

Senate Bill 499

By: Senator Hudgens of the 47th

AS PASSED SENATE

**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 registration requirements for life settlement brokers; to
4 provide suspension, revocation, and refusal to renew of such licenses; to provide for
5 requirements for life settlement contracts; to provide for certain reporting requirements; to
6 provide for certain privacy requirements; to provide for the examination of licensees; to
7 provide for the authority of the Commissioner of Insurance to investigate persons involved
8 in the life settlement business and in suspected fraudulent practices; to provide for
9 restrictions on advertising; to provide for certain disclosures; to provide for requirements and
10 procedures for life settlement contracts; to authorize the Commissioner of Insurance to
11 promulgate rules and regulations; to provide for prohibited acts concerning life settlement
12 contracts; to provide for fraud prevention and control; to provide for certain immunities from
13 liability; to provide for confidentiality; to provide for injunctions and other civil remedies;
14 to provide for criminal sanctions and penalties; to provide that violations of the chapter shall
15 constitute unfair trade practices; to provide for related matters; to provide for effective dates
16 and applicability; to repeal conflicting laws; 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 revising the chapter as follows:

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

11 (2) 'Business of life settlements' means an activity ~~including~~ involved in, but not limited
 12 to, ~~the offering to enter into, solicitation, negotiation, procurement, effectuation,~~
 13 ~~purchasing, investing, financing~~ soliciting, negotiating, procuring, effectuating,
 14 monitoring, or tracking, ~~underwriting, selling, transferring, assigning, pledging,~~
 15 ~~hypothecating, or in any other manner involving,~~ of life settlement contracts.

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

17 (A) Being unable to perform at least two activities of daily living ~~including, but not~~
 18 ~~limited to,~~ such as eating, toileting, transferring, bathing, dressing, or continence;

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

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

24 (4)(A) 'Financing entity' means an underwriter, placement agent, lender, purchaser of
 25 securities, purchaser of a policy or certificate from a ~~life settlement~~ provider, credit
 26 enhancer, or ~~an~~ any entity that has a direct ownership in a policy or certificate that is
 27 the subject of a life settlement contract, but:

28 (i)(A) Whose principal activity related to the transaction is providing funds to effect
 29 the life settlement contract or purchase of one or more ~~purchased~~ policies; and

30 (ii)(B) Who has an agreement in writing with one or more ~~licensed life settlement~~
 31 providers to finance the acquisition of life settlement contracts ~~or to provide stop-loss~~
 32 ~~insurance.~~

33 (B) 'Financing entity' does not include a nonaccredited investor or purchaser.

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

1 ~~(5)~~(6) 'Fraudulent life settlement act' includes:

2 (A) Acts or omissions committed by a any person who, knowingly ~~or~~ and with intent
3 to defraud, for the purpose of depriving another of property or for pecuniary gain,
4 ~~commits~~, engages in acts, or permits its employees or its agents to engage, in acts,
5 including, but not limited to:

6 (i) Presenting, causing to be presented, or preparing with knowledge ~~or~~ and belief
7 that it will be presented to or by a ~~life settlement provider, financing entity, premium~~
8 finance lender, life settlement broker, insurer, insurance producer, or ~~another~~ any
9 other person, false material information, or concealing material information, as part
10 of, in support of, or concerning a fact material to one or more of the following:

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

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

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

15 (IV) Premiums paid on a an insurance policy;

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

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

19 (VII) In the solicitation, offer to enter into, or effectuation, ~~or sale~~ of a life
20 settlement contract or insurance policy;

21 (VIII) The issuance of written evidence of a life settlement ~~contract~~ contracts or
22 insurance; ~~or~~

23 ~~A financing transaction~~ Any application for or the existence of or any
24 payments related to a loan secured directly or indirectly by an interest in a life
25 insurance policy; or

26 (X) Enter into any practice or plan which involved stranger originated life
27 insurance;

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

32 ~~(ii)~~(iii) Employing any device, scheme, or artifice to defraud ~~related to purchased~~
33 policies in the business of life settlements; or

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

1 (B) In the furtherance of a fraud or to prevent the detection of a fraud, acts or
 2 omissions of any a person, ~~commits or permits~~ its employees, or its agents to ~~commit~~
 3 ~~any of the following acts~~ acting with such person's permission, to:

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

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

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

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

14 ~~(C)(v)~~ Embezzlement Engage in embezzlement, theft, misappropriation, or
 15 conversion of moneys, funds, premiums, credits, or other property of a ~~life settlement~~
 16 provider, ~~life insurance producer~~, insurer, insured, ~~seller~~, insurance policy owner, or
 17 ~~another~~ any other person engaged in the business of life settlements or insurance;

18 ~~(D)(vi)~~ Recklessly entering into, negotiating, Knowingly and with intent to defraud,
 19 enter into, broker, or otherwise ~~dealing~~ deal in a life settlement contract, the subject
 20 of which is a life insurance policy that was obtained by presenting false information
 21 concerning a any fact material to the policy; or by concealing, for the purpose of
 22 misleading another, information concerning a any fact material to the policy, where
 23 the ~~seller~~ owner or the ~~seller's~~ owner's agent intended to defraud the policy's issuer;
 24 insurance company that issued the policy. As used in this subparagraph, 'recklessly'
 25 means ~~engaging in the conduct in conscious and clearly unjustifiable disregard of a~~
 26 ~~substantial likelihood of the existence of the relevant facts or risks, this disregard~~
 27 ~~involving a gross deviation from acceptable standards of conduct; or~~

28 ~~(E)(vii)~~ Attempting Attempt to commit, assist, aid, or abet in the commission of, or
 29 conspiracy to commit, the acts or omissions specified in this paragraph; or

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

33 (7) 'Insured' means the person covered under the policy being considered for sale in a life
 34 settlement contract.

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

1 ~~(6)~~(9) 'Life insurance producer' means a any person licensed in this state as a resident or
 2 nonresident insurance producer ~~pursuant to Chapter 23 of this title~~ who has received
 3 qualification or authority for life insurance coverage or a life line of coverage pursuant
 4 to Chapter 23 of this title.

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

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

28 (B) Life settlement contract also includes:

29 (i) A written agreement ~~a contract~~ for a loan or other ~~financing~~ lending transaction,
 30 ~~with a seller~~ secured primarily by an individual or group life insurance policy, ~~other~~
 31 ~~than a loan by a life insurance company pursuant to the terms of the policy or a loan~~
 32 ~~secured by the cash value of a policy;~~ and

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

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

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

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

5 ~~A life settlement contract includes an agreement with a seller to transfer ownership~~
 6 ~~or change the beneficiary designation at a later date regardless of the date that~~
 7 ~~compensation is paid to the seller. A life settlement contract does not mean a~~
 8 ~~written agreement entered into between a seller and a person having an insurable~~
 9 ~~interest in the insured's life.~~

10 (C) Life settlement contract does not include:

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

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

19 (iii) A collateral assignment of a life insurance policy by an owner;

20 (iv) A loan made by a lender that does not violate Chapter 22 of this title, provided
 21 such loan is not described in this paragraph as being included in the definition of a life
 22 settlement contract, and is not otherwise within the definition of life settlement
 23 contract;

24 (v) An agreement where all the parties are closely related to the insured by blood or
 25 law or have a lawful substantial economic interest in the continued life, health, and
 26 bodily safety of the person insured or are trusts established primarily for the benefit
 27 of such parties;

28 (vi) Any designation, consent, or agreement by an insured who is an employee of an
 29 employer in connection with the purchase by the employer, or trust established by the
 30 employer, of life insurance on the life of the employee;

31 (vii) A bona fide business succession planning arrangement between:

32 (I) One or more shareholders in a corporation or between a corporation and one or
 33 more of its shareholders or one or more trust established by its shareholders;

34 (II) One or more partners in a partnership or between a partnership and one or more
 35 of its partners or one or more trust established by its partners; or

1 (III) One or more members in a limited liability company or between a limited
 2 liability company and one or more of its members or one or more trust established
 3 by its members;

4 (viii) An agreement entered into by a service recipient, or a trust established by the
 5 service recipient, and a service provider or a trust established by the service provider,
 6 who performs significant services for the service recipient's trade or business; or

7 (ix) Any other contract, transaction, or arrangement from the definition of life
 8 settlement contract that the Commissioner determines is not of the type intended to
 9 be regulated by this chapter.

