

Senate Bill 499

By: Senator Hudgens of the 47th

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 59 of Title 33 of the Official Code of Georgia Annotated, relating to life  
2 settlements, so as to provide a short title; to provide for definitions; to provide for license  
3 requirements for providers and brokers; to provide suspension, revocation, and refusal to  
4 renew of such licenses; to provide for requirements for life settlement contracts; to provide  
5 for certain reporting requirements; to provide for certain privacy requirements; to provide for  
6 the examination of licensees; to provide for the authority of the Commissioner of Insurance  
7 to investigate persons involved in the life settlement business and in suspected fraudulent  
8 practices; to provide for restrictions on advertising; to provide for certain disclosures; to  
9 provide for requirements and procedures for life settlement contracts; to authorize the  
10 Commissioner of Insurance to promulgate rules and regulations; to provide for prohibited  
11 acts concerning life settlement contracts; to provide for fraud prevention and control; to  
12 provide for certain immunities from liability; to provide for confidentiality; to provide for  
13 injunctions and other civil remedies; to provide for criminal sanctions and penalties; to  
14 provide that violations of the chapter shall constitute unfair trade practices; to provide for  
15 related matters; to provide for effective dates and applicability; to repeal conflicting laws;  
16 and for other purposes.

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

18 **SECTION 1.**  
19 Chapter 59 of Title 33 of the Official Code of Georgia Annotated, relating to life settlements,  
20 is amended by striking the chapter in its entirety and inserting in lieu thereof the following:

21 "CHAPTER 59

22 33-59-1.

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

1 33-59-2.

2 As used in this chapter, the term:

3 (1) 'Advertisement' means any written, electronic, or printed communication or any  
4 communication by means of recorded telephone messages or transmitted on radio,  
5 television, the Internet, or similar communications media, including film strips, motion  
6 pictures, and videos, published, disseminated, circulated, or placed before the public,  
7 directly or indirectly, for the purpose of creating an interest in or inducing a person to  
8 purchase or sell, assign, devise, bequest, or transfer the death benefit or ownership of a  
9 life insurance policy or an interest in a life insurance policy pursuant to a life settlement  
10 contract.

11 (2) 'Broker' means a person who, on behalf of an owner and for a fee, commission, or  
12 other valuable consideration, offers or attempts to negotiate life settlement contracts  
13 between an owner and providers. A broker represents only the owner and owes a  
14 fiduciary duty to the owner to act according to the owner's instructions, and in the best  
15 interest of the owner, notwithstanding the manner in which the broker is compensated.  
16 A broker does not include an attorney, certified public accountant, or financial planner  
17 retained in the type of practice customarily performed in their professional capacity to  
18 represent the owner whose compensation is not paid directly or indirectly by the provider  
19 or any other person, except the owner.

20 (3) 'Business of life settlements' means an activity involved in, but not limited to,  
21 offering to enter into, soliciting, negotiating, procuring, effectuating, monitoring, or  
22 tracking of life settlement contracts.

23 (4) 'Chronically ill' means:

24 (A) Being unable to perform at least two activities of daily living, such as eating,  
25 toileting, transferring, bathing, dressing, or continence;

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

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

30 (5) 'Financing entity' means an underwriter, placement agent, lender, purchaser of  
31 securities, purchaser of a policy or certificate from a provider, credit enhancer, or any  
32 entity that has a direct ownership in a policy or certificate that is the subject of a life  
33 settlement contract, but:

34 (A) Whose principal activity related to the transaction is providing funds to effect the  
35 life settlement contract or purchase of one or more policies; and

36 (B) Who has an agreement in writing with one or more providers to finance the  
37 acquisition of life settlement contracts.

1 Financing entity does not include a nonaccredited investor or purchaser.

2 (6) 'Financing transaction' means a transaction in which a licensed provider obtains  
3 financing from a financing entity including, without limitation, any secured or unsecured  
4 financing, any securitization transaction, or any securities offering which either is  
5 registered or exempt from registration under federal and state securities law.

6 (7) 'Fraudulent life settlement act' includes:

7 (A) Acts or omissions committed by any person who, knowingly and with intent to  
8 defraud, for the purpose of depriving another of property or for pecuniary gain, engages  
9 in acts, or permits its employees or its agents to engage in acts, including, but not  
10 limited to:

11 (i) Presenting, causing to be presented, or preparing with knowledge and belief that  
12 it will be presented to or by a provider, premium finance lender, broker, insurer,  
13 insurance producer, or any other person, false material information, or concealing  
14 material information, as part of, in support of, or concerning a fact material to one or  
15 more of the following:

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

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

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

20 (IV) Premiums paid on an insurance policy;

21 (V) Payments and changes in ownership or beneficiary made in accordance with  
22 the terms of a life settlement contract or insurance policy;

23 (VI) The reinstatement or conversion of an insurance policy;

24 (VII) In the solicitation, offer to enter into, or effectuation of a life settlement  
25 contract or insurance policy;

26 (VIII) The issuance of written evidence of life settlement contracts or insurance;

27 (IX) Any application for or the existence of or any payments related to a loan  
28 secured directly or indirectly by any interest in a life insurance policy; or

29 (X) Enter into any practice or plan which involves stranger originated life  
30 insurance;

31 (ii) Failing to disclose to the insurer where the request for such disclosure has been  
32 asked for by the insurer that the prospective insured has undergone a life expectancy  
33 evaluation by any person or entity other than the insurer or its authorized  
34 representatives in connection with the issuance of the policy;

35 (iii) Employing any device, scheme, or artifice to defraud in the business of life  
36 settlements; or

1 (iv) In the solicitation, application, or issuance of a life insurance policy, employing  
2 any device, scheme, or artifice in violation of state insurable interest laws; and

3 (B) In the furtherance of a fraud or to prevent the detection of a fraud, acts or  
4 omissions of any person, its employees, or its agents acting with such person's  
5 permission, to:

6 (i) Remove, conceal, alter, destroy, or sequester from the Commissioner the assets  
7 or records of a licensee or other person engaged in the business of life settlements;

8 (ii) Misrepresent or conceal the financial condition of a licensee, financing entity,  
9 insurer, or other person;

10 (iii) Transact the business of life settlements in violation of laws requiring a license,  
11 certificate of authority, or other legal authority for the transaction of the business of  
12 life settlements;

13 (iv) File with the Commissioner or the chief insurance regulatory official of another  
14 jurisdiction a document containing false information or otherwise concealing  
15 information about a material fact from the Commissioner;

16 (v) Engage in embezzlement, theft, misappropriation, or conversion of moneys,  
17 funds, premiums, credits, or other property of a provider, insurer, insured, owner,  
18 insurance, policy owner, or any other person engaged in the business of life  
19 settlements or insurance;

20 (vi) Knowingly and with intent to defraud, enter into, broker, or otherwise deal in a  
21 life settlement contract, the subject of which is a life insurance policy that was  
22 obtained by presenting false information concerning any fact material to the policy  
23 or by concealing, for the purpose of misleading another, information concerning any  
24 fact material to the policy, where the owner or the owner's agent intended to defraud  
25 the policy's issuer;

26 (vii) Attempt to commit, assist, aid, or abet in the commission of, or conspiracy to  
27 commit, the acts or omissions specified in this paragraph; or

28 (viii) Misrepresent the state of residence of an owner to be a state or jurisdiction that  
29 does not have a law substantially similar to this chapter for the purpose of evading or  
30 avoiding the provisions of this chapter.

