

Senate Bill 217

By: Senators Hudgens of the 47th, Shafer of the 48th, Moody of the 56th, Cagle of the 49th, Harp of the 29th and others

**A BILL TO BE ENTITLED  
AN ACT**

1 To amend Title 33 of the Official Code of Georgia Annotated, relating to insurance, so as to  
2 enact the "Life Settlements Act"; to provide a short title; to provide definitions; to provide  
3 for the protection of contractual and property rights of a life insurance policy owner to seek  
4 a life settlement; to establish consumer protections by providing for the regulation of a life  
5 settlement transaction; to provide for the licensing and regulation of a life settlement provider  
6 and others involved in a life settlement transaction; to provide for antifraud measures; to  
7 provide penalties for certain violations; to provide for related matters; to provide for  
8 severability; to provide an effective date; to repeal conflicting laws; and for other purposes.

9                   BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10                   **SECTION 1.**

11 Title 33 of the Official Code of Georgia Annotated, relating to insurance, is amended by  
12 adding a new Chapter 59 to read as follows:

13                   **"CHAPTER 59**

14                   33-59-1.

15 This chapter shall be known and may be cited as the 'Life Settlements Act.'

16                   33-59-2.

17 As used in this chapter, the term:

18                   (1) 'Advertising' means any written, electronic, or printed communication or any  
19 communication by means of recorded telephone messages or any communication  
20 transmitted on radio, television, the Internet, or similar communications media, including  
21 film strips, motion pictures, and videos, published, disseminated, circulated, or placed  
22 directly before the public in this state for the purpose of creating an interest in or inducing

1       a person to sell, assign, devise, bequeath, or transfer the death benefit or ownership of a  
2       policy pursuant to a life settlement contract.

3       (2) 'Business of life settlements' means an activity including, but not limited to, the  
4       offering, solicitation, negotiation, procurement, effectuation, purchasing, investing,  
5       financing, monitoring, tracking, underwriting, selling, transferring, assigning, pledging,  
6       hypothecating, or in any other manner involving, life settlement contracts.

7       (3) 'Chronically ill' or 'having a chronic illness' means:

8           (A) Being unable to perform at least two activities of daily living including, but not  
9           limited to, eating, toileting, transferring, bathing, dressing, or continence;

10          (B) Requiring substantial supervision to protect the individual from threats to health  
11          and safety due to severe cognitive impairment; or

12          (C) Having a level of disability similar to that described in subparagraph (A) of this  
13          paragraph as determined by the Secretary of the United States Department of Health  
14          and Human Services.

15       (4)(A) 'Financing entity' means an underwriter, placement agent, lender, purchaser of  
16       securities, purchaser of a policy or certificate from a life settlement provider, credit  
17       enhancer, or an entity that has a direct ownership in a policy that is the subject of a life  
18       settlement contract, but:

19           (i) Whose principal activity related to the transaction is providing funds to effect the  
20           life settlement or purchase of one or more purchased policies; and

21           (ii) Who has an agreement in writing with one or more licensed life settlement  
22           providers to finance the acquisition of life settlement contracts or to provide stop-loss  
23           insurance.

24       (B) 'Financing entity' does not include a nonaccredited investor.

25       (5) 'Fraudulent life settlement act' includes:

26           (A) Acts or omissions committed by a person who, knowingly or with intent to  
27           defraud, for the purpose of depriving another of property or for pecuniary gain,  
28           commits, engages, or permits its employees or its agents to engage, in acts including:

29              (i) Presenting, causing to be presented, or preparing with knowledge or belief that it  
30              will be presented to or by a life settlement provider, financing entity, insurer,  
31              insurance producer, or another person, false material information, or concealing  
32              material information, as part of, in support of, or concerning a fact material to one or  
33              more of the following:

34                  (I) An application for the issuance of a life settlement contract or policy;

35                  (II) The underwriting of a life settlement contract or policy;

36                  (III) A claim for payment or benefit pursuant to a life settlement contract or policy;

37                  (IV) Premiums paid on a policy;

- 1                         (V) Payments and changes in ownership or beneficiary made in accordance with  
2                         the terms of a life settlement contract or policy;
- 3                         (VI) The reinstatement or conversion of a policy;
- 4                         (VII) In the solicitation, offer, effectuation, or sale of a life settlement contract or  
5                         policy;
- 6                         (VIII) The issuance of written evidence of a life settlement contract or insurance;  
7                         or
- 8                         (IX) A financing transaction;
- 9                         (ii) Employing any device, scheme, or artifice to defraud related to purchased  
10                         policies; or
- 11                         (B) In the furtherance of a fraud or to prevent the detection of a fraud a person commits  
12                         or permits its employees or its agents to commit any of the following acts:
- 13                         (i) Remove, conceal, alter, destroy, or sequester from the Commissioner the assets  
14                         or records of a licensee or other person engaged in the business of life settlements;
- 15                         (ii) Misrepresent or conceal the financial condition of a licensee, financing entity,  
16                         insurer, or other person;
- 17                         (iii) Transact the business of life settlements in violation of laws requiring a license,  
18                         certificate of authority, or other legal authority for the transaction of the business of  
19                         life settlements; or
- 20                         (iv) File with the Commissioner or the chief insurance regulatory official of another  
21                         jurisdiction a document containing false information or otherwise conceal information  
22                         about a material fact from the Commissioner;
- 23                         (C) Embezzlement, theft, misappropriation, or conversion of moneys, funds,  
24                         premiums, credits, or other property of a life settlement provider, life insurance  
25                         producer, insurer, insured, seller, policy owner, or another person engaged in the  
26                         business of life settlements or insurance;
- 27                         (D) Recklessly entering into, negotiating, or otherwise dealing in a life settlement  
28                         contract, the subject of which is a policy that was obtained by presenting false  
29                         information concerning a fact material to the policy, or by concealing, for the purpose  
30                         of misleading another, information concerning a fact material to the policy, where the  
31                         seller or the seller's agent intended to defraud the insurance company that issued the  
32                         policy. As used in this subparagraph, 'recklessly' means engaging in the conduct in  
33                         conscious and clearly unjustifiable disregard of a substantial likelihood of the existence  
34                         of the relevant facts or risks, this disregard involving a gross deviation from acceptable  
35                         standards of conduct; or
- 36                         (E) Attempting to commit, assist, aid, or abet in the commission of, or conspiracy to  
37                         commit, the acts or omissions specified in this paragraph.

1       (6) 'Life insurance producer' means a person licensed as a resident or nonresident  
2       insurance producer pursuant to Chapter 23 of this title who has received qualification for  
3       life insurance coverage or a life line of coverage.

4       (7) 'Life settlement contract' means a written agreement establishing the terms under  
5       which compensation or anything of value is paid, which compensation or value is less  
6       than the expected death benefit of the policy, in return for the seller's assignment,  
7       transfer, sale, devise, or bequest of the death benefit or ownership of any portion of the  
8       policy. A life settlement contract also includes a contract for a loan or other financing  
9       transaction with a seller secured primarily by an individual or group life insurance policy,  
10      other than a loan by a life insurance company pursuant to the terms of the policy or a loan  
11      secured by the cash value of a policy. A life settlement contract includes an agreement  
12      with a seller to transfer ownership or change the beneficiary designation at a later date  
13      regardless of the date that compensation is paid to the seller. A life settlement contract  
14      does not mean a written agreement entered into between a seller and a person having an  
15      insurable interest in the insured's life.

16       (8) 'Life settlement provider' means a person, other than a seller, who enters into or  
17      effectuates a life settlement contract. Life settlement provider does not include:

18           (A) A bank, savings bank, savings and loan association, credit union, or other licensed  
19       lending institution that takes an assignment of a policy as collateral for a loan;  
20           (B) The issuer of a policy providing accelerated benefits pursuant to the policy;  
21           (C) An authorized or eligible insurer that provides stop-loss coverage to a life  
22       settlement provider, financing entity, special purpose entity, or related provider trust;  
23           (D) A natural person who enters into or effectuates no more than one agreement in a  
24       calendar year for the transfer of policies for any value less than the expected death  
25       benefit;  
26           (E) A financing entity;  
27           (F) A special purpose entity;  
28           (G) A related provider trust; or  
29           (H) An accredited investor or qualified institutional buyer as defined, respectively, in  
30       Regulation D, Rule 501, or Rule 144A of the Federal Securities Act of 1933, as  
31       amended, and who purchases a purchased policy from a life settlement provider.