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

12 ~~(A) A bank, savings bank, savings and loan association, credit union, or other licensed~~
 13 ~~lending institution that takes an assignment of a policy as collateral for a loan;~~

14 ~~(B) The issuer of a policy providing accelerated benefits pursuant to the policy;~~

15 ~~(C) An authorized or eligible insurer that provides stop-loss coverage to a life~~
 16 ~~settlement provider, financing entity, special purpose entity, or related provider trust;~~

17 ~~(D) A natural person who enters into or effectuates no more than one agreement in a~~
 18 ~~calendar year for the transfer of policies for any value less than the expected death~~
 19 ~~benefit;~~

20 ~~(E) A financing entity;~~

21 ~~(F) A special purpose entity;~~

22 ~~(G) A related provider trust; or~~

23 ~~(H) An accredited investor or qualified institutional buyer as defined, respectively, in~~
 24 ~~Regulation D, Rule 501, or Rule 144A of the Federal Securities Act of 1933, as~~
 25 ~~amended, and who purchases a purchased policy from a life settlement provider.~~

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

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

34 (A) Any provider or other licensee under this chapter;

35 (B) A qualified institutional buyer as defined in Rule 144A of the federal Securities
 36 Act of 1933, as amended;

37 (C) A financing entity;

1 (D) A special purpose entity; or

2 (E) A related provider trust.

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

7 ~~(9)~~(15) 'Person' means a any natural person or a legal entity, including, but not limited
 8 to, an individual, a partnership, limited liability company, association, trust, or
 9 corporation.

10 ~~(10)~~(16) 'Policy' means an individual or group policy, group certificate, contract, or
 11 arrangement of life insurance affecting the rights of owned by a resident of this state or
 12 bearing a reasonable relation to this state, regardless of whether delivered or issued for
 13 delivery in this state.

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

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

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

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

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

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

29 (E) A purchaser;

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

32 (G) A financing entity;

33 (H) A special purpose entity;

34 (I) A related provider trust;

35 (J) A life settlement broker; or

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

4 ~~(11)~~(19) 'Purchased policy' means a policy or group certificate that has been acquired by
 5 a ~~life settlement~~ provider pursuant to a life settlement contract.

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

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

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

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

31 ~~(A) A licensee as provided by this chapter, including a life insurance producer;~~

32 ~~(B) An accredited investor or qualified institutional buyer as defined, respectively, in~~
 33 ~~Regulation D, Rule 501, or Rule 144A of the Federal Securities Act of 1933, as~~
 34 ~~amended;~~

35 ~~(C) A financing entity;~~

36 ~~(D) A special purpose entity; or~~

37 ~~(E) A related provider trust.~~

1 ~~(14)~~(23) 'Special purpose entity' means a corporation, partnership, trust, limited liability
 2 company, or other ~~similar~~ legal entity formed ~~only~~ solely to provide either; directly or
 3 indirectly; access to institutional capital markets for a financing entity or ~~licensed life~~
 4 ~~settlement provider; or in connection with a transaction in which the securities in the~~
 5 special purpose entity are acquired by the owner or by a qualified institutional buyer as
 6 defined in Rule 144 promulgated under the federal Securities Act of 1933, as amended,
 7 or the securities pay a fixed rate of return commensurate with established asset-backed
 8 institutional capital markets.

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

21 ~~(15)~~(25) 'Terminally ill' or ~~'having a terminal illness'~~ means having an illness or sickness
 22 that can reasonably is be expected to result in death in 24 months or less.

23 33-59-3.

24 ~~(a)(1) A~~ No person, wherever located, shall ~~not negotiate life settlement contracts between~~
 25 ~~a seller and one or more life settlement providers or otherwise act on behalf of a seller~~
 26 ~~unless such person is a life insurance producer~~ act as a provider or life settlement broker
 27 with an owner or multiple owners who are residents of this state without first having
 28 obtained a license or acknowledgment of registration from the Commissioner. If there is
 29 more than one owner on a single policy and the owners are residents of different states, the
 30 life settlement contract shall be governed by the law of the state in which the owner having
 31 the largest percentage ownership resides or, if the owners hold equal ownership, the state
 32 of residence of one owner agreed upon in writing by all owners.

33 ~~(2) A life insurance producer, as defined in paragraph (10) of subsection (a) of Code~~
 34 ~~Section 33-23-1, who has been licensed for at least one year, shall be permitted to~~
 35 ~~negotiate, as defined in paragraph (11) of subsection (a) of Code Section 33-23-1, life~~
 36 ~~settlement contracts between a seller residing in this state and one or more life settlement~~

1 providers. For purposes of this Code section, the one-year requirement is deemed to be
 2 satisfied if such person has been licensed as a resident life insurance producer in his or
 3 her home state for at least one year.

4 (b) Application for a provider license or life settlement broker registration shall be made
 5 to the Commissioner by the applicant on a form prescribed by the Commissioner and the
 6 application shall be accompanied by a fee in an amount established by the Commissioner;
 7 provided, however, that the license and renewal fees for a provider license shall be
 8 reasonable and that the registration and renewal fees for a life settlement broker registration
 9 shall not exceed those established for an insurance producer, as such fees are otherwise
 10 provided for in this title.

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

16 (d)(3) Not later than 30 days from the first day of negotiating a life settlement on behalf
 17 of a seller operating as a life settlement broker, the life insurance producer shall notify the
 18 Commissioner of the activity that he or she is acting as a life settlement broker on a form
 19 prescribed by the Commissioner and shall pay any applicable fees fee to be determined by
 20 the Commissioner. Notification shall include an acknowledgment by the life insurance
 21 producer that he or she operates will operate as a life settlement broker in accordance with
 22 this chapter.

23 (e)(4) Irrespective of the manner in which the life insurance producer is compensated, a
 24 life insurance producer is deemed to represent only the seller and not the life settlement
 25 provider or any insurer, and the The insurer that issued the seller's policy that is the subject
 26 of a life settlement contract shall not be liable responsible for any act or omission of the life
 27 insurance producer or the a life settlement broker, provider, or purchaser arising out of or
 28 in connection with the life settlement transaction, provided that the insurer shall remain
 29 liable for any of its own acts or omissions unless the insurer receives compensation for the
 30 placement of a life settlement contract from the provider, purchaser, or life settlement
 31 broker in connection with the life settlement contract.

32 (f)(5) Notwithstanding paragraph (1) of this subsection, a A person licensed as an attorney,
 33 certified public accountant, or financial planner accredited by a nationally recognized
 34 accreditation agency; who is retained to represent the seller, owner and whose
 35 compensation is not paid directly or indirectly by the life settlement provider; or purchaser
 36 may negotiate life settlement contracts on behalf of the owner without having to obtain a
 37 license as a life insurance producer settlement broker.

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

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

11 (3)(g) Licenses A license may be renewed from year to every year on the anniversary date
 12 May 1 upon payment of the annual periodic renewal fees to be determined by the
 13 Commissioner fee. Failure to pay the fees by the renewal date fee within the terms
 14 prescribed shall result in the expiration automatic revocation of the license requiring
 15 periodic renewal.

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

19 (h) The term of a provider license shall be equal to that of a domestic stock life insurance
 20 company and the term of a life settlement broker registration shall be equal to that of an
 21 insurance producer license. Licenses or registrations requiring periodic renewal may be
 22 renewed on their anniversary date upon payment of the periodic renewal fee as specified
 23 in subsection (b) of this Code section. Failure to pay the fees on or before the renewal date
 24 shall result in expiration of the license or registration.