31 (8) 'Insured' means the person covered under the policy being considered for sale in a life  
32 settlement contract.

33 (9) 'Life expectancy' means the arithmetic mean of the number of months the insured  
34 under the life insurance policy to be settled can be expected to live as determined by a life  
35 expectancy company considering medical records and appropriate experiential data.

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

4 (11)(A) 'Life settlement contract' means a written agreement entered into between a  
5 provider and an owner establishing the terms under which compensation or any thing  
6 of value will be paid, which compensation or thing of value is less than the expected  
7 death benefit of the insurance policy or certificate, in return for the owner's assignment,  
8 transfer, sale, devise, or bequest of the death benefit or any portion of an insurance  
9 policy or certificate of insurance for compensation; provided, however, that the  
10 minimum value for a life settlement contract shall be greater than a cash surrender  
11 value or accelerated death benefit available at the time of an application for a life  
12 settlement contract. Life settlement contract also includes the transfer for compensation  
13 or value of ownership or beneficial interest in a trust or other entity that owns such  
14 policy if the trust or other entity was formed or availed of for the principal purpose of  
15 acquiring one or more life insurance contracts, which life insurance contract insures the  
16 life of a person residing in this state.

17 (B) Life settlement contract also includes:

18 (i) A written agreement for a loan or other lending transaction, secured primarily by  
19 an individual or group life insurance policy; and

20 (ii) A premium finance loan made for a policy on or before the date of issuance of the  
21 policy where:

22 (I) The loan proceeds are not used solely to pay premiums for the policy and any  
23 costs or expenses incurred by the lender or the borrower in connection with the  
24 financing;

25 (II) The owner receives on the date of the premium finance loan a guarantee of the  
26 future life settlement value of the policy; or

27 (III) The owner agrees on the date of the premium finance loan to sell the policy  
28 or any portion of its death benefit on any date following the issuance of the policy.

29 (C) Life settlement contract does not include:

30 (i) A policy loan by a life insurance company pursuant to the terms of the life  
31 insurance policy or accelerated death provisions contained in the life insurance policy,  
32 whether issued with the original policy or as a rider;

33 (ii) A premium finance loan, as defined in paragraph (18) of this Code section, or any  
34 loan made by a bank or other licensed financial institution, provided that neither  
35 default on such loan nor the transfer of the policy in connection with such default is  
36 pursuant to an agreement or understanding with any other person for the purpose of  
37 evading regulation under this chapter;

- 1 (iii) A collateral assignment of a life insurance policy by an owner;
- 2 (iv) A loan made by a lender that does not violate Chapter 22 of this title, provided  
3 such loan is not described in this paragraph as being included in the definition of a life  
4 settlement contract, and is not otherwise within the definition of life settlement  
5 contract;
- 6 (v) An agreement where all the parties are closely related to the insured by blood or  
7 law or have a lawful substantial economic interest in the continued life, health, and  
8 bodily safety of the person insured or are trusts established primarily for the benefit  
9 of such parties;
- 10 (vi) Any designation, consent, or agreement by an insured who is an employee of an  
11 employer in connection with the purchase by the employer, or trust established by the  
12 employer, of life insurance on the life of the employee;
- 13 (vii) A bona fide business succession planning arrangement between:
- 14 (I) One or more shareholders in a corporation or between a corporation and one or  
15 more of its shareholders or one or more trust established by its shareholders;
- 16 (II) One or more partners in a partnership or between a partnership and one or more  
17 of its partners or one or more trust established by its partners; or
- 18 (III) One or more members in a limited liability company or between a limited  
19 liability company and one or more of its members or one or more trust established  
20 by its members;
- 21 (viii) An agreement entered into by a service recipient, or a trust established by the  
22 service recipient, and a service provider or a trust established by the service provider,  
23 who performs significant services for the service recipient's trade or business; or
- 24 (ix) Any other contract, transaction, or arrangement from the definition of life  
25 settlement contract that the Commissioner determines is not of the type intended to  
26 be regulated by this chapter.

27 (12) 'Net death benefit' means the amount of the life insurance policy or certificate to be  
28 settled less any outstanding debts or liens.

29 (13) 'Owner' means the owner of a life insurance policy or a certificate holder under a  
30 group policy, with or without a terminal illness, who enters or seeks to enter into a life  
31 settlement contract. For the purposes of this chapter, an owner shall not be limited to an  
32 owner of a life insurance policy or a certificate holder under a group policy that insures  
33 the life of an individual with a terminal or chronic illness or condition except where  
34 specifically addressed. Owner does not include:

- 35 (A) Any provider or other licensee under this chapter;
- 36 (B) A qualified institutional buyer as defined in Rule 144A of the federal Securities  
37 Act of 1933, as amended;

1 (C) A financing entity;

2 (D) A special purpose entity; or

3 (E) A related provider trust.

4 (14) 'Patient identifying information' means an insured's address, telephone number,  
5 facsimile number, e-mail address, photograph or likeness, employer, employment status,  
6 social security number, or any other information that is likely to lead to the identification  
7 of the insured.

8 (15) 'Person' means any natural person or legal entity, including, but not limited to, a  
9 partnership, limited liability company, association, trust, or corporation.

10 (16) 'Policy' means an individual or group policy, group certificate, contract, or  
11 arrangement of life insurance owned by a resident of this state, regardless of whether  
12 delivered or issued for delivery in this state.

13 (17) 'Premium finance loan' is a loan made primarily for the purposes of making  
14 premium payments on a life insurance policy, which loan is secured by an interest in such  
15 life insurance policy.

16 (18) 'Provider' means a person, other than an owner, who enters into or effectuates a life  
17 settlement contract with an owner. A provider does not include:

18 (A) Any bank, savings bank, savings and loan association, or credit union;

19 (B) A licensed lending institution or creditor or secured party pursuant to a premium  
20 finance loan agreement which takes an assignment of a life insurance policy or  
21 certificate issued pursuant to a group life insurance policy as collateral for a loan;

22 (C) The insurer of a life insurance policy or rider to the extent of providing accelerated  
23 death benefits or riders under this title or cash surrender value;

24 (D) Any natural person who enters into or effectuates no more than one agreement in  
25 a calendar year for the transfer of a life insurance policy or certificate issued pursuant  
26 to a group life insurance policy for compensation or any thing of value less than the  
27 expected death benefit payable under the policy;

28 (E) A purchaser;

29 (F) Any authorized or eligible insurer that provides stop loss coverage to a provider,  
30 purchaser, financing entity, special purpose entity, or related provider trust;

31 (G) A financing entity;

32 (H) A special purpose entity;

33 (I) A related provider trust;

34 (J) A broker; or

35 (K) An accredited investor or qualified institutional buyer as defined in, respectively,  
36 Regulation D, Rule 501, or Rule 144A of the federal Securities Act of 1933, as  
37 amended, who purchases a life settlement policy from a provider.