32       (9) 'Person' means a natural person or a legal entity including, but not limited to, an  
33       individual, partnership, limited liability company, association, trust, or corporation.

34       (10) 'Policy' means an individual or group policy, group certificate, contract, or  
35       arrangement of life insurance affecting the rights of a resident of this state or bearing a  
36       reasonable relation to this state, regardless of whether delivered or issued for delivery in  
37       this state.

1       (11) 'Purchased policy' means a policy that has been acquired by a life settlement  
2 provider pursuant to a life settlement contract.

3       (12) 'Related provider trust' means a titling trust or other trust established by a licensed  
4 life settlement provider or a financing entity for the sole purpose of holding the  
5 ownership or beneficial interest in purchased policies in connection with a financing  
6 transaction. The trust shall have a written agreement with the licensed life settlement  
7 provider under which the licensed life settlement provider is responsible for ensuring  
8 compliance with all statutory and regulatory requirements and under which the trust  
9 agrees to make all records and files related to life settlement transactions available to the  
10 Commissioner as if those records and files were maintained directly by the licensed life  
11 settlement provider.

12     (13) 'Seller' means the owner of a policy who is a resident of this state who enters or  
13 seeks to enter into a life settlement contract. For the purposes of this chapter, a seller is  
14 not limited to an owner of a policy insuring the life of an individual with a terminal or  
15 chronic illness or condition except where specifically addressed. If there is more than  
16 one owner on a single policy and the owners are residents of different states, the  
17 transaction shall be governed by the law of the state in which the owner having the largest  
18 percentage ownership resides or, if the owners hold equal ownership, the state of  
19 residence of one owner agreed upon in writing by all owners. Seller does not include:

- 20       (A) A licensee as provided by this chapter, including a life insurance producer;
- 21       (B) An accredited investor or qualified institutional buyer as defined, respectively, in  
22 Regulation D, Rule 501, or Rule 144A of the Federal Securities Act of 1933, as  
23 amended;
- 24       (C) A financing entity;
- 25       (D) A special purpose entity; or
- 26       (E) A related provider trust.

27     (14) 'Special purpose entity' means a corporation, partnership, trust, limited liability  
28 company, or other similar entity formed only to provide either, directly or indirectly,  
29 access to institutional capital markets for a financing entity or licensed life settlement  
30 provider.

31     (15) 'Terminally ill' or 'having a terminal illness' means having an illness or sickness that  
32 reasonably is expected to result in death in 24 months or less.

33     33-59-3.

34     (a)(1) A person shall not negotiate life settlement contracts between a seller and one or  
35 more life settlement providers or otherwise act on behalf of a seller unless such person  
36 is a life insurance producer.

1       (2) A life insurance producer, as defined in paragraph (10) of subsection (a) of Code  
2 Section 33-23-1, who has been licensed for at least one year, shall be permitted to  
3 negotiate, as defined in paragraph (11) of subsection (a) of Code Section 33-23-1, life  
4 settlement contracts between a seller residing in this state and one or more life settlement  
5 providers. For purposes of this Code section, the one-year requirement is deemed to be  
6 satisfied if such person has been licensed as a resident life insurance producer in his or  
7 her home state for at least one year.

8       (3) Not later than 30 days from the first day of negotiating a life settlement on behalf of  
9 a seller, the life insurance producer shall notify the Commissioner of the activity on a  
10 form prescribed by the Commissioner and shall pay any applicable fees to be determined  
11 by the Commissioner. Notification shall include an acknowledgment by the life  
12 insurance producer that he or she operates in accordance with this chapter.

13      (4) Irrespective of the manner in which the life insurance producer is compensated,  
14 a life insurance producer is deemed to represent only the seller, and not the viatical  
15 settlement provider or any insurer, and owes a fiduciary duty to the seller to act according  
16 to the seller's instructions and in the best interests of the seller.

17      (5) Notwithstanding paragraph (1) of this subsection, a person licensed as an attorney,  
18 certified public accountant, or financial planner accredited by a nationally recognized  
19 accreditation agency, who is retained to represent the seller, whose compensation is not  
20 paid directly or indirectly by the life settlement provider, may negotiate life settlement  
21 contracts without having to obtain a license as a life insurance producer.

22      (b)(1) A person may not operate as a life settlement provider without first obtaining a life  
23 settlement provider license from the insurance commissioner of the state of residence of  
24 the seller.

25      (2) Application for a life settlement provider license shall be made to the Commissioner  
26 by the applicant on a form prescribed by the Commissioner, and an application shall be  
27 accompanied by the fees to be determined by the Commissioner. Applications for license  
28 under this Code section shall be approved or denied by the Commissioner within 60  
29 calendar days following receipt of a completed application by the Commissioner. The  
30 Commissioner shall notify applicants that the application is complete. Applications for  
31 such license shall be deemed approved after such time if not disapproved.

32      (3) A license may be renewed from year to year on the anniversary date upon payment  
33 of the annual renewal fees to be determined by the Commissioner. Failure to pay the fees  
34 by the renewal date shall result in the expiration of the license.

35      (4) Notwithstanding paragraphs (2) and (3) of this subsection, the license and renewal  
36 fees for a life settlement provider license may not exceed that established for an insurer  
37 as provided in Code Section 33-8-1.

1       (5) The applicant for a life settlement provider license shall provide information on  
2 forms prescribed by the Commissioner. The Commissioner has authority, at any time,  
3 to require the applicant to fully disclose the identity of all stockholders, partners, officers,  
4 members, and employees, except stockholders owning fewer than 5 percent of the shares  
5 of an applicant whose shares are publicly traded, and the Commissioner may refuse to  
6 issue a license in the name of a legal entity if not satisfied that any officer, employee,  
7 stockholder, partner, or member of it who may materially influence the applicant's  
8 conduct meets the standards of this chapter.

9       (6) A license issued to a legal entity authorizes all partners, officers, members, and  
10 designated employees to act as life settlement providers, as applicable, under the license,  
11 and all those persons shall be named in the application and any supplements to the  
12 application.

13      (7) Upon the filing of an application and the payment of the license fee, the  
14 Commissioner shall make an investigation of each applicant for a license as a life  
15 settlement provider and issue a license if the Commissioner finds that the applicant:

- 16           (A) Has provided a detailed plan of operation;
- 17           (B) Is competent and trustworthy and intends to act in good faith in the capacity  
18 involved by the license for which he or she has applied;
- 19           (C) Has a good business reputation and has had experience, training, or education so  
20 as to be qualified in the business for the license in which he or she has applied;
- 21           (D) If a legal entity, provides a certificate of good standing from the state of its  
22 domicile; and
- 23           (E) Has provided an antifraud plan that meets the requirements of this chapter.

24      (8) The Commissioner may not issue a license to a nonresident applicant unless a written  
25 designation of an agent for service of process is filed and maintained with the  
26 Commissioner or the applicant has filed with the Commissioner the applicant's written  
27 irrevocable consent that any action against the applicant may be commenced against the  
28 applicant by service of process on the Commissioner.

29      (9) A life settlement provider shall provide to the Commissioner new or revised  
30 information about officers, stockholders of 10 percent or more, partners, directors,  
31 members, or designated employees within 30 days of the change.

32      33-59-4.

33      (a) The Commissioner may refuse to issue, suspend, revoke, or refuse to renew the license  
34 of a life settlement provider if the Commissioner finds that:

- 35           (1) There was any material misrepresentation in the application for the license;

1       (2) The licensee or any officer, partner, member, or key management personnel has been  
2       convicted of fraudulent or dishonest practices, is subject to a final administrative action,  
3       or is otherwise shown to be untrustworthy or incompetent;  
4       (3) The licensee demonstrates a pattern of unreasonable payments to sellers;  
5       (4) The licensee or any officer, partner, member, or key management personnel has been  
6       found guilty of, or has pleaded guilty or nolo contendere to, any felony, or to a  
7       misdemeanor involving fraud or moral turpitude, regardless of whether a judgment or  
8       conviction has been entered by the court;  
9       (5) The licensee has entered into any life settlement contract that has not been approved  
10      pursuant to this chapter;  
11      (6) The licensee has failed to honor contractual obligations set out in a life settlement  
12      contract;  
13      (7) The licensee no longer meets the requirements for initial licensure;  
14      (8) The licensee has assigned, transferred, or pledged a purchased policy to a person  
15      other than a life settlement provider licensed in this state, an accredited investor or  
16      qualified institutional buyer as defined, respectively, in Regulation D, Rule 501, or Rule  
17      144A of the Federal Securities Act of 1933, as amended, a financing entity, a special  
18      purpose entity, or a related provider trust; or  
19      (9) The applicant or licensee or any officer, partner, member, or key management  
20      personnel or any life producer has violated a provision of this chapter.