25 (i)(5) The applicant for a life settlement provider license shall provide such information
 26 as the Commissioner may require on forms prescribed prepared by the Commissioner. The
 27 Commissioner ~~has~~ shall have the authority, at any time, to require ~~the~~ such applicant to
 28 fully disclose the identity of ~~all its~~ stockholders, except stockholders owning fewer than 10
 29 percent of the shares of an applicant whose shares are publicly traded, partners, officers,
 30 members, and employees, ~~except stockholders owning fewer than 5 percent of the shares~~
 31 ~~of an applicant whose shares are publicly traded,~~ and the Commissioner may, in the
 32 exercise of the Commissioner's sole discretion, refuse to issue such a license in the name
 33 of a ~~legal entity~~ any person if not satisfied that any officer, employee, stockholder, or
 34 partner, ~~or member of it~~ thereof who may materially influence the applicant's conduct
 35 meets the standards of this chapter.

36 (j)(6) A license issued to a legal partnership, corporation, or other entity authorizes all
 37 partners, members, officers, ~~members,~~ and designated employees to act as life settlement

1 providers, as applicable, as a licensee under the license, and ~~all if~~ those persons ~~shall be~~ are
 2 named in the application and any supplements to the application.

3 ~~(k)(7)~~ Upon the filing of an application and the payment of the license fee, the
 4 Commissioner shall make an investigation of each applicant ~~for a license as a life~~
 5 ~~settlement provider~~ and may issue a license if the Commissioner finds that the applicant:

6 ~~(A)(1)~~ Has If a provider, has provided a detailed plan of operation;

7 ~~(B)(2)~~ Is competent and trustworthy and intends to ~~act~~ transact its business in good faith
 8 ~~in the capacity involved by the license for which he or she has applied;~~

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

11 ~~(D)(4)~~ If the applicant is a legal entity, ~~has provided~~ is formed or organized pursuant to
 12 the laws of this state or is a foreign legal entity authorized to transact business in this state
 13 or provides a certificate of good standing from the state of its domicile; and

14 ~~(E)(5)~~ Has provided to the Commissioner an antifraud plan that meets the requirements
 15 of ~~this chapter~~. Code Section 33-59-14 and includes:

16 (A) A description of the procedures for detecting and investigating possible fraudulent
 17 acts and procedures for resolving material inconsistencies between medical records and
 18 insurance applications;

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

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

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

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

32 (m) The Commissioner shall not issue a license to any applicant unless the applicant has
 33 an adequate net worth as prescribed by order, rule, or regulation.

34 (n) Each licensee shall file with the Commissioner on or before the first day of May of
 35 each year an annual statement containing such information as the Commissioner by rule
 36 may prescribe.

1 (o) A provider may not use any person to perform the functions of a life settlement broker
 2 as defined in paragraph (10) of Code Section 33-59-2 unless the person holds a current,
 3 valid registration as a life settlement broker and as provided in this Code section.

4 (p) A life settlement broker may not use any person to perform the functions of a provider
 5 as defined in paragraph (18) of Code Section 33-59-2 unless such person holds a current,
 6 valid license as a provider and as provided in this Code section.

7 (q)(9) A life settlement provider and a life settlement broker shall provide to the
 8 Commissioner new or revised information about officers, stockholders of 10 percent or
 9 more stockholders, partners, directors, members, or and designated employees within 30
 10 days of the any change.

11 (r) An individual registered as a life settlement broker shall complete on a biennial basis
 12 15 hours of training related to life settlements and life settlement transactions as required
 13 by the Commissioner; provided, however, that a life insurance producer who is operating
 14 as a life settlement broker pursuant to this Code section shall not be subject to the
 15 requirements of this subsection. Any person failing to meet the requirements of this
 16 subsection shall be subject to the penalties imposed by the Commissioner.

17 33-59-4.

18 (a) The Commissioner may ~~refuse to issue~~, suspend, revoke, or refuse to renew the license
 19 of a ~~life settlement provider~~ any licensee if the Commissioner finds that:

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

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

25 (3) The ~~licensee~~ provider demonstrates a pattern of ~~unreasonable~~ unreasonably
 26 withholding payments to ~~seller~~ policy owners;

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

28 ~~(4)(5)~~ (5) The licensee or any officer, partner, member, or ~~key management personnel~~
 29 director has been ~~found guilty~~ convicted of, or has ~~pleaded guilty or nolo contendere to,~~
 30 any a felony; or to a any misdemeanor of which criminal fraud is an element; or the
 31 licensee has pleaded guilty or nolo contendere with respect to any felony or any
 32 misdemeanor of which criminal involving fraud or moral turpitude; is an element
 33 regardless of whether a judgment ~~or of~~ conviction has been entered by the court;

34 ~~(5)(6)~~ (6) The ~~licensee~~ provider has entered into any life settlement contract that has not
 35 been approved pursuant to this chapter;

1 ~~(6)(7)~~ The licensee provider has failed to honor contractual obligations set out in a life
2 settlement contract;

3 ~~(7)~~ The licensee no longer meets the requirements for initial licensure;

4 (8) The licensee provider has assigned, transferred, or pledged a ~~purchased~~ settled policy
5 to a person other than a ~~life settlement~~ provider licensed in this state, purchaser, an
6 accredited investor or qualified institutional buyer as defined, respectively, in Regulation
7 D, Rule 501, or Rule 144A of the ~~Federal~~ federal Securities Act of 1933, as amended, a
8 financing entity, a special purpose entity, or a related provider trust; ~~or~~

9 (9) The ~~applicant or~~ licensee or any officer, partner, member, or key management
10 personnel ~~or any life insurance producer~~ has violated a ~~provision~~ any of the provisions
11 of this chapter; or

12 (10) The provider has failed to maintain an adequate net worth.

13 (b) ~~The~~ Before the Commissioner may ~~suspend, revoke, or refuse~~ denies a license
14 application or suspends, revokes, or refuses to renew the license of a ~~life insurance~~
15 ~~producer if the Commissioner finds that such life insurance producer has violated the~~
16 ~~provisions of any licensee under this chapter, the Commissioner shall conduct a hearing in~~
17 accordance with Chapter 2 of this title.

18 ~~(c) If the Commissioner denies a license application or suspends, revokes, or refuses to~~
19 ~~renew the license of a life settlement provider or suspends, revokes, or refuses to renew a~~
20 ~~license of a life insurance producer pursuant to this chapter, the Commissioner shall~~
21 ~~conduct a hearing in accordance with Chapter 13 of Title 50:~~

22 33-59-5.

23 (a) A No person may not use a any form of life settlement contract or provide to a seller
24 a disclosure statement form in this state unless it has been filed with and approved, if
25 required, by the Commissioner in a manner that conforms with the filing procedures and
26 any time restrictions or deeming provisions, if any, for life insurance forms, policies, and
27 contracts.

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

33 (c) A person shall not use a life settlement contract form or provide to an owner a
34 disclosure statement form in this state unless first filed with and approved by the
35 Commissioner. The Commissioner shall disapprove a Any life settlement contract form
36 or disclosure statement form filed with the Commissioner shall be deemed approved if it

1 ~~has not been disapproved within 60 days of the filing. The Commissioner shall disapprove~~
 2 ~~a life settlement contract form or disclosure statement form if, in the Commissioner's~~
 3 ~~opinion, the contract or provisions contained in it therein fail to meet the requirements of~~
 4 ~~Code Sections 33-59-8, 33-59-9, 33-59-11, and 33-59-15 or are unreasonable, contrary to~~
 5 ~~the interests of the public, or otherwise misleading or unfair to the seller owner. At the~~
 6 ~~Commissioner's discretion, the Commissioner may require the submission of advertising~~
 7 ~~material.~~

8 33-59-6.