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

3 (20) 'Purchaser' means a person who pays compensation or any thing of value as  
4 consideration for a beneficial interest in a trust which is vested with, or for the  
5 assignment, transfer, or sale of, an ownership or other interest in a life insurance policy  
6 or a certificate issued pursuant to a group life insurance policy which has been the subject  
7 of a life settlement contract.

8 (21) 'Related provider trust' means a titling trust or other trust established by a licensed  
9 provider or a financing entity for the sole purpose of holding the ownership or beneficial  
10 interest in purchased policies in connection with a financing transaction. In order to  
11 qualify as a related provider trust, the trust must have a written agreement with the  
12 licensed provider under which the licensed provider is responsible for ensuring  
13 compliance with all statutory and regulatory requirements and under which the trust  
14 agrees to make all records and files relating to life settlement transactions available to the  
15 department as if those records and files were maintained directly by the licensed provider.

16 (22) 'Settled policy' means a life insurance policy or certificate that has been acquired by  
17 a provider pursuant to a life settlement contract.

18 (23) 'Special purpose entity' means a corporation, partnership, trust, limited liability  
19 company, or other legal entity formed solely to provide either directly or indirectly access  
20 to institutional capital markets for a financing entity or provider; or in connection with  
21 a transaction in which the securities in the special purpose entity are acquired by the  
22 owner or by a qualified institutional buyer as defined in Rule 144 promulgated under the  
23 federal Securities Act of 1933, as amended, or the securities pay a fixed rate of return  
24 commensurate with established asset-backed institutional capital markets.

25 (24) 'Stranger originated life insurance' is a practice or plan to initiate a life insurance  
26 policy for the benefit of a third party investor who, at the time of policy origination, has  
27 no insurable interest in the insured. Stranger originated life insurance practices include,  
28 but are not limited to, cases in which life insurance is purchased with resources or  
29 guarantees from or through a person or entity who, at the time of policy inception, could  
30 not lawfully initiate the policy himself or herself or itself, and where, at the time of  
31 inception, there is an arrangement or agreement, whether oral or written, to directly or  
32 indirectly transfer the ownership of the policy or the policy benefits to a third party.  
33 Trusts that are created to give the appearance of insurable interest and are used to initiate  
34 policies for investors violate insurable interest laws and the prohibition against wagering  
35 on life. Stranger originated life insurance arrangements do not include those practices set  
36 forth in subparagraph (C) of paragraph (11) of this Code section.

1 (25) 'Terminally ill' means having an illness or sickness that can reasonably be expected  
2 to result in death in 24 months or less.

3 33-59-3.

4 (a) No person, wherever located, shall act as a provider or broker with an owner or  
5 multiple owners who are residents of this state without first having obtained a license from  
6 the Commissioner. If there is more than one owner on a single policy and the owners are  
7 residents of different states, the life settlement contract shall be governed by the law of the  
8 state in which the owner having the largest percentage ownership resides or, if the owners  
9 hold equal ownership, the state of residence of one owner agreed upon in writing by all  
10 owners.

11 (b) Application for a provider or broker license shall be made to the Commissioner by the  
12 applicant on a form prescribed by the Commissioner and the application shall be  
13 accompanied by a fee in an amount established by the Commissioner; provided, however,  
14 that the license and renewal fees for a provider license shall be reasonable and that the  
15 license and renewal fees for a broker license shall not exceed those established for an  
16 insurance producer, as such fees are otherwise provided for in this title.

17 (c) A life insurance producer who has been duly licensed as a resident insurance producer  
18 with a life line of authority in this state or his or her home state for at least one year and is  
19 licensed as a nonresident producer in this state shall be deemed to meet the licensing  
20 requirements of this Code section and shall be permitted to operate as a broker.

21 (d) Not later than 30 days from the first day of operating as a broker, the life insurance  
22 producer shall notify the Commissioner that he or she is acting as a broker on a form  
23 prescribed by the Commissioner and shall pay any applicable fee to be determined by the  
24 Commissioner. Notification shall include an acknowledgment by the life insurance  
25 producer that he or she will operate as a broker in accordance with this chapter.

26 (e) The insurer that issued the policy that is the subject of a life settlement contract shall  
27 not be responsible for any act or omission of a broker, provider, or purchaser arising out  
28 of or in connection with the life settlement transaction unless the insurer receives  
29 compensation for the placement of a life settlement contract from the provider, purchaser,  
30 or broker in connection with the life settlement contract.

31 (f) A person licensed as an attorney, certified public accountant, or financial planner  
32 accredited by a nationally recognized accreditation agency who is retained to represent the  
33 owner and whose compensation is not paid directly or indirectly by the provider or  
34 purchaser may negotiate life settlement contracts on behalf of the owner without having  
35 to obtain a license as a broker.

1 (g) Licenses may be renewed every year on the anniversary date upon payment of the  
2 periodic renewal fee. As specified by subsection (b) of this Code section, the renewal fee  
3 for a provider shall not exceed a reasonable fee. Failure to pay the fee within the terms  
4 prescribed shall result in the automatic revocation of the license requiring periodic renewal.

5 (h) The term of a provider license shall be equal to that of a domestic stock life insurance  
6 company and the term of a broker license shall be equal to that of an insurance producer  
7 license. Licenses requiring periodic renewal may be renewed on their anniversary date  
8 upon payment of the periodic renewal fee as specified in subsection (b) of this Code  
9 section. Failure to pay the fees on or before the renewal date shall result in expiration of  
10 the license.

11 (i) The applicant shall provide such information as the Commissioner may require on  
12 forms prepared by the Commissioner. The Commissioner shall have authority, at any  
13 time, to require such applicant to fully disclose the identity of its stockholders, except  
14 stockholders owning fewer than 10 percent of the shares of an applicant whose shares are  
15 publicly traded, partners, officers, and employees, and the Commissioner may, in the  
16 exercise of the Commissioner's sole discretion, refuse to issue such a license in the name  
17 of any person if not satisfied that any officer, employee, stockholder, or partner thereof  
18 who may materially influence the applicant's conduct meets the standards of this chapter.

19 (j) A license issued to a partnership, corporation, or other entity authorizes all members,  
20 officers, and designated employees to act as a licensee under the license if those persons  
21 are named in the application and any supplements to the application.

22 (k) Upon the filing of an application and the payment of the license fee, the Commissioner  
23 shall make an investigation of each applicant and may issue a license if the Commissioner  
24 finds that the applicant:

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

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

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

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

32 (5) Has provided to the Commissioner an antifraud plan that meets the requirements of  
33 Code Section 33-59-14 and includes:

34 (A) A description of the procedures for detecting and investigating possible fraudulent  
35 acts and procedures for resolving material inconsistencies between medical records and  
36 insurance applications;

1 (B) A description of the procedures for reporting fraudulent insurance acts to the  
2 Commissioner;

3 (C) A description of the plan for antifraud education and training of its underwriters  
4 and other personnel; and

5 (D) A written description or chart outlining the arrangement of the antifraud personnel  
6 who are responsible for the investigation and reporting of possible fraudulent insurance  
7 acts and investigating unresolved material inconsistencies between medical records and  
8 insurance applications.