21      (b) The Commissioner may suspend, revoke, or refuse to renew the license of a life  
22      insurance producer if the Commissioner finds that such life insurance producer has violated  
23      the provisions of this chapter.

24      (c) If the Commissioner denies a license application or suspends, revokes, or refuses to  
25      renew the license of a life settlement provider or suspends, revokes, or refuses to renew a  
26      license of a life insurance producer pursuant to this chapter, the Commissioner shall  
27      conduct a hearing in accordance with Chapter 13 of Title 50.

28      33-59-5.

29      A person may not use a life settlement contract or provide to a seller a disclosure statement  
30      form in this state unless filed with and approved by the Commissioner. Any life settlement  
31      contract form or disclosure form filed with the Commissioner shall be deemed approved  
32      if it has not been disapproved within 60 days of the filing. The Commissioner shall  
33      disapprove a life settlement contract form or disclosure statement form if, in the  
34      Commissioner's opinion, the contract or provisions contained in it are unreasonable,  
35      contrary to the interests of the public, or otherwise misleading or unfair to the seller.

1       33-59-6.

2       (a) Each life settlement provider shall file with the Commissioner by March first of each  
3       year an annual statement containing such information as the Commissioner prescribes by  
4       regulation. This information is limited to only those transactions where the seller is a  
5       resident of this state and does not include individual transaction data regarding the business  
6       of life settlements or data which compromises the privacy of personal, financial, and health  
7       information of the seller or insured.

8       (b) Except as otherwise allowed or required by law, a life settlement provider, life  
9       insurance producer, information bureau, rating agency or company, or another person with  
10       actual knowledge of a seller or insured's identity may not disclose that identity as a seller  
11       or insured or the seller's or insured's financial or medical information to another person  
12       unless the disclosure is:

13       (1) Necessary to effect a life settlement contract between the seller and a life settlement  
14       provider and the seller or insured or both, as may be required, have provided prior written  
15       consent to the disclosure;

16       (2) Provided in response to an investigation or examination by the Commissioner or  
17       another governmental officer or agency;

18       (3) A term of or condition to the transfer of a policy by one life settlement provider to  
19       another life settlement provider;

20       (4) Necessary to permit a financing entity, related provider trust, or special purpose  
21       entity to finance the purchase of policies by a life settlement provider and the seller and  
22       insured have provided prior written consent to the disclosure;

23       (5) Necessary to allow the life settlement provider or their authorized representatives to  
24       make contacts for the purpose of determining health status; or

25       (6) Required to purchase stop-loss coverage.

26       33-59-7.

27       (a) *Authority, scope, and scheduling of examinations.*

28       (1) The Commissioner may conduct an examination under this chapter of a licensee as  
29       often as the Commissioner in his or her sole discretion deems appropriate.

30       (2) For purposes of completing an examination of a licensee under this chapter, the  
31       Commissioner may examine or investigate any person, or the business of any person, in  
32       so far as the examination or investigation is, in the sole discretion of the Commissioner,  
33       necessary or material to the examination of the licensee.

34       (3) In lieu of an examination under this chapter of any foreign or alien licensee licensed  
35       in this state, the Commissioner may, at the Commissioner's discretion, accept an

1 examination report on the licensee as prepared by the Commissioner for the licensee's  
2 state of domicile or port-of-entry state.

3 (b) *Record retention requirements.*

4 (1) A person required to be licensed by this chapter shall for five years retain copies of  
5 all:

6 (A) Proposed, offered, or executed contracts, underwriting documents, policy forms,  
7 and applications from the date of the proposal, offer, or execution of the contract,  
8 whichever is later;

9 (B) All checks, drafts, or other evidence and documentation related to the payment,  
10 transfer, deposit, or release of funds from the date of the transaction; and

11 (C) All other records and documents related to the requirements of this chapter.

12 (2) This Code section does not relieve a person of the obligation to produce these  
13 documents to the Commissioner after the retention period has expired if the person has  
14 retained the documents.

15 (3) Records required to be retained by this Code section shall be legible and complete  
16 and may be retained in paper, photograph, micro process, magnetic, mechanical, or  
17 electronic media or by any process that accurately reproduces or forms a durable medium  
18 for the reproduction of a record.

19 (c) *Conduct of examinations.*

20 (1) Upon determining that an examination should be conducted, the Commissioner shall  
21 issue an examination warrant appointing one or more examiners to perform the  
22 examination and instructing them as to the scope of the examination. In conducting the  
23 examination, the examiner shall observe those guidelines and procedures set forth in the  
24 Examiners' Handbook adopted by the National Association of Insurance Commissioners.  
25 The Commissioner may also employ such other guidelines or procedures as the  
26 Commissioner may deem appropriate.

27 (2) Every licensee or person from whom information is sought and its officers, directors,  
28 and agents shall provide to the examiners timely, convenient, and free access at all  
29 reasonable hours at its offices to all books, records, accounts, papers, documents, assets,  
30 and computer or other recordings relating to the property, assets, business, and affairs of  
31 the licensee being examined. The officers, directors, employees, and agents of the  
32 licensee or person shall facilitate the examination and aid in the examination so far as it  
33 is in their power to do so. The refusal of a licensee, by its officers, directors, employees,  
34 or agents, to submit to examination or to comply with any reasonable written request of  
35 the Commissioner shall be grounds for suspension or refusal of or nonrenewal of any  
36 license or authority held by the licensee to engage in the life settlement business or other  
37 business subject to the Commissioner's jurisdiction. Any proceedings for suspension,

1 revocation, or refusal of any license or authority shall be conducted pursuant to Code  
2 Section 33-2-24.

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

9 (4) When making an examination under this chapter, the Commissioner may retain  
10 attorneys, appraisers, independent actuaries, independent certified public accountants, or  
11 other professionals and specialists as examiners, the reasonable cost of which shall be  
12 borne by the licensee that is the subject of the examination.

13 (5) Nothing contained in this chapter shall be construed to limit the Commissioner's  
14 authority to terminate or suspend an examination in order to pursue other legal or  
15 regulatory action pursuant to the insurance laws of this state. Findings of fact and  
16 conclusions made pursuant to any examination shall be prima-facie evidence in any legal  
17 or regulatory action.

18 (6) Nothing contained in this chapter shall be construed to limit the Commissioner's  
19 authority to use and, if appropriate, to make public any final or preliminary examination  
20 report, any examiner or licensee work papers or other documents, or any other  
21 information discovered or developed during the course of any examination in the  
22 furtherance of any legal or regulatory action which the Commissioner may, in his or her  
23 sole discretion, deem appropriate.

24 (7) The licensee shall pay the charges incurred in the examination, including the  
25 expenses of the Commissioner or his or her designee and the expenses and compensation  
26 of the Commissioner's examiners and assistants. If a licensee feels the fees assessed are  
27 unreasonable in relation to the examination performed, the licensee may appeal the  
28 assessments pursuant to Chapter 13 of Title 50. If no hearing is requested or if after a  
29 hearing and appeal process the licensee refuses or fails to pay, the Commissioner or his  
30 or her designee shall promptly institute a civil action to recover the expenses of  
31 examination against a licensee.

32 (d) *Examination reports.*

33 (1) Examination reports shall comprise only facts appearing upon the books, records, or  
34 other documents of the licensee, its agents, or other persons examined or as ascertained  
35 from the testimony of its officers or agents or other persons examined concerning its  
36 affairs and such conclusions and recommendations as the examiners find reasonably  
37 warranted from the facts.

1       (2) No later than 60 days following completion of the examination, the examiner in  
2 charge shall file with the Commissioner a verified written report of examination under  
3 oath. Upon receipt of the verified report, the Commissioner shall transmit the report to  
4 the licensee examined, together with a notice that shall afford the licensee examined a  
5 reasonable opportunity of not more than 30 days to make a written submission or rebuttal  
6 with respect to any matters contained in the examination report.