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

18 ~~(2) Such This information is shall be limited to only those transactions where the seller~~
 19 ~~insured is a resident of this state and does shall not include individual transaction data~~
 20 ~~regarding the business of life settlements or data which compromises the privacy of~~
 21 ~~personal, financial, and health information of the seller information that there is a~~
 22 ~~reasonable basis to believe could be used to identify the owner or the insured.~~

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

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

1 (1) ~~Necessary~~ Is necessary to effect a life settlement contract between the ~~seller~~ owner
 2 and a ~~life settlement provider and the seller or~~ owner and insured ~~or both, as may be~~
 3 ~~required~~; have provided prior written consent to the disclosure;

4 (2) Is necessary to effectuate the sale of life settlement contracts, or interests therein, as
 5 investments, provided that the sale is conducted in accordance with applicable state and
 6 federal securities law and provided further that the owner and the insured have both
 7 provided prior written consent to the disclosure;

8 ~~(2)(3) Provided~~ Is provided in response to an investigation or examination by the
 9 Commissioner or ~~another~~ any other governmental officer or agency or pursuant to the
 10 requirements of Code Section 33-59-7;

11 ~~(3)(4) A~~ Is a term of or condition to the transfer of a policy by one ~~life settlement~~
 12 ~~provider to another life settlement provider,~~ in which case the receiving provider shall be
 13 required to comply with the confidentiality requirements of this subsection;

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

17 (5) ~~Necessary~~ Is necessary to allow the ~~life settlement provider or life settlement broker~~
 18 ~~or its~~ their authorized representatives to make contacts for the purpose of determining
 19 health status. For the purposes of this paragraph, the term 'authorized representative' shall
 20 not include any person who has or may have any financial interest in the settlement
 21 contract other than a provider, registered life settlement broker, financing entity, related
 22 provider trust, or special purpose entity. A provider or life settlement broker shall require
 23 its authorized representative to agree in writing to adhere to the privacy provisions of this
 24 chapter; or

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

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

30 33-59-7.

31 (a) ~~Authority, scope, and scheduling of examinations.~~

32 ~~(†)~~ The Commissioner may, when the Commissioner deems it reasonably necessary to
 33 protect the interests of the public, conduct an examination under this chapter of a licensee
 34 as often as the Commissioner in his or her sole discretion deems appropriate examine the
 35 business and affairs of any licensee or applicant for a license. The Commissioner may
 36 order any licensee or applicant to produce any records, books, files, or other information

1 reasonably necessary to ascertain whether such licensee or applicant is acting or has acted
 2 in violation of the law or otherwise contrary to the interests of the public. The expenses
 3 incurred in conducting any examination shall be paid by the licensee or applicant.

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

8 ~~(3)~~(b) In lieu of an examination under this chapter of any foreign or alien licensee licensed
 9 in this state, the Commissioner may, at the Commissioner's discretion, accept an
 10 examination report on the licensee as prepared by the ~~commissioner~~ Commissioner for the
 11 licensee's state of domicile or port-of-entry state.

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

15 ~~(b)~~(d) Record retention requirements. Records of all consummated transactions and life
 16 settlement contracts shall be maintained by the provider for three years after the death of
 17 the insured and shall be available to the Commissioner for inspection during reasonable
 18 business hours.

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

21 ~~(A) Proposed, offered, or executed contracts, underwriting documents, policy forms,~~
 22 ~~and applications from the date of the proposal, offer, or execution of the contract,~~
 23 ~~whichever is later;~~

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

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

27 ~~(2) This Code section does not relieve a person of the obligation to produce these~~
 28 ~~documents to the Commissioner after the retention period has expired if the person has~~
 29 ~~retained the documents.~~

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

34 ~~(c)~~(e) Conduct of examinations:

35 (1) Upon determining that an examination should be conducted, the Commissioner shall
 36 issue an examination warrant appointing one or more examiners to perform the
 37 examination and instructing them as to the scope of the examination. In conducting the

1 examination, the examiner shall ~~observe those guidelines and procedures set forth in the~~
 2 ~~Examiners' Handbook adopted by the National Association of Insurance Commissioners.~~
 3 ~~The Commissioner may also employ such other guidelines or procedures as the~~
 4 ~~Commissioner may deem appropriate~~ use methods common to the examination of any life
 5 settlement licensee and should use those guidelines and procedures set forth in an
 6 examiners' handbook adopted by a national organization. The Commissioner may also
 7 employ such other guidelines as the Commissioner may deem appropriate.

8 (2) Every licensee or person from whom information is sought, ~~and~~ its officers, directors,
 9 and agents shall provide to the examiners timely, convenient, and free access at all
 10 reasonable hours at its offices to all books, records, accounts, papers, documents, assets,
 11 and computer or other recordings relating to the property, assets, business, and affairs of
 12 the licensee being examined. The officers, directors, employees, and agents of the
 13 licensee or person shall facilitate the examination and aid in the examination so far as it
 14 is in their power to do so. The refusal of a licensee, by its officers, directors, employees,
 15 or agents, to submit to examination or to comply with any reasonable written request of
 16 the Commissioner shall be grounds for suspension or refusal of or nonrenewal of any
 17 license or authority held by the licensee to engage in the life settlement business or other
 18 business subject to the Commissioner's jurisdiction. Any proceedings for suspension,
 19 revocation, or refusal of any license or authority shall be conducted pursuant to ~~Code~~
 20 ~~Section 33-2-24~~ Chapter 2 of this title.

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

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

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

36 (6) Nothing contained in this ~~chapter~~ Code section shall be construed to limit the
 37 Commissioner's authority to use and, if appropriate, to make public any final or

1 preliminary examination report, any examiner or licensee work papers or other
 2 documents, or any other information discovered or developed during the course of any
 3 examination in the furtherance of any legal or regulatory action which the Commissioner
 4 may, in his or her sole discretion, deem appropriate.

5 ~~(7) The licensee shall pay the charges incurred in the examination, including the~~
 6 ~~expenses of the Commissioner or his or her designee and the expenses and compensation~~
 7 ~~of the Commissioner's examiners and assistants. If a licensee feels the fees assessed are~~
 8 ~~unreasonable in relation to the examination performed, the licensee may appeal the~~
 9 ~~assessments pursuant to Chapter 13 of Title 50. If no hearing is requested or if after a~~
 10 ~~hearing and appeal process the licensee refuses or fails to pay, the Commissioner or his~~
 11 ~~or her designee shall promptly institute a civil action to recover the expenses of~~
 12 ~~examination against a licensee.~~

13 ~~(d)~~(f) *Examination reports:*

14 (1) Examination reports shall comprise only facts appearing upon the books, records, or
 15 other documents of the licensee, its agents, or other persons examined or as ascertained
 16 from the testimony of ~~its~~ the licensee's officers or agents or other persons examined
 17 concerning ~~its~~ the licensee's affairs, and such conclusions and recommendations as the
 18 examiners find reasonably warranted from the facts.

19 (2) No later than 60 days following completion of the examination, the examiner in
 20 charge shall file with the Commissioner a verified written report of examination under
 21 oath. Upon receipt of the verified report, the Commissioner shall transmit the report to
 22 the licensee examined, together with a notice that shall afford the licensee examined a
 23 reasonable opportunity of not more than 30 days to make a written submission or rebuttal
 24 with respect to any matters contained in the examination report and which shall become
 25 part of the report or to request a hearing on any matter in dispute if the Commissioner
 26 deems such written submission or rebuttal comments appropriate and consistent with the
 27 findings of the examination.