9 (l) The Commissioner shall not issue any license to any nonresident applicant unless a  
10 written designation of an agent for service of process is filed and maintained with the  
11 Commissioner or unless the applicant has filed with the Commissioner the applicant's  
12 written irrevocable consent that any action against the applicant may be commenced  
13 against the applicant by service of process on the Commissioner.

14 (m) Each licensee shall file with the Commissioner on or before the first day of March of  
15 each year an annual statement containing such information as the Commissioner by rule  
16 may prescribe.

17 (n) A provider may not use any person to perform the functions of a broker as defined in  
18 paragraph (2) of Code Section 33-59-2 unless the person holds a current, valid license as  
19 a broker and as provided in this Code section.

20 (o) A broker may not use any person to perform the functions of a provider as defined in  
21 paragraph (18) of Code Section 33-59-2 unless such person holds a current, valid license  
22 as a provider and as provided in this Code section.

23 (p) A provider and a broker shall provide to the Commissioner new or revised information  
24 about officers, 10 percent or more stockholders, partners, directors, members, and  
25 designated employees within 30 days of any change.

26 (q) An individual licensed as a broker shall complete on a biennial basis 15 hours of  
27 training related to life settlements and life settlement transactions as required by the  
28 Commissioner; provided, however, that a life insurance producer who is operating as a  
29 broker pursuant to this Code section shall not be subject to the requirements of this  
30 subsection. Any person failing to meet the requirements of this subsection shall be subject  
31 to the penalties imposed by the Commissioner.

32 33-59-4.

33 (a) The Commissioner may suspend, revoke, or refuse to renew the license of any licensee  
34 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 director has been guilty of fraudulent  
2 or dishonest practices, is subject to a final administrative action, or is otherwise shown  
3 to be untrustworthy or incompetent to act as a licensee;

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

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

7 (5) The licensee or any officer, partner, member, or director has been convicted of a  
8 felony or of any misdemeanor of which criminal fraud is an element; or the licensee has  
9 pleaded guilty or nolo contendere with respect to any felony or any misdemeanor of  
10 which criminal fraud or moral turpitude is an element regardless whether a judgment of  
11 conviction has been entered by the court;

12 (6) The provider has entered into any life settlement contract that has not been approved  
13 pursuant to this chapter;

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

16 (8) The provider has assigned, transferred, or pledged a settled policy to a person other  
17 than a provider licensed in this state, a purchaser, an accredited investor or qualified  
18 institutional buyer as defined, respectively, in Regulation D, Rule 501, or Rule 144A of  
19 the federal Securities Act of 1933, as amended, financing entity, special purpose entity,  
20 or related provider trust; or

21 (9) The licensee or any officer, partner, member, or key management personnel has  
22 violated any of the provisions of this chapter.

23 (b) Before the Commissioner denies a license application or suspends, revokes, or refuses  
24 to renew the license of any licensee under this chapter, the Commissioner shall conduct a  
25 hearing in accordance Chapter 2 of this title.

26 33-59-5.

27 (a) No person may use any form of life settlement contract in this state unless it has been  
28 filed with and approved, if required, by the Commissioner in a manner that conforms with  
29 the filing procedures and any time restrictions or deeming provisions, if any, for life  
30 insurance forms, policies, and contracts.

31 (b) No insurer may, as a condition of responding to a request for verification of coverage  
32 or in connection with the transfer of a policy pursuant to a life settlement contract, require  
33 that the owner, insured, provider, or broker sign any form, disclosure, consent, waiver, or  
34 acknowledgment that has not been expressly approved by the Commissioner for use in  
35 connection with life settlement contracts in this state.

1 (c) A person shall not use a life settlement contract form or provide to an owner a  
2 disclosure statement form in this state unless first filed with and approved by the  
3 Commissioner. The Commissioner shall disapprove a life settlement contract form or  
4 disclosure statement form if, in the Commissioner's opinion, the contract or provisions  
5 contained therein fail to meet the requirements of Code Sections 33-59-8, 33-59-9,  
6 33-59-11, and 33-59-15 or are unreasonable, contrary to the interests of the public, or  
7 otherwise misleading or unfair to the owner. At the Commissioner's discretion, the  
8 Commissioner may require the submission of advertisement material.

9 33-59-6.

10 (a)(1) For any policy settled within five years of policy issuance, each provider shall file  
11 with the Commissioner on or before March 1 of each year an annual statement containing  
12 such information as the Commissioner may prescribe by rule or regulation. In addition  
13 to any other requirements, the annual statement shall specify the total number, aggregate  
14 face amount, and life settlement proceeds of policies settled during the immediately  
15 preceding calendar year, together with a breakdown of the information by policy issue  
16 year. The annual statement shall also include the names of the insurance companies  
17 whose policies have been settled and the brokers that have settled said policies.

18 (2) Such information shall be limited to only those transactions where the insured is a  
19 resident of this state and shall not include individual transaction data regarding the  
20 business of life settlements or information that there is a reasonable basis to believe could  
21 be used to identify the owner or the insured.

22 (3) Every provider that willfully fails to file an annual statement as required in this Code  
23 section or willfully fails to reply within 30 days to a written inquiry by the Commissioner  
24 in connection therewith, shall, in addition to other penalties provided by this chapter, be  
25 subject, upon due notice and opportunity to be heard, to a penalty of up to \$250.00 per  
26 day of delay, not to exceed \$25,000.00 in the aggregate, for each such failure.

27 (b) Except as otherwise allowed or required by law, a provider, broker, insurance  
28 company, insurance producer, information bureau, rating agency or company, or any other  
29 person with actual knowledge of an insured's identity shall not disclose the identity of an  
30 insured or information that there is a reasonable basis to believe could be used to identify  
31 the insured or the insured's financial or medical information to any other person unless the  
32 disclosure:

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

35 (2) Is necessary to effectuate the sale of life settlement contracts, or interests therein, as  
36 investments, provided that the sale is conducted in accordance with applicable state and

1 federal securities law and provided further that the owner and the insured have both  
2 provided prior written consent to the disclosure;

3 (3) Is provided in response to an investigation or examination by the Commissioner or  
4 any other governmental officer or agency or pursuant to the requirements of Code  
5 Section 33-59-7;

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

9 (5) Is necessary to allow the provider or broker or their authorized representatives to  
10 make contacts for the purpose of determining health status. For the purposes of this  
11 paragraph, the term 'authorized representative' shall not include any person who has or  
12 may have any financial interest in the settlement contract other than a provider, licensed  
13 broker, financing entity, related provider trust, or special purpose entity. A provider or  
14 broker shall require its authorized representative to agree in writing to adhere to the  
15 privacy provisions of this chapter; or

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

17 (c) Nonpublic personal information solicited or obtained in connection with a proposed  
18 or actual life settlement contract shall be subject to the provisions applicable to financial  
19 institutions under the federal Gramm-Leach-Bliley Act, P.L. 106-102 (1999), and all other  
20 state and federal laws relating to confidentiality of nonpublic personal information.