7       (3) Within 30 days of the end of the period allowed for the receipt of written submissions  
8 or rebuttals, the Commissioner shall fully consider and review the report, together with  
9 any written submissions or rebuttals and any relevant portions of the examiner's work  
10 papers and enter an order:

11       (A) Adopting the examination report as filed or with modification or corrections. If  
12 the examination report reveals that the company is operating in violation of any law,  
13 rule, or prior order of the Commissioner, the Commissioner may order the company to  
14 take any action the Commissioner considers necessary and appropriate to cure the  
15 violation;

16       (B) Rejecting the examination report with directions to the examiners to reopen the  
17 examination for purposes of obtaining additional data, documentation, or information  
18 and refiling; or

19       (C) Calling for an investigatory hearing with no less than 20 days' notice to the  
20 company for purposes of obtaining additional documentation, data, information, and  
21 testimony.

22       (4) All orders entered pursuant to this subsection shall be accompanied by findings and  
23 conclusions resulting from the Commissioner's consideration and review of the  
24 examination report, relevant examiner work papers, and any written submissions or  
25 rebuttals. Any order issued pursuant to subparagraph (A) of paragraph (3) of this  
26 subsection shall be considered a final administrative decision and may be appealed  
27 pursuant to Chapter 13 of Title 50 and shall be served upon the company by certified mail  
28 or statutory overnight delivery, together with a copy of the adopted examination report.  
29 Within 30 days of the issuance of the adopted report the company shall file affidavits  
30 executed by each of its directors stating under oath that they have received a copy of the  
31 adopted report and related orders.

32       (5) Hearings conducted pursuant to this Code section shall be subject to the following  
33 requirements:

34       (A) Any hearing conducted pursuant to this Code section by the Commissioner or the  
35 Commissioner's authorized representative shall be conducted as a nonadversarial  
36 confidential investigatory proceeding as necessary for the resolution of any  
37 inconsistencies, discrepancies, or disputed issues apparent upon the face of the filed

1 examination report or raised by or as a result of the Commissioner's review of relevant  
2 work papers or by the written submission or rebuttal of the company. Within 20 days  
3 of the conclusion of any hearing, the Commissioner shall enter an order pursuant to  
4 paragraph (3) of this subsection;

5 (B) The Commissioner may not appoint an examiner as an authorized representative  
6 to conduct the hearing. The hearing shall proceed expeditiously with discovery by the  
7 company limited to the examiner's work papers which tend to substantiate any  
8 assertions set forth in any written submission or rebuttal. The Commissioner or the  
9 Commissioner's representative may issue subpoenas for the attendance of any  
10 witnesses or the production of any documents considered relevant to the investigation  
11 whether under the control of the Commissioner, the company, or other persons. The  
12 documents produced shall be included in the record and testimony taken by the  
13 Commissioner or the Commissioner's representative shall be under oath and preserved  
14 for the record. Nothing contained in this Code section shall require the Commissioner  
15 to disclose any information or records which would indicate or show the existence or  
16 content of any investigation or activity of a criminal justice agency; and

17 (C) The hearing shall proceed with the Commissioner or the Commissioner's  
18 representative posing questions to the persons subpoenaed. Thereafter, the company  
19 and the department may present testimony relevant to the investigation.  
20 Cross-examination may be conducted only by the Commissioner or the Commissioner's  
21 representative. The company and the Commissioner shall be permitted to make closing  
22 statements and may be represented by counsel of their choice.

23 (6) In the event the Commissioner determines that regulatory action is appropriate as a  
24 result of an examination, the Commissioner may initiate any proceedings or actions  
25 provided by law.

26 (e) *Confidentiality of examination information.*

27 (1) Names and individual identification data for all sellers shall be considered private and  
28 confidential information and shall not be disclosed by the Commissioner, unless required  
29 by law.

30 (2)(A) Except as otherwise provided in this chapter, all examination reports, working  
31 papers, recorded information, documents, and copies thereof produced by, obtained by,  
32 or disclosed to the Commissioner or any other person in the course of an examination  
33 made under this chapter or in the course of analysis or investigation by the  
34 Commissioner of the financial condition or market conduct of a licensee are:

- 35 (i) Confidential by law and privileged;  
36 (ii) Not subject to the provisions of Chapter 18 of Title 50;  
37 (iii) Not subject to subpoena; and

(iv) Not subject to discovery or admissible in evidence in any private civil action.

(B) The Commissioner is authorized to use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as part of the Commissioner's official duties.

(3) Documents, materials, or other information, including, but not limited to, all working papers, and copies thereof, in the possession or control of the National Association of Insurance Commissioners and its affiliates and subsidiaries are:

(A) Confidential by law and privileged;

(B) Not subject to subpoena; and

(C) Not subject to discovery or admissible in evidence in any private civil action if they are:

(i) Created, produced, or obtained by or disclosed to the National Association of Insurance Commissioners and its affiliates and subsidiaries in the course of assisting an examination made under this chapter or assisting an insurance commissioner in the analysis or investigation of the financial condition or market conduct of a licensee; or

(ii) Disclosed to the National Association of Insurance Commissioners and its affiliates and subsidiaries under paragraph (5) of this subsection by the Commissioner.

(4) For the purposes of paragraph (2) of this subsection, 'chapter' includes the law of another state or jurisdiction that is substantially similar to this chapter.

(5) The Commissioner or any person that received the documents, material, or other information while acting under the authority of the Commissioner, including the National Association of Insurance Commissioners and its affiliates and subsidiaries, is permitted to testify in any private civil action concerning any confidential documents, materials, or information subject to paragraph (1) of this subsection.

(6) In order to assist in the performance of the Commissioner's duties, the Commissioner:

(A) May share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to paragraph (1) of this subsection, with other state, federal, and international regulatory agencies, with the National Association of Insurance Commissioners and its affiliates and subsidiaries, and with state, federal, and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material, communication, or other information:

(B) May receive documents, materials, communications, or information, including otherwise confidential and privileged documents, materials, or information, from the

National Association of Insurance Commissioners and its affiliates and subsidiaries and from regulatory and law enforcement officials of other foreign or domestic jurisdictions and shall maintain as confidential or privileged any document, material, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information; and (C) May enter into agreements governing sharing and use of information consistent with this subsection.

(7) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the Commissioner under this Code section or as a result of sharing as authorized in paragraph (5) of this subsection.

(8) A privilege established under the law of any state or jurisdiction that is substantially similar to the privilege established under this subsection shall be available and enforced in any proceeding in and in any court of this state.

(9) Nothing contained in this chapter shall prevent or be construed as prohibiting the Commissioner from disclosing the content of an examination report, preliminary examination report, or results, or any matter relating thereto, to the insurance commissioner of any other state or country or to law enforcement officials of this or any other state or agency of the federal government at any time or to the National Association of Insurance Commissioners, so long as such agency or office receiving the report or matters relating thereto agrees in writing to hold it confidential and in a manner consistent with this chapter.

(f) *Conflict of interest.*

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

(A) A seller;

(B) An insured in a purchased policy; or

(C) A beneficiary in an insurance policy that is proposed to be the subject of a life settlement contract.

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

1       (g) *Cost of examinations.*

2       The expenses incurred in conducting any examination shall be paid by the licensee or  
3       applicant.

4       (h) *Immunity from liability.*

5           (1) No cause of action shall arise nor shall any liability be imposed against the  
6       Commissioner, the Commissioner's authorized representatives, or any examiner  
7       appointed by the Commissioner for any statements made or conduct performed in good  
8       faith while carrying out the provisions of this chapter.

9           (2) No cause of action shall arise, nor shall any liability be imposed against any person,  
10       for the act of communicating or delivering information or data to the Commissioner or  
11       the Commissioner's authorized representative or examiner pursuant to an examination  
12       made under this chapter, if the act of communication or delivery was performed in good  
13       faith and without fraudulent intent or the intent to deceive. This paragraph does not  
14       abrogate or modify in any way any common law or statutory privilege or immunity  
15       heretofore enjoyed by any person identified in paragraph (1) of this subsection.

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

22       (i) *Investigative authority of the commissioner.*

23       The Commissioner may investigate suspected fraudulent life settlement acts and persons  
24       engaged in the business of life settlements.

25       33-59-8.