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

32 ~~(A) Adopting the examination report as filed or with modification or corrections. If~~
 33 ~~the examination report reveals that the company is operating in violation of any law,~~
 34 ~~rule, or prior order of the Commissioner, the Commissioner may order the company to~~
 35 ~~take any action the Commissioner considers necessary and appropriate to cure the~~
 36 ~~violation;~~

1 ~~(B) Rejecting the examination report with directions to the examiners to reopen the~~
2 ~~examination for purposes of obtaining additional data, documentation, or information~~
3 ~~and refiling, or~~

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

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

17 ~~(5) Hearings conducted pursuant to this Code section shall be subject to the following~~
18 ~~requirements:~~

19 ~~(A) Any hearing conducted pursuant to this Code section by the Commissioner or the~~
20 ~~Commissioner's authorized representative shall be conducted as a nonadversarial~~
21 ~~confidential investigatory proceeding as necessary for the resolution of any~~
22 ~~inconsistencies, discrepancies, or disputed issues apparent upon the face of the filed~~
23 ~~examination report or raised by or as a result of the Commissioner's review of relevant~~
24 ~~work papers or by the written submission or rebuttal of the company. Within 20 days~~
25 ~~of the conclusion of any hearing, the Commissioner shall enter an order pursuant to~~
26 ~~paragraph (3) of this subsection;~~

27 ~~(B) The Commissioner may not appoint an examiner as an authorized representative~~
28 ~~to conduct the hearing. The hearing shall proceed expeditiously with discovery by the~~
29 ~~company limited to the examiner's work papers which tend to substantiate any~~
30 ~~assertions set forth in any written submission or rebuttal. The Commissioner or the~~
31 ~~Commissioner's representative may issue subpoenas for the attendance of any~~
32 ~~witnesses or the production of any documents considered relevant to the investigation~~
33 ~~whether under the control of the Commissioner, the company, or other persons. The~~
34 ~~documents produced shall be included in the record and testimony taken by the~~
35 ~~Commissioner or the Commissioner's representative shall be under oath and preserved~~
36 ~~for the record. Nothing contained in this Code section shall require the Commissioner~~

1 to disclose any information or records which would indicate or show the existence or
2 content of any investigation or activity of a criminal justice agency; and

3 ~~(C) The hearing shall proceed with the Commissioner or the Commissioner's~~
4 ~~representative posing questions to the persons subpoenaed. Thereafter, the company~~
5 ~~and the department may present testimony relevant to the investigation.~~
6 ~~Cross-examination may be conducted only by the Commissioner or the Commissioner's~~
7 ~~representative. The company and the Commissioner shall be permitted to make closing~~
8 ~~statements and may be represented by counsel of their choice.~~

9 ~~(6)(3)~~ In the event the Commissioner determines that regulatory action is appropriate as
10 a result of an examination, the Commissioner may initiate any proceedings or actions
11 provided by law.

12 ~~(e)(g)~~ *Confidentiality of examination information.*

13 (1) Names and individual identification data for all ~~setters~~ owners, purchasers, and
14 insureds shall be considered private and confidential information and shall not be
15 disclosed by the Commissioner; unless the disclosure is to another regulator or is required
16 by law.

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

22 ~~(i) Confidential~~ confidential by law and privileged;₂

23 ~~(ii) Not shall not be~~ subject to the provisions of Article 4 of Chapter 18 of Title 50;₂

24 ~~(iii) Not shall not be~~ subject to subpoena;₂ and

25 ~~(iv) Not shall not be~~ subject to discovery or admissible in evidence in any private
26 civil action.

27 ~~(B)~~ The Commissioner is authorized to use the documents, materials, or other
28 information in the furtherance of any regulatory or legal action brought as part of the
29 Commissioner's official duties. The licensee being examined may have access to all
30 documents used to make the report except documents and work papers that the
31 Commissioner has deemed privileged.

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

35 ~~(A) Confidential by law and privileged;~~

36 ~~(B) Not subject to subpoena; and~~

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

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

7 ~~or~~

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

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

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

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

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

27 ~~(B) May receive documents, materials, communications, or information, including~~
28 ~~otherwise confidential and privileged documents, materials, or information, from the~~
29 ~~National Association of Insurance Commissioners and its affiliates and subsidiaries and~~
30 ~~from regulatory and law enforcement officials of other foreign or domestic jurisdictions~~
31 ~~and shall maintain as confidential or privileged any document, material, or information~~
32 ~~received with notice or the understanding that it is confidential or privileged under the~~
33 ~~laws of the jurisdiction that is the source of the document, material, or information; and~~

34 ~~(C) May enter into agreements governing sharing and use of information consistent~~
35 ~~with this subsection.~~

36 ~~(7) No waiver of any applicable privilege or claim of confidentiality in the documents,~~
37 ~~materials, or information shall occur as a result of disclosure to the Commissioner under~~

1 ~~this Code section or as a result of sharing as authorized in paragraph (5) of this~~
 2 ~~subsection.~~

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

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

14 ~~(f)~~(h) *Conflict of interest.*

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

20 (A) ~~A seller~~ An owner;

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

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

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

29 ~~(g)~~ *Cost of examinations.*

30 ~~The expenses incurred in conducting any examination shall be paid by the licensee or~~
 31 ~~applicant.~~

32 ~~(h)~~(i) *Immunity from liability.*

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

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

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

15 ~~(i)(j) Investigative authority of the commissioner.~~

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

18 33-59-8.

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

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

25 (c) No person or trust shall:

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

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

30 ~~33-59-8.~~ 33-59-9.

31 ~~(a) With each application for a life settlement contract, a life settlement~~ The provider or
 32 ~~life insurance producer shall provide the seller with at least the following disclosures no~~
 33 ~~later than the time the application for the life settlement contract is signed by all parties.~~
 34 ~~The disclosures shall be provided~~ provide in writing, in a separate document that is signed
 35 by the seller owner and the life settlement provider, or life insurance producer and shall

1 provide the following information to the owner no later than the date the life settlement
 2 contract is signed by all parties:

3 (1) ~~That there exist~~ The fact that possible alternatives to a life settlement contract
 4 contracts exist, including, but not limited to, any accelerated death benefits or policy
 5 loans offered under the seller's by the issuer of the life insurance policy;

6 (2) ~~That~~ The fact that some or all of the proceeds of ~~the~~ a life settlement contract may
 7 be taxable ~~under federal income tax and state franchise and income taxes and~~ that
 8 assistance ~~may~~ should be sought from a professional tax adviser;

9 (3) ~~That~~ The fact that the proceeds of ~~the~~ from a life settlement contract ~~may~~ could be
 10 subject to the claims of creditors;

11 (4) ~~That~~ The fact that receipt of ~~the~~ proceeds of from a life settlement contract may
 12 adversely affect the seller's recipient's eligibility for Medicaid public assistance or other
 13 government benefits or entitlements and that advice ~~may~~ should be obtained from the
 14 appropriate government agencies;

15 (5) ~~That~~ The fact that the seller owner has ~~the~~ a right to ~~rescind~~ terminate a life
 16 settlement contract ~~before the earlier of 30 calendar~~ within 15 days ~~after of~~ of the date ~~upon~~
 17 ~~which the life settlement contract~~ it is executed by all parties or for 15 calendar days after
 18 ~~the receipt of the life settlement proceeds by the seller~~ and the owner has received the
 19 disclosures contained in this Code section. Rescission, if exercised by the seller owner,
 20 is effective only if both notice of the rescission is given and ~~repayment of~~ the owner
 21 repays all proceeds and any premiums, loans, and loan interest ~~to the life settlement paid~~
 22 on account of the provider ~~is made~~ within the rescission period. If the insured dies during
 23 the rescission period, the ~~life settlement~~ contract is shall be deemed to have been
 24 rescinded; subject to repayment ~~being made to the life settlement provider within the~~
 25 ~~rescission period~~ by the owner or the owner's estate of all ~~life settlement~~ proceeds and
 26 any premiums, loans, and loan interest to the provider;

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

32 (7) ~~That~~ 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 seller owner and that
 35 assistance ~~may~~ 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 life
 2 settlement broker or any other person acting for the owner in connection with the
 3 transaction, where 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 ~~(8)(10) The fact that~~ That the disclosure to a seller shall include distribution of a
 7 brochure, approved by the Commissioner, describing the process of life settlements shall
 8 require delivery of a buyer's guide or a similar consumer advisory package in the form
 9 prescribed by the Commissioner to owners during the solicitation process;

10 ~~(9)(11) That the~~ The disclosure document shall contain the following language:

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

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

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

25 ~~(10)(13) The fact that~~ That the insured may be contacted by either the ~~life settlement~~
 26 provider or life settlement broker or its authorized representative for the purpose of
 27 determining the insured's health status or to verify the insured's address. This contact
 28 is limited to once every three months if the insured has a life expectancy of more than one
 29 year and no more than once ~~each~~ per month if the insured has a life expectancy of one
 30 year or less.;

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

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

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

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

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

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

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

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

17 ~~(2)~~(1) The name, business address, and telephone number of the life settlement ~~provider~~
 18 broker;

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

25 ~~(4) The dollar amount of the current death benefit payable to the life settlement provider~~
 26 ~~under the policy. If known, the life settlement provider also shall disclose the availability~~
 27 ~~of additional guaranteed insurance benefits, the dollar amount of accidental death and~~
 28 ~~dismemberment benefits under the policy or certificate, and the life settlement provider's~~
 29 ~~interest in those benefits; and~~

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

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

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

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

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

9 ~~(c) If the life settlement provider transfers ownership or changes the beneficiary of the~~
 10 ~~policy, the life settlement provider shall communicate the change in ownership or~~
 11 ~~beneficiary to the insured within 20 days after the change.~~

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

14 33-59-10.