21 33-59-7.

22 (a) The Commissioner may, when the Commissioner deems it reasonably necessary to  
23 protect the interests of the public, examine the business and affairs of any licensee or  
24 applicant for a license. The Commissioner may order any licensee or applicant to produce  
25 any records, books, files, or other information reasonably necessary to ascertain whether  
26 such licensee or applicant is acting or has acted in violation of the law or otherwise  
27 contrary to the interests of the public. The expenses incurred in conducting any  
28 examination shall be paid by the licensee or applicant.

29 (b) In lieu of an examination under this chapter of any foreign or alien licensee licensed  
30 in this state, the Commissioner may, at the Commissioner's discretion, accept an  
31 examination report on the licensee as prepared by the Commissioner for the licensee's state  
32 of domicile or port-of-entry state.

33 (c) Names of and individual identification data for all owners and insureds shall be  
34 considered private and confidential information and shall not be disclosed by the  
35 Commissioner unless required by law.

1 (d) Records of all consummated transactions and life settlement contracts shall be  
2 maintained by the provider for three years after the death of the insured and shall be  
3 available to the Commissioner for inspection during reasonable business hours.

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

10 (2) Every licensee or person from whom information is sought, its officers, directors, and  
11 agents shall provide to the examiners timely, convenient, and free access at all reasonable  
12 hours at its offices to all books, records, accounts, papers, documents, assets, and  
13 computer or other recordings relating to the property, assets, business, and affairs of the  
14 licensee being examined. The officers, directors, employees, and agents of the licensee  
15 or person shall facilitate the examination and aid in the examination so far as it is in their  
16 power to do so. The refusal of a licensee, by its officers, directors, employees, or agents,  
17 to submit to examination or to comply with any reasonable written request of the  
18 Commissioner shall be grounds for suspension or refusal of or nonrenewal of any license  
19 or authority held by the licensee to engage in the life settlement business or other  
20 business subject to the Commissioner's jurisdiction. Any proceedings for suspension,  
21 revocation, or refusal of any license or authority shall be conducted pursuant to Chapter 2  
22 of this title.

23 (3) The Commissioner shall have the power to issue subpoenas, to administer oaths, and  
24 to examine under oath any person as to any matter pertinent to the examination. Upon  
25 the failure or refusal of a person to obey a subpoena, the Commissioner may petition a  
26 court of competent jurisdiction and, upon proper showing, the court may enter an order  
27 compelling the witness to appear and testify or produce documentary evidence.

28 (4) When making an examination under this Code section, the Commissioner may retain  
29 attorneys, appraisers, independent actuaries, independent certified public accountants, or  
30 other professionals and specialists as examiners, the reasonable cost of which shall be  
31 borne by the licensee that is the subject of the examination.

32 (5) Nothing contained in this Code section shall be construed to limit the  
33 Commissioner's authority to terminate or suspend an examination in order to pursue other  
34 legal or regulatory action pursuant to the insurance laws of this state. Findings of fact  
35 and conclusions made pursuant to any examination shall be prima-facie evidence in any  
36 legal or regulatory action.

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

7 (f)(1) Examination reports shall be comprised of only facts appearing upon the books,  
8 from the testimony of the licensee's officers or agents or other persons examined  
9 concerning the licensee's affairs, and such conclusions and recommendations as the  
10 examiners find reasonably warranted from the facts.

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

18 (3) In the event the Commissioner determines that regulatory action is appropriate as a  
19 result of an examination, the Commissioner may initiate any proceedings or actions  
20 provided by law.

21 (g)(1) Names and individual identification data for all owners, purchasers, and insureds  
22 shall be considered private and confidential information and shall not be disclosed by the  
23 Commissioner unless the disclosure is to another regulator or is required by law.

24 (2) Except as otherwise provided in this chapter, all examination reports, working papers,  
25 recorded information, documents, and copies thereof produced by, obtained by, or  
26 disclosed to the Commissioner or any other person in the course of an examination made  
27 under this chapter or in the course of analysis or investigation by the Commissioner of  
28 the financial condition or market conduct of a licensee shall be confidential by law and  
29 privileged, shall not be subject to the provisions of Article 4 of Chapter 18 of Title 50,  
30 shall not be subject to subpoena, and shall not be subject to discovery or admissible in  
31 evidence in any private civil action. The Commissioner is authorized to use the  
32 documents, materials, or other information in the furtherance of any regulatory or legal  
33 action brought as part of the Commissioner's official duties. The licensee being  
34 examined may have access to all documents used to make the report.

35 (h)(1) An examiner may not be appointed by the Commissioner if the examiner, either  
36 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 subsection shall not be construed to preclude automatically an examiner from being:

(A) An owner;

(B) An insured in a life settlement contract or insurance policy; or

(C) A beneficiary in an insurance policy that is proposed for 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.

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

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

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

(j) The Commissioner may investigate suspected fraudulent life settlement acts and persons engaged in the business of life settlements.

33-59-8.

(a) A broker or provider licensed pursuant to this chapter may conduct or participate in advertisements within this state. Such advertisements shall comply with all advertising and marketing laws of this state and rules and regulations promulgated by the Commissioner that are applicable to life insurers or to brokers and providers licensed pursuant to this chapter.

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

1 (c) No person or trust shall:

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

4 (2) Use the words 'free,' 'no cost,' or words of similar import in the marketing,  
5 advertising, soliciting, or otherwise promoting of the purchase of a policy.

6 33-59-9.

7 (a) The provider shall provide in writing, in a separate document that is signed by the  
8 owner and provider, the following information to the owner no later than the date the life  
9 settlement contract is signed by all parties:

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

12 (2) The fact that some or all of the proceeds of a life settlement contract may be taxable  
13 and that assistance should be sought from a professional tax adviser;

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

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

19 (5) The fact that the owner has a right to terminate a life settlement contract within 15  
20 days of the date it is executed by all parties and the owner has received the disclosures  
21 contained in this Code section. Rescission, if exercised by the owner, is effective only  
22 if both notice of the rescission is given and the owner repays all proceeds and any  
23 premiums, loans, and loan interest paid on account of the provider within the rescission  
24 period. If the insured dies during the rescission period, the contract shall be deemed to  
25 have been rescinded subject to repayment by the owner or the owner's estate of all  
26 proceeds and any premiums, loans, and loan interest to the provider;

27 (6) The fact that proceeds will be sent to the owner within three business days after the  
28 provider has received the insurer or group administrator's acknowledgment that  
29 ownership of the policy or interest in the certificate has been transferred and the  
30 beneficiary has been designated in accordance with the terms of the life settlement  
31 contract;

32 (7) The fact that entering into a life settlement contract may cause other rights or  
33 benefits, including conversion rights and waiver of premium benefits that may exist under  
34 the policy or certificate of a group policy, to be forfeited by the owner and that assistance  
35 should be sought from a professional financial adviser;

1 (8) The amount and method of calculating the compensation paid or to be paid to the  
2 broker or any other person acting for the owner in connection with the transaction, where  
3 the term 'compensation' includes any thing of value paid or given;

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

6 (10) The fact that the Commissioner shall require delivery of a buyer's guide or a similar  
7 consumer advisory package in the form prescribed by the Commissioner to owners during  
8 the solicitation process;

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

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

17 (12) The fact that the Commissioner shall require providers and brokers to print separate  
18 signed fraud warnings on their applications and on their life settlement contracts as  
19 follows:

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

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

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

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

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

35 (17) The name, business address, and telephone number of the independent third-party  
36 escrow agent, and the fact that the owner may inspect or receive copies of the relevant  
37 escrow or trust agreements or documents; and

1 (18) The fact that a change of ownership could in the future limit the insured's ability to  
2 purchase future insurance on the insured's life because there is a limit to how much  
3 coverage insurers will issue on one life.

