

## NEWSSTAND

### **New Hampshire and Wisconsin Enact Life Settlement Laws: California Issues Regulations**

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[Geoffrey Etherington](#)

New Hampshire and Wisconsin have joined with other states in enacting or updating life settlement laws in recent months and California's Insurance Department issued new regulations just weeks before its new life settlement law was to go into effect on July 1, 2010.

New Hampshire Governor John Lynch (D) signed HB 660 effective June 14, 2010. New Hampshire's statute is primarily based on the model life settlement law adopted by the National Association of Insurance Commissioners (the NAIC), and, among other things, imposes restrictions with respect to stranger-originated life insurance transactions (STOLI):

...a practice or plan to initiate a life insurance policy for the benefit of a third party investor who, at the time of policy origination, has no insurable interest in the insured. STOLI practices include but are not limited to cases in which life insurance is purchased with resources or guarantees from or through a person, or entity who, at the time of policy inception, could not lawfully initiate the policy himself, herself, or itself, and where, at the time of inception, there is an arrangement or agreement, whether verbal or written, to directly or indirectly transfer the ownership of the policy and/or the policy benefits to a third party. Trusts that are created to give the appearance of insurable interest and are used to initiate policies for investors violate insurable interest laws and the prohibition against wagering on life...

New Hampshire will require STOLI investors to wait at least five years before collecting death benefits under a policy. This restriction only applies to STOLI policies; it does not apply to policies originally purchased for an insurance protection purpose.

New Hampshire life settlement providers must obtain license and their contract forms are subject to insurance department approval. Providers must also comply with disclosure, reporting, privacy, and record retention requirements.

On May 13, 2010, Wisconsin Governor Jim Doyle signed into law Senate Bill 513 (SB 513). SB 513 is a hybrid of the NAIC Viatical Settlements Model Act and the Life Settlements Model Act of the National Conference of Insurance Legislators (NCOIL), and includes a requirement with some exceptions that life insurance policies be in force for at least five years before they can be sold in the secondary market.

Wisconsin requires life settlement providers and brokers to obtain licenses and imposes on them disclosure and anti-fraud obligations. The purchase price paid to a Wisconsin policyowner for a life insurance policy must be less than the death benefit, but more than the cash surrender value.

On June 11, 2010, the California Insurance Department issued proposed regulations, on an emergency basis, to implement Senate Bill 98 (SB 98) signed on October 11, 2009 by California Governor Arnold Schwarzenegger which was effective as of July 1, 2010. The new California law targets (STOLI) transactions. SB 98 repeals previous laws regarding viatical settlements, which only applied to life insurance policies belonging to individuals with terminal diseases. SB 98 regulates all life settlements, including sales of life insurance policies by healthy insureds.

The proposed regulations (i) define procedures for licensing California life settlement providers and brokers, (ii) specify forms for provider and broker applications and consumer disclosures and a suggested provider verification of coverage form, and (iii) set forth procedures for filing life settlement forms with the California Insurance Commissioner prior to use.

California life settlement providers are required to disclose to policyowners that (a) there are possible alternatives to life settlements, including accelerated benefits options under their policies, (b) some or all of the proceeds of a life settlement may be taxable and (c) a change in ownership of the settled policy could limit the insured's ability to purchase insurance in the future because there is a limit to how much coverage insurers will issue on one life.

Unlike New Hampshire and Wisconsin, California's updated life settlement law imposes only a two-year ban on life settlements but it establishes a statutory definition of STOLI and classifies STOLI transactions as fraudulent acts. California's law was primarily based on the NCOIL Model Act.

These recent actions by New Hampshire, Wisconsin and California are evidence of the continuing drive by legislators and regulators to significantly increase the regulation of life settlements and in many cases discourage or, at least, disfavor investments in life insurance policies by third parties (or "strangers").