26           (a) With each application for a life settlement contract, a life settlement provider or life  
27       insurance producer shall provide the seller with at least the following disclosures no later  
28       than the time the application for the life settlement contract is signed by all parties. The  
29       disclosures shall be provided in a separate document that is signed by the seller and the life  
30       settlement provider or life insurance producer and shall provide the following information:

- 31              (1) That there exist possible alternatives to a life settlement contract including any  
32       accelerated death benefits or policy loans offered under the seller's life insurance policy;  
33              (2) That some or all of the proceeds of the life settlement contract may be taxable under  
34       federal income tax and state franchise and income taxes and assistance may be sought  
35       from a professional tax adviser;  
36              (3) That proceeds of the life settlement contract may be subject to the claims of creditors;

- 1       (4) That receipt of the proceeds of a life settlement contract may adversely affect the  
2       seller's eligibility for Medicaid or other government benefits or entitlements and advice  
3       may be obtained from the appropriate government agencies;
- 4       (5) That the seller has the right to rescind a life settlement contract before the earlier of  
5       30 calendar days after the date upon which the life settlement contract is executed by all  
6       parties or for 15 calendar days after the receipt of the life settlement proceeds by the  
7       seller. Rescission, if exercised by the seller, is effective only if both notice of the  
8       rescission is given and repayment of all proceeds and any premiums, loans, and loan  
9       interest to the life settlement provider is made within the rescission period. If the insured  
10      dies during the rescission period, the life settlement contract is deemed to have been  
11      rescinded, subject to repayment being made to the life settlement provider within the  
12      rescission period of all life settlement proceeds and any premiums, loans, and loan  
13      interest;
- 14      (6) That funds shall be sent to the seller within three business days after the life  
15      settlement provider has received the insurer or group administrator's acknowledgment  
16      that ownership of the purchased policy has been transferred and the beneficiary has been  
17      designated;
- 18      (7) That entering into a life settlement contract may cause other rights or benefits,  
19      including conversion rights and waiver of premium benefits that may exist under the  
20      policy, to be forfeited by the seller and assistance may be sought from a financial adviser;
- 21      (8) That the disclosure to a seller shall include distribution of a brochure, approved by  
22      the Commissioner, describing the process of life settlements;
- 23      (9) That the disclosure document shall contain the following language: 'All medical,  
24      financial, or personal information solicited or obtained by a life settlement provider or a  
25      life insurance producer about an insured, including the insured's identity or the identity  
26      of family members, a spouse, or a significant other, may be disclosed as necessary to  
27      effect the life settlement contract between the seller and the life settlement provider. If  
28      you are asked to provide this information, you will be asked to consent to the disclosure.  
29      The information may be provided to someone who buys the policy or provides funds for  
30      the purchase. You may be asked to renew your permission to share information every  
31      two years.'; and
- 32      (10) That the insured may be contacted by either the life settlement provider or its  
33      authorized representative for the purpose of determining the insured's health status. This  
34      contact is limited to once every three months if the insured has a life expectancy of more  
35      than one year and no more than once each month if the insured has a life expectancy of  
36      one year or less.

1       (b) A life settlement provider shall provide the seller with at least the following disclosures  
2       no later than the date the life settlement contract is signed by all parties. The disclosures  
3       shall be displayed conspicuously in the life settlement contract or in a separate document  
4       signed by the seller and the life settlement provider and provide the following information:

5           (1) The affiliation, if any, between the life settlement provider and the issuer of the  
6       insurance policy to be acquired pursuant to a life settlement contract;

7           (2) The name, address, and telephone number of the life settlement provider;

8           (3) If a policy to be acquired pursuant to a life settlement contract has been issued as a  
9       joint policy or involves family riders or any coverage of a life other than the insured  
10      under the policy to be acquired pursuant to a life settlement contract, the seller shall be  
11      informed of the possible loss of coverage on the other lives under the policy and shall be  
12      advised to consult with his or her insurance producer or the insurer issuing the policy for  
13      advice on the proposed life settlement contract;

14           (4) The dollar amount of the current death benefit payable to the life settlement provider  
15      under the policy. If known, the life settlement provider also shall disclose the availability  
16      of additional guaranteed insurance benefits, the dollar amount of accidental death and  
17      dismemberment benefits under the policy or certificate, and the life settlement provider's  
18      interest in those benefits; and

19           (5) The name, business address, and telephone number of the independent third-party  
20      escrow agent and the fact that the seller may inspect or receive copies of the relevant  
21      escrow or trust agreements or documents.

22       (c) If the life settlement provider transfers ownership or changes the beneficiary of the  
23       policy, the life settlement provider shall communicate the change in ownership or  
24       beneficiary to the insured within 20 days after the change.

25       (d) With respect to each policy issued by an insurance company, the insurance company  
26       shall send written notice to the owner of a policy, where the insured person under such  
27       policy is age 60 or older or is known to be terminally ill or chronically ill, that a life  
28       settlement contract is an available alternative transaction to such owner at the time of each  
29       of the following:

30           (1) When an insurance company receives from such owner a request to surrender, in  
31       whole or in part, a policy;

32           (2) When an insurance company receives from such owner a request to receive an  
33       accelerated death benefit under a policy;

34           (3) When an insurance company receives from such owner a request collaterally to  
35       assign a policy as security for a loan;

36           (4) When an insurance company sends to such owner a notice of lapse of a policy; or

37           (5) At any other time that the Commissioner may require by rule or regulation.

1      33-59-9.

2      (a)(1) A life settlement provider entering into a life settlement contract first shall obtain:

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

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

10        (2) The insurer shall respond to a request for verification of coverage submitted by a life  
11        settlement provider or life insurance producer not later than 30 calendar days from the  
12        date the request is received. The request for verification of coverage shall be made on  
13        a form approved by the Commissioner. The insurer shall complete and issue the  
14        verification of coverage or indicate in which respects it is unable to respond. In its  
15        response, the insurer shall indicate whether, based on the medical evidence and  
16        documents provided, the insurer intends to pursue an investigation at this time regarding  
17        the validity of the insurance contract or possible fraud and shall provide sufficient detail  
18        of all reasons for the investigation to the life settlement provider or the life insurance  
19        producer.

20        (3) Before or at the time of execution of the life settlement contract, the life settlement  
21        provider shall obtain a witnessed document in which the seller consents to the life  
22        settlement contract, represents that the seller has a full and complete understanding of the  
23        life settlement contract, represents that the seller has a full and complete understanding  
24        of the benefits of the policy, acknowledges that the seller is entering into the life  
25        settlement contract freely and voluntarily, and, for persons with a terminal or chronic  
26        illness or condition, acknowledges that the insured has a terminal or chronic illness and  
27        that the terminal or chronic illness or condition was diagnosed after the policy was issued.

28        (4) If a life insurance producer performs any of these activities required of the life  
29        settlement provider, the life settlement provider is deemed to have fulfilled the  
30        requirements of this Code section.

31        (b) Medical information solicited or obtained by a licensee is subject to the applicable  
32        provisions of state law relating to confidentiality of medical or protected health  
33        information.

34        (c) A life settlement contract entered into in this state shall provide the seller with an  
35        unconditional right to rescind the contract before the earlier of 30 calendar days after the  
36        date upon which the life settlement contract is executed by all parties or 15 calendar days  
37        after the receipt of the life settlement proceeds by the seller. Rescission, if exercised by the

1 seller, is effective only if both notice of the rescission is given and repayment of all  
2 proceeds and any premiums, loans, and loan interest to the life settlement provider is made  
3 within the rescission period. If the insured dies during the rescission period, the life  
4 settlement contract shall be deemed to have been rescinded, subject to repayment of all life  
5 settlement proceeds and any premiums, loans, and loan interest to the life settlement  
6 provider.

7 (d) The life settlement provider shall instruct the seller to send the executed documents  
8 required to effect the change in ownership, assignment, or change in beneficiary directly  
9 to the independent escrow agent. Within three business days after the date the escrow  
10 agent receives the documents or from the date the life settlement provider receives the  
11 documents, if the seller erroneously provides the documents directly to the life settlement  
12 provider, the life settlement provider shall pay or transfer the proceeds of the life settlement  
13 contract into an escrow or trust account maintained in a state or federally chartered  
14 financial institution whose deposits are insured by the Federal Deposit Insurance  
15 Corporation. Upon payment of the life settlement proceeds into the escrow account, the  
16 escrow agent shall deliver the original change in ownership, assignment, or change in  
17 beneficiary forms to the life settlement provider or related provider trust. Upon the escrow  
18 agent's receipt of the acknowledgment of the properly completed transfer of ownership,  
19 assignment, or designation of beneficiary from the insurance company, the escrow agent  
20 shall pay the life settlement proceeds to the seller.