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

21 (b) If, as described in paragraph (11) of Code Section 33-59-2, the loan provides funds
 22 which can be used for a purpose other than paying for the premiums, costs, and expenses
 23 associated with obtaining and maintaining the life insurance policy and loan, the
 24 application shall be rejected as a violation of the prohibited practices in Code
 25 Section 33-59-13.

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

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

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

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

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

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

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

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

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

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

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

19 ~~33-59-9:~~ 33-59-11.

20 (a)(1) A ~~life settlement~~ provider entering into a life settlement contract, wherein the
 21 insured is terminally or chronically ill, shall first ~~shall~~ obtain:

22 ~~(A)(1)~~ (1) If the ~~seller~~ owner is the insured, a written statement from a licensed attending
 23 physician that the ~~seller~~ owner is of sound mind and under no constraint or undue
 24 influence to enter into a ~~life~~ settlement contract; and

25 ~~(B)(2)~~ (2) A document in which the insured consents to the release of his or her medical
 26 records to a ~~life settlement~~ provider, life settlement broker, or insurance producer and, if
 27 the policy was issued less than two years from the date of application for a ~~life~~ settlement
 28 contract, to the insurance company that issued the policy.

29 ~~(2)(b)~~ (b) The insurer shall respond to a request for verification of coverage submitted by a
 30 ~~life settlement~~ provider, life settlement broker, or life insurance producer not later than 30
 31 calendar days ~~from~~ after the date the request is received. The request for verification of
 32 coverage ~~shall~~ must be made on a form approved by the Commissioner. The insurer shall
 33 complete and issue the verification of coverage or indicate in which respects it is unable
 34 to respond. In its response, the insurer shall indicate whether, based on the medical
 35 evidence and documents provided, the insurer intends to pursue an investigation at this
 36 time regarding the validity of the insurance contract ~~or possible fraud and shall provide~~

1 sufficient detail of all reasons for the investigation to the life settlement provider or the life
2 insurance producer.

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

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

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

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

21 (f) If a life settlement broker performs those verification of coverage activities required of
22 the provider, the provider is deemed to have fulfilled the requirements of subsection (a) of
23 Code Section 33-5-9.

24 (g) Within 20 days after an owner executes the life settlement contract, the provider shall
25 give written notice to the insurer that issued that insurance policy that the policy has
26 become subject to a life settlement contract. The notice shall be accompanied by the
27 documents required by Code Section 33-59-10.

28 ~~(b)(h) Medical~~ All medical information solicited or obtained by a any licensee is shall be
29 subject to the applicable provisions provision of state law relating to confidentiality of
30 medical or ~~protected health~~ information if not otherwise provided in this chapter.

31 ~~(c)(i) A~~ All life settlement ~~contract~~ contracts entered into in this state shall provide that the
32 ~~seller with an unconditional right to~~ owner may rescind the contract on or before the
33 ~~earlier of 30 calendar~~ 15 days after the date ~~upon which the life settlement contract~~ it is
34 executed by all parties or ~~15 calendar days after the receipt of the life settlement proceeds~~
35 ~~by the seller thereto.~~ Rescission, if exercised by the seller owner, is effective only if both
36 notice of the rescission is given and repayment of the owner repays all proceeds and any
37 premiums, loans, and loan interest to the life settlement provider is made paid on account

1 of the provider within the rescission period. If the insured dies during the rescission period,
 2 the ~~life settlement~~ contract shall be deemed to have been rescinded; subject to repayment
 3 by the owner or the owner's estate of all ~~life settlement~~ proceeds and any premiums, loans,
 4 and loan interest to the ~~life settlement~~ provider.

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

23 ~~(e)(k)~~ Failure to tender consideration the life settlement contract proceeds to the seller for
 24 the life settlement contract within the time owner by the date disclosed to the owner renders
 25 the ~~life settlement~~ contract voidable by the seller owner for lack of consideration until the
 26 time ~~consideration is~~ the proceeds are tendered to and accepted by the seller owner. A
 27 failure to give written notice of the right of rescission hereunder shall toll the right of
 28 rescission until 30 days after the written notice of the right of rescission has been given.

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

1 ~~insured's health status. A life settlement provider is responsible for the actions of his or~~
2 ~~her authorized representatives.~~

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

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

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

17 (1) The policy was issued upon the owner's exercise of conversion rights arising out of
18 a group or individual policy, provided that the total of the time covered under the
19 conversion policy plus the time covered under the prior policy is at least 24 months. The
20 time covered under a group policy must be calculated without regard to a change in
21 insurance carriers, provided that the coverage has been continuous and under the same
22 group sponsorship; or

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

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

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

29 (C) The owner's spouse dies;

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

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

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

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

1 Copies of the independent evidence required by paragraph (2) of this subsection shall be
 2 submitted to the insurer when the provider submits a request to the insurer for verification
 3 of coverage. The copies shall be accompanied by a letter of attestation from the provider
 4 that the copies are true and correct copies of the documents received by the provider.
 5 Nothing in this Code section shall prohibit an insurer from exercising its right to contest
 6 the validity of any policy. If the provider submits to the insurer a copy of independent
 7 evidence provided for in subparagraph (A) of paragraph (2) of this subsection when the
 8 provider submits a request to the insurer to effect the transfer of the policy to the provider,
 9 the copy is deemed to establish that the settlement contract satisfies the requirements of this
 10 subsection.

11 ~~33-59-10:~~

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

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

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

24 ~~(i) The seller or insured is terminally or chronically ill; or~~

25 ~~(ii) The seller or insured disposes of his or her ownership interests in a closely held~~
 26 ~~corporation, pursuant to the terms of a buyout or other similar agreement in effect at~~
 27 ~~the time the insurance policy was initially issued.~~

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

34 ~~(C) If the life settlement provider submits to the insurer a copy of independent~~
 35 ~~evidence provided for in subparagraph (A) of paragraph (2) of this Code section when~~
 36 ~~the life settlement provider submits a request to the insurer to effect the transfer of the~~

1 policy to the life settlement provider, the copy is deemed to conclusively establish that
2 the life settlement contract satisfies the requirements of this Code section and the
3 insurer shall respond timely to the request.

4 ~~33-59-11.~~

5 ~~(a) The purpose of this Code section is to provide a prospective seller with clear and~~
6 ~~unambiguous statements in the advertisement of a life settlement contract and to assure the~~
7 ~~clear, truthful, and adequate disclosure of the benefits, risks, limitations, and exclusions of~~
8 ~~a life settlement contract. This purpose is to be accomplished by the establishment of~~
9 ~~guidelines and standards of permissible and impermissible conduct in the advertising of a~~
10 ~~life settlement contract to assure that a product description is presented in a manner that~~
11 ~~prevents unfair, deceptive, or misleading advertising and is conducive to accurate~~
12 ~~presentation and description of a life settlement contract through the advertising media and~~
13 ~~material used by a licensee.~~

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

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

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

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

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

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

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

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

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

~~(i) Be genuine;~~

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

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

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

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

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

~~(D) An advertisement may not state or imply that a life settlement contract, benefit, or service has been approved or endorsed by a group of individuals, society, association, or other organization, unless that is the fact and unless any relationship between an organization and the licensee is disclosed. If the entity making the endorsement or~~

1 ~~testimonial is owned, controlled, or managed by the licensee or receives payment or~~
2 ~~other consideration from the licensee for making an endorsement or testimonial, that~~
3 ~~fact shall be disclosed in the advertisement.~~

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

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

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

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

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

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

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

33 ~~(l) An advertisement may not create the impression that the life settlement provider, its~~
34 ~~financial condition or status, the payment of its claims, or the merits, desirability, or~~
35 ~~advisability of its life settlement contracts are recommended or endorsed by any~~
36 ~~government entity.~~

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

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

~~(1) A licensee or its business practices or methods of operation;~~

~~(2) The merits, desirability, or advisability of a life settlement contract;~~

~~(3) Any life settlement contract; or~~

~~(4) Any policy or life insurance company.~~

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

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

33-59-12.