4 (b) The written disclosures shall be conspicuously displayed in any life settlement contract  
5 furnished to the owner by a provider including any affiliations or contractual arrangements  
6 between the provider and the broker.

7 (c) A broker shall provide the owner and the provider with at least the following  
8 disclosures no later than the date the life settlement contract is signed by all parties. The  
9 disclosures shall be conspicuously displayed in the life settlement contract or in a separate  
10 document signed by the owner and provide the following information:

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

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

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

17 (4) The name of each broker who receives compensation and the amount of  
18 compensation received by that broker, which compensation includes any thing of value  
19 paid or given to the broker in connection with the life settlement contract; and

20 (5) A complete reconciliation of the gross offer or bid by the provider to the net amount  
21 of proceeds or value to be received by the owner. For the purpose of this subsection,  
22 gross offer or bid shall mean the total amount or value offered by the provider for the  
23 purchase of one or more life insurance policies, inclusive of commissions and fees.

24 (d) The failure to provide the disclosures or rights described in this Code section shall be  
25 deemed an unfair trade practice pursuant to Code Section 33-59-17.

26 33-59-10.

27 (a) Without limiting the ability of an insurer from assessing the insurability of a policy  
28 applicant and determining whether or not to issue the policy and in addition to other  
29 questions an insurance carrier may lawfully pose to a life insurance applicant, insurance  
30 carriers may inquire in the application for insurance whether the proposed owner intends  
31 to pay premiums with the assistance of financing from a lender that will use the policy as  
32 collateral to support the financing.

33 (b) If, as described in paragraph (11) of Code Section 33-59-2, the loan provides funds  
34 which can be used for a purpose other than paying for the premiums, costs, and expenses  
35 associated with obtaining and maintaining the life insurance policy and loan, the

1 application shall be rejected as a violation of the prohibited practices in Code Section 33-59-13.

2 (c) If the financing does not violate Code Section 33-59-13 in this manner, the insurance  
3 carrier:

4 (1) May make disclosures, including, but not limited to, such as the following, to the  
5 applicant and the insured, either on the application or an amendment to the application  
6 to be completed no later than the delivery of the policy:

7 'If you have entered into a loan arrangement where the policy is used as collateral and  
8 the policy does change ownership at some point in the future in satisfaction of the loan,  
9 the following may be true:

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

12 (B) A change of ownership could in the future limit your ability to purchase future  
13 insurance on the insured's life because there is a limit to how much coverage insurers  
14 will issue on one life;

15 (C) Should there be a change of ownership and you wish to obtain more insurance  
16 coverage on the insured's life in the future, the insured's higher issue age, a change  
17 in health status, or other factors may reduce the ability to obtain coverage or may  
18 result in significantly higher premiums; and

19 (D) You should consult a professional adviser since a change in ownership in  
20 satisfaction of the loan may result in tax consequences to the owner, depending on the  
21 structure of the loan.'; and

22 (2) May require certifications, such as the following, from the applicant and the insured:

23 '(A) I have not entered into any agreement or arrangement providing for the future sale  
24 of this life insurance policy;

25 (B) My loan arrangement for this policy provides funds sufficient to pay for some or  
26 all of the premiums, costs, and expenses associated with obtaining and maintaining my  
27 life insurance policy, but I have not entered into any agreement by which I am to  
28 receive consideration in exchange for procuring this policy; and

29 (C) The borrower has an insurable interest in the insured.'

30 33-59-11.

31 (a) A provider entering into a life settlement contract with any owner of a policy, wherein  
32 the insured is terminally or chronically ill, shall first obtain:

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

- 1 (2) A document in which the insured consents to the release of his or her medical records  
2 to a provider, settlement broker, or insurance producer and, if the policy was issued less  
3 than two years from the date of application for a settlement contract, to the insurance  
4 company that issued the policy.
- 5 (b) The insurer shall respond to a request for verification of coverage submitted by a  
6 provider, settlement broker, or life insurance producer not later than 30 calendar days after  
7 the date the request is received. The request for verification of coverage must be made on  
8 a form approved by the Commissioner. The insurer shall complete and issue the  
9 verification of coverage or indicate in which respects it is unable to respond. In its  
10 response, the insurer shall indicate whether, based on the medical evidence and documents  
11 provided, the insurer intends to pursue an investigation at this time regarding the validity  
12 of the insurance contract.
- 13 (c) Before or at the time of execution of the settlement contract, the provider shall obtain  
14 a witnessed document in which the owner consents to the settlement contract, represents  
15 that the owner has a full and complete understanding of the settlement contract, represents  
16 that the owner has a full and complete understanding of the benefits of the policy,  
17 acknowledges that the owner is entering into the settlement contract freely and voluntarily,  
18 and, for persons with a terminal or chronic illness or condition, acknowledges that the  
19 insured has a terminal or chronic illness and that the terminal or chronic illness or condition  
20 was diagnosed after the policy was issued.
- 21 (d) The insurer shall not unreasonably delay effecting change of ownership or beneficiary  
22 with any life settlement contract lawfully entered into in this state or with a resident of this  
23 state.
- 24 (e) If a settlement broker or life insurance producer performs any of these activities  
25 required of the provider, the provider is deemed to have fulfilled the requirements of this  
26 Code section.
- 27 (f) If a broker performs those verification of coverage activities required of the provider,  
28 the provider is deemed to have fulfilled the requirements of subsection (a) of Code  
29 Section 33-5-9.
- 30 (g) Within 20 days after an owner executes the life settlement contract, the provider shall  
31 give written notice to the insurer that issued that insurance policy that the policy has  
32 become subject to a life settlement contract. The notice shall be accompanied by the  
33 documents required by Code Section 33-59-10.
- 34 (h) All medical information solicited or obtained by any licensee shall be subject to the  
35 applicable provision of state law relating to confidentiality of medical information if not  
36 otherwise provided in this chapter.

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

9 (j) Within three business days after receipt from the owner of documents to effect the  
10 transfer of the insurance policy, the provider shall pay the proceeds of the settlement to an  
11 escrow or trust account managed by a trustee or escrow agent in a state or federally  
12 chartered financial institution pending acknowledgment of the transfer by the issuer of the  
13 policy. The trustee or escrow agent shall be required to transfer the proceeds due to the  
14 owner within three business days of acknowledgment of the transfer from the insurer.

