article three of this chapter and  
32 regulations promulgated thereunder.

33 (3) If a life settlement provider fails to submit a final plan within  
34 thirty days after a determination of the superintendent after the hear-  
35 ing held pursuant to paragraph two of this subsection, or otherwise  
36 fails to submit a plan, or fails to implement the provisions of a plan  
37 in a time and manner provided for in such plan, or otherwise refuses to  
38 comply with the provisions of this section, the superintendent may  
39 impose:

40 (A) a fine of not more than two thousand dollars per day for such  
41 failure by a life settlement provider until the superintendent deems the  
42 life settlement provider to be in compliance;

43 (B) upon the life settlement provider a fraud detection and prevention  
44 plan deemed to be appropriate by the superintendent, which shall be  
45 implemented by the life settlement provider; or

46 (C) both a fine and a fraud detection and prevention plan pursuant to  
47 subparagraphs (A) and (B) of this paragraph.

48 (d) Any plan, the information contained therein, or correspondence  
49 related thereto, or any other information furnished pursuant to this  
50 section shall be deemed to be a confidential communication and shall not  
51 be open for review or be subject to a subpoena except by a court order  
52 or by request from any law enforcement agency or authority.

53 (e) Every life settlement provider required to file a fraud prevention  
54 plan shall report to the superintendent on an annual basis, no later  
55 than March fifteenth, describing the provider's experience, performance  
56 and cost effectiveness in implementing the plan, utilizing such forms as

1 the superintendent may prescribe. Upon consideration of such reports,  
2 the superintendent may require amendments to the provider's fraud  
3 detection and prevention plan as deemed necessary.

4 § 19. The penal law is amended by adding seven new sections 176.40,  
5 176.45, 176.50, 176.55, 176.60, 176.65 and 176.70 to read as follows:

6 § 176.40 Fraudulent life settlement act; defined.

7 A fraudulent life settlement act is committed by any person who, know-  
8 ingly and with intent to defraud, presents, causes to be presented, or  
9 prepares with knowledge or belief that it will be presented to, or by, a  
10 life settlement provider, life settlement broker, life settlement inter-  
11 mediary, or any agent thereof, or to any owner any written statement or  
12 other physical evidence as part of, or in support of, an application for  
13 a life settlement contract, a claim for payment or other benefit under a  
14 life settlement contract, which the person knows to:

15 (1) contain materially false information concerning any material fact  
16 thereto; or

17 (2) conceal, for the purpose of misleading, information concerning any  
18 fact material thereto.

19 § 176.45 Life settlement fraud in the fifth degree.

20 A person is guilty of life settlement fraud in the fifth degree when  
21 he or she commits a fraudulent life settlement act.

22 Life settlement fraud in the fifth degree is a class A misdemeanor.

23 § 176.50 Life settlement fraud in the fourth degree.

24 A person is guilty of life settlement fraud in the fourth degree when  
25 he or she commits a fraudulent life settlement act and thereby wrongfull-  
26 ly takes, obtains or withholds, or attempts to wrongfully take, obtain  
27 or withhold property with a value in excess of twenty-five thousand  
28 dollars.

29 Life settlement fraud in the fourth degree is a class E felony.

30 § 176.55 Life settlement fraud in the third degree.

31 A person is guilty of life settlement fraud in the third degree when  
32 he or she commits a fraudulent life settlement act and thereby wrongfull-  
33 ly takes, obtains or withholds, or attempts to wrongfully take, obtain  
34 or withhold property with a value in excess of fifty thousand dollars.

35 Life settlement fraud in the third degree is a class D felony.

36 § 176.60 Life settlement fraud in the second degree.

37 A person is guilty of life settlement fraud in the second degree when  
38 he or she commits a fraudulent life settlement act and thereby wrongfull-  
39 ly takes, obtains or withholds, or attempts to wrongfully take, obtain  
40 or withhold property with a value in excess of one hundred thousand  
41 dollars.

42 Life settlement fraud in the second degree is a class C felony.

43 § 176.65 Life settlement fraud in the first degree.

44 A person is guilty of life settlement fraud in the first degree when  
45 he or she commits a fraudulent life settlement act and thereby wrongfull-  
46 ly takes, obtains or withholds, or attempts to wrongfully take, obtain  
47 or withhold property with a value in excess of one million dollars.

48 Life settlement fraud in the first degree is a class B felony.

49 § 176.70 Aggravated life settlement fraud.

50 A person is guilty of aggravated life settlement fraud when he or she  
51 commits a fraudulent life settlement act, and has been previously  
52 convicted within the preceding five years of any offense, an essential  
53 element of which is the commission of a fraudulent life settlement act.