21 (e) Failure to tender consideration to the seller for the life settlement contract within the  
22 time disclosed renders the life settlement contract voidable by the seller for lack of  
23 consideration until the time consideration is tendered to and accepted by the seller.

24 (f) A contact with the insured, for the purpose of determining the health status of the  
25 insured by the life settlement provider after the life settlement contract has been executed,  
26 may only be made by the licensed life settlement provider or its authorized representatives  
27 and is limited to once every three months for insureds with a life expectancy of more than  
28 one year and not more than once each month for insureds with a life expectancy of one year  
29 or less. The life settlement provider shall explain the procedure for these contacts at the  
30 time the life settlement contract is entered into. The limitations provided for in this  
31 subsection do not apply to a contact with an insured for reasons other than determining the  
32 insured's health status. A life settlement provider is responsible for the actions of his or  
33 her authorized representatives.

1      33-59-10.

2      It is a violation of this chapter for a person to enter into a life settlement contract within a  
3      two-year period commencing with the date of issuance of the policy unless the seller  
4      certifies to the life settlement provider that one or more of the following conditions have  
5      been met within the two-year period:

6            (1) The policy was issued upon the seller's exercise of conversion rights arising out of  
7            a group or individual policy, provided the total of the time covered under the conversion  
8            policy plus the time covered under the prior policy is at least 24 months. The time  
9            covered under a group policy shall be calculated without regard to a change in insurance  
10          carriers, provided the coverage has been continuous and under the same group  
11          sponsorship; or

12            (2)(A) The seller submits independent evidence to the life settlement provider that one  
13          or more of the following conditions have been met within the two-year period:

14                (i) The seller or insured is terminally or chronically ill; or  
15                (ii) The seller or insured disposes of his or her ownership interests in a closely held  
16                  corporation, pursuant to the terms of a buyout or other similar agreement in effect at  
17                  the time the insurance policy was initially issued.

18            (B) Copies of the independent evidence described in paragraph (2) of this Code section  
19          and documents required in subsection (a) of Code Section 33-59-9 shall be submitted  
20          to the insurer when the life settlement provider submits a request to the insurer for  
21          verification of coverage. The copies shall be accompanied by a letter of attestation  
22          from the life settlement provider that the copies are true and correct copies of the  
23          documents received by the life settlement provider;

24            (C) If the life settlement provider submits to the insurer a copy of independent  
25          evidence provided for in subparagraph (A) of paragraph (2) of this Code section when  
26          the life settlement provider submits a request to the insurer to effect the transfer of the  
27          policy to the life settlement provider, the copy is deemed to conclusively establish that  
28          the life settlement contract satisfies the requirements of this Code section and the  
29          insurer shall respond timely to the request.

30      33-59-11.

31            (a) The purpose of this Code section is to provide a prospective seller with clear and  
32          unambiguous statements in the advertisement of a life settlement contract and to assure the  
33          clear, truthful, and adequate disclosure of the benefits, risks, limitations, and exclusions of  
34          a life settlement contract. This purpose is to be accomplished by the establishment of  
35          guidelines and standards of permissible and impermissible conduct in the advertising of a  
36          life settlement contract to assure that a product description is presented in a manner that

1 prevents unfair, deceptive, or misleading advertising and is conducive to accurate  
2 presentation and description of a life settlement contract through the advertising media and  
3 material used by a licensee.

4 (b) This Code section applies to an advertising of a life settlement contract or a related  
5 product or service intended for dissemination in this state, including Internet advertising  
6 viewed by a person located in this state. Where disclosure requirements are established  
7 pursuant to federal regulation, this Code section shall be interpreted so as to minimize or  
8 eliminate conflict with federal regulation wherever possible.

9 (c) Each life settlement licensee shall establish and at all times maintain a system of  
10 control over the content, form, and method of dissemination of an advertisement of its  
11 contracts, products, and services. An advertisement regardless of by whom written,  
12 created, designed, or presented, is the responsibility of the licensee, as well as the  
13 individual who created or presented the advertisement. A system of control by the licensee  
14 shall include regular routine notification, at least once a year, to agents and others  
15 authorized to disseminate advertisements of the requirements and procedures for approval  
16 before the use of an advertisement not furnished by the licensee.

17 (d) An advertisement shall be truthful and not misleading in fact or by implication. The  
18 form and content of an advertisement of a life settlement contract shall be sufficiently  
19 complete and clear so as to avoid deception. It may not have the capacity or tendency to  
20 mislead or deceive. Whether an advertisement has the capacity or tendency to mislead or  
21 deceive shall be determined by the Commissioner from the overall impression that the  
22 advertisement may be reasonably expected to create upon a person of average education  
23 or intelligence within the segment of the public to which it is directed.

24 (e)(1) The information required to be disclosed under this Code section may not be  
25 minimized, rendered obscure, or presented in an ambiguous fashion or intermingled with  
26 the text of the advertisement so as to be confusing or misleading.

27 (2) An advertisement may not omit material information or use words, phrases,  
28 statements, references, or illustrations if the omission or use has the capacity, tendency,  
29 or effect of misleading or deceiving the public as to the nature or extent of any benefit,  
30 loss covered, or state or federal tax consequence. The fact that the life settlement contract  
31 offered is made available for inspection before consummation of the sale or an offer is  
32 made to refund the payment if the seller is not satisfied or that the life settlement contract  
33 includes a 'free look' period that satisfies or exceeds legal requirements does not remedy  
34 misleading statements.

35 (3) An advertisement may not use the name or title of a life insurance company or a life  
36 insurance policy unless the advertisement has been approved by the insurer.

1       (4) An advertisement may not state or imply that interest charged on an accelerated death  
2       benefit or a policy loan is unfair, inequitable, or in any manner an incorrect or improper  
3       practice.

4       (5) The words 'free,' 'no cost,' 'without cost,' 'no additional cost,' 'at no extra cost,' or  
5       words of similar import may not be used with respect to a benefit or service unless true.  
6       An advertisement may specify the charge for a benefit or service or may state that a  
7       charge is included in the payment or use other appropriate language.

8       (6)(A) Any testimonial, appraisal, or analysis used in an advertisement shall:

9           (i) Be genuine;

10          (ii) Represent the current opinion of the author;

11          (iii) Be applicable to the life settlement contract, product, or service advertised, if  
12       any; and

13          (iv) Be accurately reproduced with sufficient completeness to avoid misleading or  
14       deceiving prospective sellers as to the nature or scope of any testimonial, appraisal,  
15       analysis, or endorsement.

16       (B) In using any testimonials, appraisals, or analyses, the life settlement licensee makes  
17       as its own all the statements contained in them, and the statements are subject to all the  
18       provisions of this Code section.

19       (C) If the individual making a testimonial, appraisal, analysis, or an endorsement has  
20       a financial interest in the life settlement provider or related entity as a stockholder,  
21       director, officer, employee, or otherwise, or receives a benefit, directly or indirectly,  
22       other than required union scale wages, that fact shall be disclosed prominently in the  
23       advertisement.

24       (D) An advertisement may not state or imply that a life settlement contract, benefit, or  
25       service has been approved or endorsed by a group of individuals, society, association,  
26       or other organization, unless that is the fact and unless any relationship between an  
27       organization and the licensee is disclosed. If the entity making the endorsement or  
28       testimonial is owned, controlled, or managed by the licensee or receives payment or  
29       other consideration from the licensee for making an endorsement or testimonial, that  
30       fact shall be disclosed in the advertisement.

31       (E) If an endorsement refers to benefits received under a life settlement contract, all  
32       pertinent information shall be retained for a period of five years after its use.

33       (f) An advertisement may not contain statistical information unless it accurately reflects  
34       recent and relevant facts. The source of all statistics used in an advertisement shall be  
35       identified.

36       (g) An advertisement may not disparage insurers, life settlement providers, insurance  
37       producers, policies, services, or methods of marketing.

1       (h) The name of the life settlement licensee shall be identified clearly in all advertisements  
2       about the licensee or its life settlement contract, products, or services and, if any specific  
3       life settlement contract is advertised, the life settlement contract shall be identified either  
4       by form number or some other appropriate description. If an application is part of the  
5       advertisement, the name of the life settlement provider shall be shown on the application.