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

(b)(1) If there is more than one owner on a single policy, and the owners are residents of different states, the life settlement contract shall be governed by the law of the state in which the owner having the largest percentage ownership resides or, if the owners hold equal ownership, the state of residence of one owner agreed upon in writing by all of the owners. The law of the state of the insured shall govern in the event that equal owners fail to agree in writing upon a state of residence for jurisdictional purposes.

(2) A provider from this state who enters into a life settlement contract with an owner who is a resident of another state that has enacted statutes or adopted regulations governing life settlement contracts shall be governed in the effectuation of that life settlement contract by the statutes and regulations of the owner's state of residence. If the state in which the owner is a resident has not enacted statutes or regulations governing life settlement contracts, the provider shall give the owner notice that neither state regulates the transaction upon which he or she is entering. For transactions in those

1 states, however, the provider is to maintain all records required if the transactions were
2 executed in the state of residence. The forms used in those states need not be approved
3 by the Commissioner.

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

7 33-59-13.

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

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

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

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

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

19 (5) Enter into a premium finance agreement with any person or agency, or any person
20 affiliated with such person or agency, pursuant to which such person shall receive any
21 proceeds, fees, or other consideration, directly or indirectly, from the policy or owner of
22 the policy or any other person with respect to the premium finance agreement or any
23 settlement contract or other transaction related to such policy that are in addition to the
24 amounts required to pay the principal, interest, and service charges related to policy
25 premiums pursuant to the premium finance agreement or subsequent sale of such
26 agreement; provided, further, that any payments, charges, fees, or other amounts in
27 addition to the amounts required to pay the principal, interest, and service charges related
28 to policy premiums paid under the premium finance agreement shall be remitted to the
29 original owner of the policy or to his or her estate if he or she is not living at the time of
30 the determination of the overpayment;

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

35 (7) With respect to any life settlement contract or insurance policy and a provider,
36 knowingly enter into a life settlement contract with a owner, if, in connection with such

1 life settlement contract, any thing of value will be paid to a life settlement broker that is
 2 controlling, controlled by, or under common control with such provider or the financing
 3 entity or related provider trust that is involved in such settlement contract;

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

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

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

17 ~~33-59-12.~~ 33-59-14.

18 (a)(1) ~~A It shall be illegal for a person shall not to commit a fraudulent life settlement~~
 19 ~~act.~~

20 (2) A person; shall not knowingly ~~or~~ and intentionally; ~~shall not~~ interfere with the
 21 enforcement of the provisions of this chapter or investigations of suspected or actual
 22 violations of this chapter.

23 (3) A person in the business of life settlements; shall not knowingly or intentionally;
 24 ~~shall not~~ permit a any person convicted of a felony involving dishonesty or breach of trust
 25 to participate in the business of life settlements.

26 (b)(1) ~~A life Life settlement contract contracts and an application applications for a life~~
 27 ~~settlement contract contracts, regardless of the form of transmission, shall contain the~~
 28 following statement or a substantially similar statement:

29 'Any person who knowingly presents false information in an application for insurance
 30 or life settlement contract is guilty of a crime and; ~~upon conviction;~~ may be subject to
 31 fines or confinement in prison; ~~or both.'~~

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

34 (c)(1) ~~A Any person engaged in the business of life settlements having knowledge or a~~
 35 ~~reasonable belief that a fraudulent life settlement act is being, will be, or has been~~

1 committed shall provide to the Commissioner the information required by 2 and in a
2 manner prescribed by 3 the Commissioner.

3 (2) ~~Another~~ Any other person having knowledge or a reasonable belief that a fraudulent
4 life settlement act is being, will be, or has been committed may provide to the
5 Commissioner the information required by 6 and in a manner prescribed by 7 the
6 Commissioner.

7 (d)(1) ~~A No~~ civil liability ~~may not~~ shall be imposed on and a no cause of action ~~may not~~
8 shall arise from a person's furnishing information concerning suspected, anticipated, or
9 completed fraudulent life settlement acts or suspected or completed fraudulent insurance
10 acts; if the information is provided to or received from:

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

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

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

16 (D) ~~The National Association of Insurance Commissioners, National Association of~~
17 ~~Securities Dealers, the North American Securities Administrators Association, Any~~
18 regulatory body or their employees, agents, or representatives ~~or any other regulatory~~
19 ~~body overseeing life insurance, or life settlement contracts~~ settlements, securities, or
20 investment fraud; ~~or~~

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

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

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

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

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

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

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

12 (2) Paragraph (1) of this subsection ~~does~~ shall not prohibit release by the Commissioner
 13 of documents and evidence obtained in an investigation of suspected or actual fraudulent
 14 life settlement acts:

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

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

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

22 (3) Release of documents and evidence ~~provided by~~ under paragraph (2) of this
 23 subsection does not abrogate or modify the privilege granted in paragraph (1) of this
 24 subsection.

25 (f) This chapter ~~does~~ shall not:

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

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

30 ~~(2)(3)~~ (3) Prevent or prohibit a person from disclosing voluntarily information concerning
 31 ~~fraudulent life settlement acts~~ fraud to a law enforcement or regulatory agency other than
 32 the ~~insurance~~ department; or

33 ~~(3)(4)~~ (4) Limit the powers granted elsewhere by the laws of this state to the Commissioner
 34 or an insurance fraud unit to investigate and examine possible violations of law and to
 35 take appropriate action against wrongdoers.

36 (g)(1) ~~A life settlement provider~~ Providers and life settlement brokers shall ~~adopt~~ have
 37 in place antifraud initiatives reasonably calculated to detect, ~~assist in the prosecution of~~

1 prosecute, and prevent fraudulent life settlement acts. ~~The~~ At the discretion of the
 2 Commissioner, the Commissioner may order, or, ~~if a licensee requests,~~ may request and
 3 the Commissioner may grant, ~~these~~ such modifications of the following required
 4 initiatives as necessary to ensure an effective antifraud program. The modifications may
 5 be more or less restrictive than the required initiatives so long as the modifications
 6 reasonably may reasonably be expected to accomplish the purpose of this ~~Code section~~
 7 subsection. Antifraud initiatives shall include:

8 ~~(1)(A)~~ (A) Fraud investigators, who may be ~~life settlement providers~~ provider or life
 9 settlement broker employees or independent contractors ~~of those life settlement~~
 10 ~~providers~~; and

11 ~~(2)(B)~~ (B) An antifraud plan ~~that is,~~ which shall be submitted to the Commissioner. The
 12 antifraud plan shall include, but not be limited to, ~~a description~~:

13 ~~(i)(A)~~ (i)(A) ~~Of~~ A description of the procedures for detecting and investigating possible
 14 fraudulent life settlement acts and procedures for resolving material inconsistencies
 15 between medical records and insurance applications;

16 ~~(ii)(B)~~ (ii)(B) ~~Of~~ A description of the procedures for reporting possible fraudulent life
 17 settlement acts to the Commissioner;

18 ~~(iii)(C)~~ (iii)(C) ~~Of~~ A description of the plan for antifraud education and training of
 19 underwriters and other personnel; and

20 ~~(iv)(D)~~ (iv)(D) A description or chart outlining the organizational arrangement of the
 21 antifraud personnel who are responsible for the investigation and reporting of possible
 22 fraudulent life settlement acts and investigating unresolved material inconsistencies
 23 between medical records and insurance applications.