15 (k) Failure to tender the life settlement contract proceeds to the owner by the date  
16 disclosed to the owner renders the contract voidable by the owner for lack of consideration  
17 until the time the proceeds are tendered to and accepted by the owner. A failure to give  
18 written notice of the right of rescission hereunder shall toll the right of rescission until 30  
19 days after the written notice of the right of rescission has been given.

20 (l) Any fee paid by a provider, party, individual, or an owner to a broker in exchange for  
21 services provided to the owner pertaining to a life settlement contract shall be computed  
22 as a percentage of the offer obtained, not the face value of the policy. Nothing in this Code  
23 section shall be construed as prohibiting a broker from reducing such broker's fee below  
24 this percentage if the broker so chooses.

25 (m) The broker shall disclose to the owner any thing of value paid or given to a broker,  
26 which relates to a life settlement contract.

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

33 (1) The policy was issued upon the owner's exercise of conversion rights arising out of  
34 a group or individual policy, provided that the total of the time covered under the  
35 conversion policy plus the time covered under the prior policy is at least 24 months. The  
36 time covered under a group policy must be calculated without regard to a change in

1 insurance carriers, provided that the coverage has been continuous and under the same  
2 group sponsorship; or

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

5 (A) The owner or insured is terminally or chronically ill;

6 (B) The owner or insured disposes of his or her ownership interests in a closely held  
7 corporation, pursuant to the terms of a buyout or other similar agreement in effect at the  
8 time the insurance policy was initially issued;

9 (C) The owner's spouse dies;

10 (D) The owner divorces his or her spouse;

11 (E) The owner retires from full-time employment;

12 (F) The owner becomes physically or mentally disabled and a physician determines  
13 that the disability prevents the owner from maintaining full-time employment; or

14 (G) A final order, judgment, or decree is entered by a court of competent jurisdiction,  
15 on the application of a creditor of the owner, adjudicating the owner bankrupt or  
16 insolvent, or approving a petition seeking reorganization of the owner or appointing a  
17 receiver, trustee, or liquidator to all or a substantial part of the owner's assets.

18 Copies of the independent evidence required by paragraph (2) of this subsection shall be  
19 submitted to the insurer when the provider submits a request to the insurer for verification  
20 of coverage. The copies shall be accompanied by a letter of attestation from the provider  
21 that the copies are true and correct copies of the documents received by the provider.  
22 Nothing in this Code section shall prohibit an insurer from exercising its right to contest  
23 the validity of any policy. If the provider submits to the insurer a copy of independent  
24 evidence provided for in subparagraph (A) of paragraph (2) of this subsection when the  
25 provider submits a request to the insurer to effect the transfer of the policy to the provider,  
26 the copy is deemed to establish that the settlement contract satisfies the requirements of this  
27 subsection.

28 33-59-12.

29 (a) The Commissioner may promulgate regulations implementing this chapter and  
30 regulating the activities and relationships of providers, brokers, insurers, and their agents  
31 subject to statutory limitations on administrative rule making.

32 (b)(1) If there is more than one owner on a single policy, and the owners are residents  
33 of different states, the life settlement contract shall be governed by the law of the state  
34 in which the owner having the largest percentage ownership resides or, if the owners hold  
35 equal ownership, the state of residence of one owner agreed upon in writing by all of the

1 owners. The law of the state of the insured shall govern in the event that equal owners  
2 fail to agree in writing upon a state of residence for jurisdictional purposes.

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

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

16 33-59-13.

17 (a) It shall be unlawful for any person to:

18 (1) Enter into a life settlement contract if such person knows or reasonably should have  
19 known that the life insurance policy was obtained by means of a false, deceptive, or  
20 misleading application for such policy;

21 (2) Engage in any transaction, practice, or course of business if such person knows or  
22 reasonably should have known that the intent was to avoid the notice requirements of this  
23 Code section;

24 (3) Engage in any fraudulent act or practice in connection with any transaction relating  
25 to any settlement involving an owner who is a resident of this state;

26 (4) Issue, solicit, market, or otherwise promote the purchase of an insurance policy for  
27 the purpose of or with an emphasis on settling the policy;

28 (5) Enter into a premium finance agreement with any person or agency, or any person  
29 affiliated with such person or agency, pursuant to which such person shall receive any  
30 proceeds, fees, or other consideration, directly or indirectly, from the policy or owner of  
31 the policy or any other person with respect to the premium finance agreement or any  
32 settlement contract or other transaction related to such policy that are in addition to the  
33 amounts required to pay the principal, interest, and service charges related to policy  
34 premiums pursuant to the premium finance agreement or subsequent sale of such  
35 agreement; provided, further, that any payments, charges, fees, or other amounts in  
36 addition to the amounts required to pay the principal, interest, and service charges related

1 to policy premiums paid under the premium finance agreement shall be remitted to the  
2 original owner of the policy or to his or her estate if he or she is not living at the time of  
3 the determination of the overpayment;

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

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

13 (8) With respect to a provider, enter into a life settlement contract unless the life  
14 settlement promotional, advertisement, and marketing materials, as may be prescribed by  
15 rule or regulation, have been filed with the Commissioner. In no event shall any  
16 marketing materials expressly reference that the insurance is 'free' for any period of time.  
17 The inclusion of any reference in the marketing materials that would cause an owner to  
18 reasonably believe that the insurance is free for any period of time shall be considered a  
19 violation of this chapter; or

20 (9) With respect to any life insurance producer, insurance company, broker, or provider,  
21 make any statement or representation to the applicant or policyholder in connection with  
22 the sale or financing of a life insurance policy to the effect that the insurance is free or  
23 without cost to the policyholder for any period of time unless provided in the policy.

24 (b) A violation of this Code section shall be deemed a fraudulent life settlement act.

25 33-59-14.

26 (a)(1) It shall be illegal for a person to commit a fraudulent life settlement act.

27 (2) A person shall not knowingly and intentionally interfere with the enforcement of the  
28 provisions of this chapter or investigations of suspected or actual violations of this  
29 chapter.

30 (3) A person in the business of life settlements shall not knowingly or intentionally  
31 permit any person convicted of a felony involving dishonesty or breach of trust to  
32 participate in the business of life settlements.

33 (b)(1) Life settlement contracts and applications for life settlement contracts, regardless  
34 of the form of transmission, shall contain the following statement or a substantially  
35 similar statement: 'Any person who knowingly presents false information in an

1 application for insurance or life settlement contract is guilty of a crime and may be  
2 subject to fines and confinement in prison.'

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

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

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

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

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

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

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

21 (D) Any regulatory body or their employees, agents, or representatives overseeing life  
22 insurance, life settlements, securities, or investment fraud;

23 (E) The life insurer that issued the life insurance policy covering the life of the insured;  
24 or

25 (F) The licensee and any agents, employees, or representatives.