6       (i) An advertisement may not use a trade name, group designation, name of the parent  
7       company of a licensee, name of a particular division of the licensee, service mark, slogan,  
8       symbol, or other device or reference without disclosing the name of the licensee, if the  
9       advertisement has the capacity or tendency to mislead or deceive as to the true identity of  
10      the licensee, or to create the impression that a company other than the licensee has any  
11      responsibility for the financial obligation under a life settlement contract.

12      (j) An advertisement may not use any combination of words, symbols, or physical  
13      materials that by their content, phraseology, shape, color, or other characteristics are so  
14      similar to a combination of words, symbols, or physical materials used by a government  
15      program or agency or otherwise appear to be of such a nature that they tend to mislead  
16      prospective sellers into believing that the solicitation is in some manner connected with a  
17      government program or agency.

18      (k) An advertisement may state that a licensee is licensed in the state where the  
19      advertisement appears, provided it does not exaggerate that fact or suggest or imply that  
20      the competing licensee may not be so licensed. The advertisement may ask the audience  
21      to consult the licensee's website or contact the Department of Insurance to find out if that  
22      state requires licensing and, if so, whether the licensee or any other company is licensed.

23      (l) An advertisement may not create the impression that the life settlement provider, its  
24      financial condition or status, the payment of its claims, or the merits, desirability, or  
25      advisability of its life settlement contracts are recommended or endorsed by any  
26      government entity.

27      (m) The name of the actual licensee shall be stated in all of its advertisements. An  
28      advertisement may not use a trade name, any group designation, name of any affiliate or  
29      controlling entity of the licensee, service mark, slogan, symbol, or other device in a manner  
30      that has the capacity or tendency to mislead or deceive as to the true identity of the actual  
31      licensee or create the false impression that an affiliate or controlling entity has any  
32      responsibility for the financial obligation of the licensee.

33      (n) An advertisement may not, directly or indirectly, create the impression that any  
34      division or agency of the state or of the United States government endorses, approves, or  
35      favors:

- 36           (1) A licensee or its business practices or methods of operation;
- 37           (2) The merits, desirability, or advisability of a life settlement contract;

1       (3) Any life settlement contract; or

2       (4) Any policy or life insurance company.

3       (o) If the advertiser emphasizes the speed with which the life settlement contract occurs,  
4       the advertising shall disclose the average time frame from completed application to the date  
5       of offer and from acceptance of the offer to receipt of the funds by the seller.

6       (p) If the advertising emphasizes the dollar amounts available to sellers, the advertising  
7       shall disclose the average purchase price as a percent of face value obtained by sellers  
8       contracting with the licensee during the past six months.

9       33-59-12.

10      (a)(1) A person shall not commit a fraudulent life settlement act.

11      (2) A person, knowingly or intentionally, shall not interfere with the enforcement of the  
12       provisions of this chapter or investigations of suspected or actual violations of this  
13       chapter.

14      (3) A person in the business of life settlements, knowingly or intentionally, shall not  
15       permit a person convicted of a felony involving dishonesty or breach of trust to  
16       participate in the business of life settlements.

17      (b)(1) A life settlement contract and an application for a life settlement contract,  
18       regardless of the form of transmission, shall contain the following statement or a  
19       substantially similar statement:

20       'Any person who knowingly presents false information in an application for insurance  
21       or life settlement contract is guilty of a crime and, upon conviction, may be subject to  
22       fines or confinement in prison, or both.'

23      (2) The lack of a statement as provided for in paragraph (1) of this subsection does not  
24       constitute a defense in any prosecution for a fraudulent life settlement act.

25      (c)(1) A person engaged in the business of life settlements having knowledge or a  
26       reasonable belief that a fraudulent life settlement act is being, will be, or has been  
27       committed shall provide to the Commissioner the information required by and in a  
28       manner prescribed by the Commissioner.

29      (2) Another person having knowledge or a reasonable belief that a fraudulent life  
30       settlement act is being, will be, or has been committed may provide to the Commissioner  
31       the information required by and in a manner prescribed by the Commissioner.

32      (d)(1) A civil liability may not be imposed on and a cause of action may not arise from  
33       a person's furnishing information concerning suspected, anticipated, or completed  
34       fraudulent life settlement acts or suspected or completed fraudulent insurance acts, if the  
35       information is provided to or received from:

36       (A) The Commissioner or the Commissioner's employees, agents, or representatives;

1       (B) Federal, state, or local law enforcement or regulatory officials or their employees,  
2       agents, or representatives;

3       (C) A person involved in the prevention and detection of fraudulent life settlement acts  
4       or that person's agents, employees, or representatives;

5       (D) The National Association of Insurance Commissioners, National Association of  
6       Securities Dealers, the North American Securities Administrators Association , or their  
7       employees, agents, or representatives or any other regulatory body overseeing life  
8       insurance or life settlement contracts; or

9       (E) The insurer that issued the policy covering the life of the insured.

10      (2) Paragraph (1) of this subsection does not apply to a statement made with actual  
11       malice. In an action brought against a person for filing a report or furnishing other  
12       information concerning a fraudulent life settlement act or a fraudulent insurance act, the  
13       party bringing the action shall plead specifically any allegation that paragraph (1) of this  
14       subsection does not apply because the person filing the report or furnishing the  
15       information did so with actual malice.

16      (3) A person identified in paragraph (1) of this subsection is entitled to an award of  
17       attorney's fees and costs if he or she is the prevailing party in a civil cause of action for  
18       libel, slander, or another relevant tort arising out of activities in carrying out the  
19       provisions of this chapter and the party bringing the action was not substantially justified  
20       in doing so. For purposes of this Code section, a proceeding is 'substantially justified' if  
21       it had a reasonable basis in law or fact at the time that it was initiated.

22      (4) This Code section does not abrogate or modify common law or statutory privileges  
23       or immunities enjoyed by a person described in paragraph (1) of this subsection.

24      (5) Paragraph (1) of this subsection does not apply to a person's furnishing information  
25       concerning his or her own suspected, anticipated, or completed fraudulent life settlement  
26       acts or suspected, anticipated, or completed fraudulent insurance acts.

27      (e)(1) The documents and evidence provided pursuant to subsection (d) of this Code  
28       section or obtained by the Commissioner in an investigation of suspected or actual  
29       fraudulent life settlement acts are privileged and confidential and are not a public record  
30       and are not subject to discovery or subpoena in a civil or criminal action.

31      (2) Paragraph (1) of this subsection does not prohibit release by the Commissioner of  
32       documents and evidence obtained in an investigation of suspected or actual fraudulent life  
33       settlement acts:

34       (A) In administrative or judicial proceedings to enforce laws administered by the  
35       Commissioner;

1       (B) To federal, state, or local law enforcement or regulatory agencies, to an  
2 organization established for the purpose of detecting and preventing fraudulent life  
3 settlement acts, or to the National Association of Insurance Commissioners; or  
4       (C) At the discretion of the Commissioner, to a person in the business of life  
5 settlements that is aggrieved by a fraudulent life settlement act.

6       (3) Release of documents and evidence provided by paragraph (2) of this subsection does  
7 not abrogate or modify the privilege granted in paragraph (1) of this subsection.

8       (f) This chapter does not:

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

11       (2) Prevent or prohibit a person from disclosing voluntarily information concerning  
12 fraudulent life settlement acts to a law enforcement or regulatory agency other than the  
13 insurance department; or

14       (3) Limit the powers granted elsewhere by the laws of this state to the Commissioner or  
15 an insurance fraud unit to investigate and examine possible violations of law and to take  
16 appropriate action against wrongdoers.

17       (g) A life settlement provider shall adopt antifraud initiatives reasonably calculated to  
18 detect, assist in the prosecution of, and prevent fraudulent life settlement acts. The  
19 Commissioner may order or, if a licensee requests, may grant these modifications of the  
20 following required initiatives as necessary to ensure an effective antifraud program. The  
21 modifications may be more or less restrictive than the required initiatives so long as the  
22 modifications reasonably may be expected to accomplish the purpose of this Code section.  
23 Antifraud initiatives include:

24       (1) Fraud investigators, who may be a life settlement provider or employees or  
25 independent contractors of those life settlement providers; and

26       (2) An antifraud plan that is submitted to the Commissioner. The antifraud plan shall  
27 include, but not be limited to, a description:

28           (A) Of the procedures for detecting and investigating possible fraudulent life  
29 settlement acts and procedures for resolving material inconsistencies between medical  
30 records and insurance applications;

31           (B) Of the procedures for reporting possible fraudulent life settlement acts to the  
32 Commissioner;

33           (C) Of the plan for antifraud education and training of underwriters and other  
34 personnel; and

35           (D) A chart outlining the organizational arrangement of the antifraud personnel who  
36 are responsible for the investigation and reporting of possible fraudulent life settlement

1 acts and investigating unresolved material inconsistencies between medical records and  
2 insurance applications.