24 ~~(3)(2)~~ (2) Antifraud plans submitted to the Commissioner ~~are~~ shall be privileged and
 25 confidential; ~~are~~ and shall not be a public record; and ~~are~~ shall not be subject to discovery
 26 or subpoena in a civil or criminal action.

27 ~~33-59-13.~~ 33-59-15.

28 (a) In addition to the penalties and other enforcement provisions of this chapter, if a any
 29 person violates ~~the provisions of this chapter or any~~ rule or regulation implementing this
 30 chapter, the Commissioner may seek an injunction in a court of competent jurisdiction in
 31 the county where the person resides or has a principal place of business and may apply for
 32 temporary and permanent orders as the Commissioner determines ~~are~~ necessary to restrain
 33 the person from further committing the violation.

34 (b) ~~A~~ Any person damaged by the acts of a any other person in violation of this chapter
 35 or any rule or regulation implementing this chapter may bring a civil action for damages
 36 against the person committing the violation in a court of competent jurisdiction.

1 (c) The Commissioner may issue, ~~in accordance with Code Section 33-2-24,~~ a cease and
 2 desist order upon a person ~~that~~ who violates any provision of this chapter, any rule,
 3 regulation, or order adopted by the Commissioner, or any written agreement entered into
 4 with the Commissioner, in accordance with Chapter 2 of this title.

5 (d) When the Commissioner finds that ~~an activity in violation of this chapter~~ such an
 6 action presents an immediate danger to the public ~~that~~ and requires an immediate final
 7 order, ~~the Commissioner~~ he or she may issue an emergency cease and desist order reciting
 8 with particularity the facts underlying ~~the~~ such findings. The emergency cease and desist
 9 order is shall become effective immediately upon service of a copy of the order on the
 10 respondent and ~~remains~~ shall remain effective for 90 days. If the ~~Commissioner~~
 11 ~~department~~ begins nonemergency cease and desist proceedings under subsection (a) of this
 12 Code section, the emergency cease and desist order ~~remains~~ shall remain effective, absent
 13 an order by a an appellate court of competent jurisdiction pursuant to ~~Code Section 33-2-24~~
 14 Chapter 13 of Title 50. In the event of a willful violation of this chapter, the trial court may
 15 award statutory damages in addition to actual damages in an additional amount up to three
 16 times the actual damage award. The provisions of this chapter may not be waived by
 17 agreement. No choice of law provision may be utilized to prevent the application of this
 18 chapter to any settlement in which a party to the settlement is a resident of this state.

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

25 (f)(1) ~~A person convicted of a violation of this chapter by a court of competent~~
 26 ~~jurisdiction shall be ordered to pay restitution to a person aggrieved by the violation of~~
 27 ~~this chapter. Restitution shall be ordered in addition to a fine or imprisonment but not in~~
 28 ~~lieu of a fine or imprisonment.~~

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

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

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

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

7 ~~(D) Imprisonment for not less than one year nor more than three years or to payment~~
 8 ~~of a fine of not more than \$3,000.00, or both, if the value of life settlement contract is~~
 9 ~~\$500.00 or less.~~

10 ~~(3) A person convicted of a fraudulent life settlement act shall be ordered to pay~~
 11 ~~restitution to a person aggrieved by the fraudulent life settlement act. Restitution shall~~
 12 ~~be ordered in addition to a fine or imprisonment but not instead of a fine or~~
 13 ~~imprisonment.~~

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

22 33-59-16.

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

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

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

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

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

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

6 33-59-14. 33-59-17.

7 A violation of this chapter shall be considered an unfair trade practice under Chapter 6 of
 8 this title pursuant to state law and subject to the penalties contained in that chapter provided
 9 by state law.

10 33-59-15.

11 ~~The Commissioner shall have the authority to:~~

12 ~~(1) Promulgate rules and regulations implementing this chapter;~~

13 ~~(2) Establish standards for evaluating reasonableness of payments under a life settlement~~
 14 ~~contract for a person who is terminally or chronically ill. This authority includes, but is~~
 15 ~~not limited to, regulation of discount rates used to determine the amount paid in exchange~~
 16 ~~for assignment, transfer, sale, devise, or bequest of a benefit under a policy. A life~~
 17 ~~settlement provider, where the insured is not terminally or chronically ill, shall pay an~~
 18 ~~amount greater than the cash surrender value or accelerated death benefit then available;~~

19 ~~(3) Establish appropriate licensing requirements, fees, and standards for continued~~
 20 ~~licensure for a life settlement provider and a fee for life insurance producers;~~

21 ~~(4) Require a bond or other mechanism for financial accountability for a life settlement~~
 22 ~~provider; and~~

23 ~~(5) Adopt rules and regulations governing the relationship and responsibilities of an~~
 24 ~~insurer and a life settlement provider, life insurance producer, and others in the business~~
 25 ~~of life settlements during the period of consideration or effectuation of a life settlement~~
 26 ~~contract.~~

27 33-59-16.

28 ~~Nothing in this chapter preempts or otherwise limits the provisions of Chapter 5 of Title~~
 29 ~~10, the 'Georgia Securities Act of 1973,' or any regulations, orders, policy statements,~~
 30 ~~notices, bulletins, or other interpretations issued by or through the commissioner of~~
 31 ~~securities or his or her designee acting pursuant to Chapter 5 of Title 10. Compliance with~~
 32 ~~this chapter does not constitute compliance with any applicable provision of Chapter 5 of~~
 33 ~~Title 10 and any amendments thereto or any regulations, orders, policy statements, notices,~~

1 bulletins, or other interpretations issued by or through the commissioner of securities or his
2 or her designee acting pursuant to Chapter 5 of Title 10.

3 ~~33-59-17.~~ 33-59-18.

4 (a) A life settlement provider lawfully transacting business in this state prior to July 1,
5 2008, may continue to do so pending approval or disapproval of ~~the~~ that person's
6 application for a license so long as the application is filed with the Commissioner not later
7 than 30 days after publication by the Commissioner of an application form and instructions
8 for licensure of ~~these life settlement~~ providers. If the publication of the application form
9 and instructions is prior to ~~November 5, 2005,~~ July 1, 2008, then the filing of the
10 application shall not be later than ~~30 days after November 5, 2005~~ August 1, 2008. During
11 the time that such an application is pending with the Commissioner, the applicant may use
12 any form of life settlement contract that has been filed with the Commissioner pending
13 approval thereof, provided that such form is otherwise in compliance with the provisions
14 of this chapter. Any person transacting business in this state under this provision shall be
15 obligated to comply with all other requirements of this chapter.

16 (b) A person who has lawfully negotiated life settlement contracts between any owner
17 residing in this state and one or more providers for at least one year immediately prior to
18 July 1, 2008, may continue to do so pending approval or disapproval of that person's
19 application for a license as long as the application is filed with the Commissioner not later
20 than 30 days after publication by the Commissioner of an application form and instructions
21 for registration of life settlement brokers. If the publication of the application form and
22 instructions is prior July 1, 2008, then the filing of the application shall not be later than
23 August 1, 2008. Any person transacting business in this state under this provision shall be
24 obligated to comply with all other requirements of this chapter.

25 ~~33-59-18.~~

26 ~~Notwithstanding the provisions of this chapter to the contrary, a person who has lawfully~~
27 ~~negotiated life settlement contracts between a seller and one or more life settlement~~
28 ~~providers for at least one year immediately prior to November 5, 2005, may continue to~~
29 ~~negotiate life settlements in this state for a period of one year from November 5, 2005,~~
30 ~~provided that such person registers with the Commissioner on a form prescribed by the~~
31 ~~Commissioner. Such registration form shall be published by the Commissioner not later~~
32 ~~than December 5, 2005, and shall require a person registering to evidence that he or she has~~
33 ~~lawfully negotiated life settlement contracts and include an acknowledgment by such~~
34 ~~person that he or she will operate in accordance with and comply with this chapter."~~

1

SECTION 2.

2 For purposes of the promulgation of rules and regulations by the Commissioner of Insurance,
3 this Act shall become effective upon its approval by the Governor or upon its becoming law
4 without such approval. For all other purposes, this Act shall become effective on July 1,
5 2008.

6

SECTION 3.

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