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

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

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

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

8 (2) Paragraph (1) of this subsection shall not prohibit release by the Commissioner of  
9 documents and evidence obtained in an investigation of suspected or actual fraudulent life  
10 settlement acts:

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

13 (B) To federal, state, or local law enforcement or regulatory agencies, to an  
14 organization established for the purpose of detecting and preventing fraudulent life  
15 settlement acts, or to the National Association of Insurance Commissioners; or

16 (C) At the discretion of the Commissioner, to a person in the business of life  
17 settlements that is aggrieved by a fraudulent life settlement act.

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

20 (f) This chapter shall not:

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

23 (2) Preempt, supersede, or limit any provision of any state securities law or any rule,  
24 order, or notice issued thereunder;

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

27 (4) Limit the powers granted elsewhere by the laws of this state to the Commissioner or  
28 an insurance fraud unit to investigate and examine possible violations of law and to take  
29 appropriate action against wrongdoers.

30 (g)(1) Providers and brokers shall have in place antifraud initiatives reasonably  
31 calculated to detect, prosecute, and prevent fraudulent life settlement acts. At the  
32 discretion of the Commissioner, the Commissioner may order, or a licensee may request  
33 and the Commissioner may grant, such modifications of the following required initiatives  
34 as necessary to ensure an effective antifraud program. The modifications may be more  
35 or less restrictive than the required initiatives so long as the modifications may  
36 reasonably be expected to accomplish the purpose of this subsection. Antifraud  
37 initiatives shall include:

1 (A) Fraud investigators, who may be provider or broker employees or independent  
2 contractors; and

3 (B) An antifraud plan, which shall be submitted to the Commissioner. The antifraud  
4 plan shall include, but not be limited to:

5 (i) A description of the procedures for detecting and investigating possible fraudulent  
6 life settlement acts and procedures for resolving material inconsistencies between  
7 medical records and insurance applications;

8 (ii) A description of the procedures for reporting possible fraudulent life settlement  
9 acts to the Commissioner;

10 (iii) A description of the plan for antifraud education and training of underwriters and  
11 other personnel; and

12 (iv) A description or chart outlining the organizational arrangement of the antifraud  
13 personnel who are responsible for the investigation and reporting of possible  
14 fraudulent life settlement acts and investigating unresolved material inconsistencies  
15 between medical records and insurance applications.

16 (2) Antifraud plans submitted to the Commissioner shall be privileged and confidential  
17 and shall not be a public record and shall not be subject to discovery or subpoena in a  
18 civil or criminal action.

19 33-59-15.

20 (a) In addition to the penalties and other enforcement provisions of this chapter, if any  
21 person violates this chapter or any rule or regulation implementing this chapter, the  
22 Commissioner may seek an injunction in a court of competent jurisdiction in the county  
23 where the person resides or has a principal place of business and may apply for temporary  
24 and permanent orders that the Commissioner determines necessary to restrain the person  
25 from further committing the violation.

26 (b) Any person damaged by the acts of another person in violation of this chapter or any  
27 rule or regulation implementing this chapter may bring a civil action for damages against  
28 the person committing the violation in a court of competent jurisdiction.

29 (c) The Commissioner may issue a cease and desist order upon a person who violates any  
30 provision of this chapter, any rule, regulation, or order adopted by the Commissioner, or  
31 any written agreement entered into with the Commissioner, in accordance with Chapter 2  
32 of this title.

33 (d) When the Commissioner finds that such an action presents an immediate danger to the  
34 public and requires an immediate final order, he or she may issue an emergency cease and  
35 desist order reciting with particularity the facts underlying such findings. The emergency  
36 cease and desist order shall become effective immediately upon service of a copy of the

1 order on the respondent and shall remain effective for 90 days. If the department begins  
2 nonemergency cease and desist proceedings under subsection (a) of this Code section, the  
3 emergency cease and desist order shall remain effective, absent an order by an appellate  
4 court of competent jurisdiction pursuant to Chapter 13 of Title 50. In the event of a willful  
5 violation of this chapter, the trial court may award statutory damages in addition to actual  
6 damages in an additional amount up to three times the actual damage award. The  
7 provisions of this chapter may not be waived by agreement. No choice of law provision  
8 may be utilized to prevent the application of this chapter to any settlement in which a party  
9 to the settlement is a resident of this state.

10 33-59-16.

11 (a) It is a violation of this chapter for any person, provider, broker, or any other party  
12 related to the business of life settlements to commit a fraudulent life settlement act.

13 (b) For criminal liability purposes, a person that commits a fraudulent life settlement act  
14 shall be guilty of committing insurance fraud and shall be guilty of a felony and, upon  
15 conviction, shall be punished by imprisonment for not less than two nor more than ten  
16 years, or by a fine of not more than \$10,000.00, or both.

17 (c) The Commissioner shall be empowered to levy a civil penalty:

18 (1) Not exceeding \$1,000.00 for each and every act in violation of this chapter or, if the  
19 person knew or reasonably should have known the acts that he or she committed were in  
20 violation of this chapter, the monetary penalty provided for in this subsection may be  
21 increased to an amount up to \$5,000.00 for each and every act in violation; and

22 (2) The amount of the claim for each violation upon any person, including those persons  
23 and their employees licensed pursuant to this chapter, who is found to have committed  
24 a fraudulent life settlement act or violated any other provision of this chapter.

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

27 33-59-17.

28 A violation of this chapter shall be considered an unfair trade practice pursuant to state law  
29 and subject to the penalties provided by state law.

30 33-59-18.

31 (a) A provider lawfully transacting business in this state prior to July 1, 2009, may  
32 continue to do so pending approval or disapproval of that person's application for a license  
33 as long as the application is filed with the Commissioner not later than 30 days after  
34 publication by the Commissioner of an application form and instructions for licensure of

1 providers. If the publication of the application form and instructions is prior to July 1,  
2 2009, then the filing of the application shall not be later than August 1, 2009. During the  
3 time that such an application is pending with the Commissioner, the applicant may use any  
4 form of life settlement contract that has been filed with the Commissioner pending  
5 approval thereof, provided that such form is otherwise in compliance with the provisions  
6 of this chapter. Any person transacting business in this state under this provision shall be  
7 obligated to comply with all other requirements of this chapter.

8 (b) A person who has lawfully negotiated life settlement contracts between any owner  
9 residing in this state and one or more providers for at least one year immediately prior to  
10 July 1, 2009, may continue to do so pending approval or disapproval of that person's  
11 application for a license as long as the application is filed with the Commissioner not later  
12 than 30 days after publication by the Commissioner of an application form and instructions  
13 for licensure of brokers. If the publication of the application form and instructions is prior  
14 July 1, 2009, then the filing of the application shall not be later than August 1, 2009. Any  
15 person transacting business in this state under this provision shall be obligated to comply  
16 with all other requirements of this chapter."

## 17 **SECTION 2.**

18 For purposes of the promulgation of rules and regulations by the Commissioner of Insurance,  
19 this Act shall become effective upon its approval by the Governor or upon its becoming law  
20 without such approval. For all other purposes, this Act shall become effective on July 1,  
21 2009.

## 22 **SECTION 3.**

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