3 (3) Antifraud plans submitted to the Commissioner are privileged and confidential and  
4 are not a public record are not subject to discovery or subpoena in a civil or criminal  
5 action.

6 33-59-13.

7 (a) In addition to the penalties and other enforcement provisions of this chapter, if a person  
8 violates the provisions of this chapter or any regulation implementing this chapter, the  
9 Commissioner may seek an injunction in a court of competent jurisdiction and may apply  
10 for temporary and permanent orders as the Commissioner determines are necessary to  
11 restrain the person from committing the violation.

12 (b) A person damaged by the acts of a person in violation of this chapter may bring a civil  
13 action against the person committing the violation in a court of competent jurisdiction.

14 (c) The Commissioner may issue, in accordance with Code Section 33-2-24, a cease and  
15 desist order upon a person that violates any provision of this chapter, any regulation or  
16 order adopted by the Commissioner, or any written agreement entered into with the  
17 Commissioner.

18 (d) When the Commissioner finds that an activity in violation of this chapter presents an  
19 immediate danger to the public that requires an immediate final order, the Commissioner  
20 may issue an emergency cease and desist order reciting with particularity the facts  
21 underlying the findings. The emergency cease and desist order is effective immediately  
22 upon service of a copy of the order on the respondent and remains effective for 90 days.  
23 If the Commissioner begins nonemergency cease and desist proceedings, the emergency  
24 cease and desist order remains effective absent an order by a court of competent  
25 jurisdiction pursuant to Code Section 33-2-24.

26 (e) In addition to the penalties and other enforcement provisions of this chapter, a person  
27 who violates this chapter is subject to civil penalties of up to \$25,000.00 for each violation.  
28 Imposition of civil penalties is pursuant to an order of the Commissioner issued under  
29 Chapter 2 of this title. The Commissioner's order may require a person found to be in  
30 violation of this chapter to make restitution to a person aggrieved by violations of this  
31 chapter.

32 (f)(1) A person convicted of a violation of this chapter by a court of competent  
33 jurisdiction shall be ordered to pay restitution to a person aggrieved by the violation of  
34 this chapter. Restitution shall be ordered in addition to a fine or imprisonment but not in  
35 lieu of a fine or imprisonment.

1       (2) A person who is convicted of a violation of this chapter may be sentenced based on  
2       the greater of the value of property, services, or other benefits wrongfully obtained or  
3       attempted to be obtained or the aggregate economic loss suffered by any person as a  
4       result of the violation. A person may be sentenced to:

5           (A) Imprisonment for not less than one nor more than 20 years or to payment of a fine  
6           of not more than \$100,000.00, or both, if the value of life settlement contract is more  
7           than \$35,000.00;

8           (B) Imprisonment for not less than one nor more than ten years or to payment of a fine  
9           of not more than \$20,000.00, or both, if the value of life settlement contract is more  
10          than \$2,500.00 but not more than \$35,000.00;

11          (C) Imprisonment for not less than one nor more than five years or to payment of a fine  
12          of not more than \$10,000.00, or both, if the value of life settlement contract is more  
13          than \$500.00 but not more than \$2,500.00; or

14          (D) Imprisonment for not less than one year nor more than three years or to payment  
15          of a fine of not more than \$3,000.00, or both, if the value of life settlement contract is  
16          \$500.00 or less.

17       (3) A person convicted of a fraudulent life settlement act shall be ordered to pay  
18       restitution to a person aggrieved by the fraudulent life settlement act. Restitution shall  
19       be ordered in addition to a fine or imprisonment but not instead of a fine or  
20       imprisonment.

21       (4) In a prosecution under this Code section, the value of a life settlement contract within  
22       a six-month period may be aggregated and the defendant charged accordingly in applying  
23       the provisions of this Code section. If two or more offenses are committed by the same  
24       person in two or more counties, the accused may be prosecuted in a county in which one  
25       of the offenses was committed for all of the offenses aggregated as provided by this Code  
26       section. The statute of limitations shall not begin to run until the insurance company or  
27       law enforcement agency is aware of the fraud, but the prosecution may not be  
28       commenced later than seven years after the act has occurred.

29       33-59-14.

30       (a) It is unlawful for any person or entity licensed under this chapter or any other person  
31       or entity licensed under this title to prohibit, restrict, limit, or impair a licensed life  
32       insurance producer from aiding and assisting the owner of a policy with a settlement or  
33       otherwise participating in a settlement transaction under this chapter or to engage in any  
34       transaction, act, practice, or course of business or dealing which restricts, limits, or impairs  
35       in any way the lawful transfer of ownership, change of beneficiary, or assignment of a  
36       policy to effectuate a settlement contract.

1       (b) A violation of this chapter shall be considered an unfair trade practice under Chapter  
2       6 of this title and subject to the penalties contained in that chapter.

3       33-59-15.

4       The Commissioner shall have the authority to:

- 5           (1) Promulgate rules and regulations implementing this chapter;
- 6           (2) Establish standards for evaluating reasonableness of payments under a life settlement  
7           contract for a person who is terminally or chronically ill. This authority includes, but is  
8           not limited to, regulation of discount rates used to determine the amount paid in exchange  
9           for assignment, transfer, sale, devise, or bequest of a benefit under a policy. A life  
10          settlement provider, where the insured is not terminally or chronically ill, shall pay an  
11          amount greater than the cash surrender value or accelerated death benefit then available;
- 12          (3) Establish appropriate licensing requirements, fees, and standards for continued  
13          licensure for a life settlement provider and a fee for life insurance producers;
- 14          (4) Require a bond or other mechanism for financial accountability for a life settlement  
15          provider; and
- 16          (5) Adopt rules and regulations governing the relationship and responsibilities of an  
17          insurer and a life settlement provider, life insurance producer, and others in the business  
18          of life settlements during the period of consideration or effectuation of a life settlement  
19          contract.

20       33-59-16.

21       Nothing in this chapter preempts or otherwise limits the provisions of Chapter 5 of Title  
22       10, the 'Georgia Securities Act of 1973,' or any regulations, orders, policy statements,  
23       notices, bulletins, or other interpretations issued by or through the commissioner of  
24       securities or his or her designee acting pursuant to Chapter 5 of Title 10. Compliance with  
25       this chapter does not constitute compliance with any applicable provision of the Chapter  
26       5 of Title 10 and any amendments thereto or any regulations, orders, policy statements,  
27       notices, bulletins, or other interpretations issued by or through the commissioner of  
28       securities or his or her designee acting pursuant to the Chapter 5 of Title 10.

29       33-59-17.

30       A life settlement provider lawfully transacting business in this state may continue to do so  
31       pending approval or disapproval of the person's application for a license as long as the  
32       application is filed with the Commissioner not later than 30 days after publication by the  
33       Commissioner of an application form for licensure of these life settlement providers. If the  
34       publication of the application form is prior to the effective date of this chapter, then the

1 filing of the application shall not be later than 30 days after the effective date of this  
2 chapter.

3 33-59-18.

4 Notwithstanding the provisions of this chapter to the contrary, a person who has lawfully  
5 negotiated life settlement contracts between a seller and one or more life settlement  
6 provider for at least one year immediately prior to the effective date of this chapter may  
7 continue to negotiate life settlements in this state for a period of one year from the effective  
8 date of this chapter, provided that such person registers with the Commissioner on a form  
9 prescribed by the Commissioner. Such registration form shall be published by the  
10 Commissioner not later than 30 days from the effective date of this chapter and shall  
11 require a person registering to evidence that he or she has lawfully negotiated life  
12 settlement contracts and include an acknowledgment by such person that he or she will  
13 operate in accordance with and comply with this chapter."

14 **SECTION 2.**

15 If any portion of this Act or any amendments thereto or its applicability to any person or  
16 circumstance is held invalid by a court, the remainder of this Act or its applicability to other  
17 persons or circumstances shall not be affected.

18 **SECTION 3.**

19 This Act shall become effective on the 180 days following its approval by the Governor or  
20 its becoming law without such approval.

21 **SECTION 4.**

22 All laws and parts of laws in conflict with this Act are repealed.