54 Aggravated life settlement fraud is a class D felony.

55 § 20. Section 570 of the banking law, as added by chapter 488 of the  
56 laws of 1960, is amended to read as follows:

1 § 570. Restrictions on premium finance agreements. 1. No premium  
2 finance agreement shall contain any provision by which:

3 (a) In the absence of default of the insured, the premium finance  
4 agency holding the agreement may, arbitrarily and without reasonable  
5 cause, accelerate the maturity of any part or all of the amount owing  
6 thereunder;

7 (b) A power of attorney is given to confess judgment in this state; or

8 (c) The insured relieves the insurance agent or broker or the premium  
9 finance agency holding the agreement from liability for any legal rights  
10 or remedies [~~which~~] that the insured may otherwise have against [~~him~~]  
11 the insurance agent or broker.

12 2. No person may use a premium finance agreement in a manner designed  
13 to evade any requirement of article seventy-eight of the insurance law.

14 3. Every person or premium finance agency that enters into a premium  
15 finance agreement, as such terms are defined pursuant to article  
16 twelve-B of this chapter, shall file in the office of the superintendent  
17 of insurance, on or before the first day of March, a statement, to be  
18 known as its annual statement, verified by the oath of at least two of  
19 its principal officers, showing its condition at the end of the preced-  
20 ing calendar year. The statement shall be in such form and shall contain  
21 such other matters as the superintendent of insurance shall prescribe.  
22 In addition to any other requirements, the annual statement shall speci-  
23 fy the total number, aggregate face amount and life settlement proceeds  
24 of, policies settled during the immediately preceding calendar year,  
25 together with a breakdown of the information by policy issue year.

26 § 21. This act shall take effect on the one hundred eightieth day  
27 after it shall have become a law, provided that:

28 (1) a person lawfully operating as a life settlement provider, life  
29 settlement broker or life settlement intermediary in this state with  
30 respect to life settlement transactions not heretofore regulated under  
31 the insurance law may, with respect to such transactions, continue to do  
32 so after such one hundred eightieth day, pending approval or disapproval  
33 of the person's application for a license or registration, as applica-  
34 ble, if the appropriate application is filed with the superintendent of  
35 insurance not later than 30 days after the superintendent publishes, on  
36 the insurance department's website, the application form for such licen-  
37 sure or registration, and provided further that such person certifies in  
38 the application that such person shall comply with all applicable  
39 provisions of the insurance law and regulations thereunder;

40 (2) a person licensed as a viatical settlement company or a viatical  
41 settlement broker immediately prior to the effective date of this act  
42 may act as a life settlement provider or a life settlement broker after  
43 such one hundred eightieth day, for the duration of the term of the  
44 provider or the broker's license, without having to file a new applica-  
45 tion, including with respect to transactions not heretofore regulated  
46 under the insurance law, provided, however, such company or broker shall  
47 thereafter be subject to a renewal of such license as a life settlement  
48 provider or life settlement broker and shall be required, with such  
49 renewal, to provide evidence to the superintendent of insurance that  
50 such licensee is in compliance with the licensing requirements set forth  
51 in sections 2102 and 7803 of the insurance law, for life settlement  
52 brokers and life settlement providers, respectively;

53 (3) with respect to life settlement transactions not heretofore regu-  
54 lated under the insurance law, a person licensed as a viatical settle-  
55 ment company immediately prior to the effective date of this act or a  
56 person lawfully operating as a life settlement provider in this state,

1 as described in subdivision one of this section, that has filed, no  
2 later than 30 days prior to the effective date of this act, specimen  
3 copies of the contract forms, application forms and other forms that it  
4 intends to use, and certified to the superintendent of insurance that  
5 such forms are in compliance with the insurance law and any regulations  
6 promulgated thereunder, may use the unapproved forms until the super-  
7 intendent of insurance has either approved or disapproved the forms;

8 (4) with respect to viatical settlement transactions heretofore regu-  
9 lated under the insurance law, a person licensed as a viatical settle-  
10 ment company immediately prior to the effective date of this act, as  
11 described in subdivision two of this section, shall not continue to  
12 issue contract forms, application forms and other forms approved by the  
13 superintendent of insurance prior to the effective date of this act,  
14 after the effective date of this act. Any such person that has filed, no  
15 later than thirty days prior to the effective date of this act, specimen  
16 copies of the contract forms, application forms and other forms that it  
17 intends to use, and that has certified to the superintendent of insur-  
18 ance that such forms are in compliance with the insurance law and any  
19 regulations promulgated thereunder, as of the effective date of this  
20 act, may use such unapproved forms until the superintendent of insurance  
21 has either approved or disapproved the forms;

22 (5) sections 7810, 7811 and 7815 of the insurance law, as added by  
23 section eleven of this act, shall take effect immediately; and

24 (6) effective immediately, the superintendent of insurance may promul-  
25 gate any rules and regulations necessary for the implementation of the  
26 provisions of this act on its effective date.

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