

Senate Bill 61

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.'

24 33-59-2.

25 As used in this chapter, the term:

26 (1) '~~Advertising Advertisement~~' means any written, electronic, or printed communication
 27 or any communication by means of recorded telephone messages or ~~any communication~~
 28 transmitted on radio, television, the Internet, or similar communications media, including
 29 film strips, motion pictures, and videos, published, disseminated, circulated, or placed
 30 directly before the public in this state for the purpose of creating an interest in or inducing
 31 a person to purchase or sell, assign, devise, ~~bequeath bequest~~, or transfer the death benefit
 32 or ownership of a life insurance policy or an interest in a life insurance policy pursuant
 33 to a life settlement contract.

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

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

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

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

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

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

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

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

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

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

61 ~~(5)~~(6) 'Fraudulent life settlement act' includes:

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

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

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

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

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

75 (IV) Premiums paid on ~~a~~ an insurance policy;

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

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

79 ~~In the~~ The solicitation, offer to enter into, or effectuation, ~~or sale~~ of a life
80 settlement contract or insurance policy;

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

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

86 (X) Stranger originated life insurance as defined in paragraph (24) of this Code
87 section;

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

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

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

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

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

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

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

106 (iv) File with the Commissioner or the chief insurance regulatory official of another
 107 jurisdiction a document containing false information or otherwise conceal information
 108 about a material fact from the Commissioner;

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

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

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

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

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

130 (8) 'Life expectancy' means the arithmetic mean of the number of months the insured
 131 under the life insurance policy to be settled can be expected to live as determined by

132 professionally competent individuals considering medical records and appropriate
 133 experiential data.

134 ~~(6)~~(9) 'Life insurance producer' means a any person licensed in this state as a resident or
 135 nonresident insurance producer ~~pursuant to Chapter 23 of this title~~ who has received
 136 qualification or authority for life insurance coverage or a life line of coverage pursuant
 137 to Chapter 23 of this title.

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

148 ~~(7)~~(11)(A) 'Life settlement contract' means a written agreement entered into between
 149 a provider and an owner establishing the terms under which compensation or ~~anything~~
 150 any thing of value is will be paid, which compensation or thing of value is less than the
 151 expected death benefit of the insurance policy or certificate, in return for the ~~seller's~~
 152 owner's assignment, transfer, sale, devise, or bequest of the death benefit or ~~ownership~~
 153 of any portion of the an insurance policy or certificate of insurance for compensation;
 154 provided, however, that the minimum value for a life settlement contract shall be
 155 greater than a cash surrender value or accelerated death benefit available at the time of
 156 an application for a life settlement contract. A life 'Life settlement contract' also
 157 includes the transfer for compensation or value of ownership or beneficial interest in
 158 a trust or other entity that owns such policy if the trust or other entity was formed or
 159 availed of for the principal purpose of acquiring one or more life insurance contracts,
 160 which life insurance contract insures the life of a person residing in this state.

161 (B) 'Life settlement contract' also includes:

- 162 (i) A written agreement a contract for a loan or other financing lending transaction,
 163 ~~with a seller~~ secured primarily by an individual or group life insurance policy, ~~other~~
 164 ~~than a loan by a life insurance company pursuant to the terms of the policy or a loan~~
 165 ~~secured by the cash value of a policy;~~ and
 166 (ii) A premium finance loan made for a policy on or before the date of issuance of the
 167 policy where:

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

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

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

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

180 (C) Life settlement contract does not include:

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

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

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

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

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

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

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

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

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

206 (III) One or more members in a limited liability company or between a limited
 207 liability company and one or more of its members or one or more trust established
 208 by its members;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

242 (C) A financing entity;

243 (D) A special purpose entity; or

244 (E) A related provider trust.

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

249 ~~(9)~~(15) 'Person' means a any natural person or a legal entity, including, but not limited
 250 to, an individual, a partnership, limited liability company, association, trust, or
 251 corporation.

252 ~~(10)~~(16) 'Policy' means an individual or group policy, group certificate, contract, or
 253 arrangement of life insurance affecting the rights of owned by a resident of this state or
 254 bearing a reasonable relation to this state, regardless of whether delivered or issued for
 255 delivery in this state.

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

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

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

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

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

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

271 (E) A purchaser;

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

274 (G) A financing entity;

275 (H) A special purpose entity;

276 (I) A related provider trust;

277 (J) A life settlement broker; or

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

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

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

288 ~~(I)~~(21) 'Related provider trust' means a titling trust or other trust established by a
 289 licensed life settlement provider or a financing entity for the sole purpose of holding the
 290 ownership or beneficial interest in purchased policies in connection with a financing
 291 transaction. ~~The~~ In order to qualify as a related provider trust, the trust shall must have
 292 a written agreement with the licensed life settlement provider under which the licensed
 293 life settlement provider is responsible for ensuring compliance with all statutory and
 294 regulatory requirements and under which the trust agrees to make all records and files
 295 related relating to life settlement transactions available to the Commissioner department
 296 as if those records and files were maintained directly by the licensed life settlement
 297 provider.

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

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

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

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

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

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

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

315 ~~(14)(23) 'Special purpose entity' means a corporation, partnership, trust, limited liability~~
 316 ~~company, or other similar legal entity formed only solely to provide either, directly or~~
 317 ~~indirectly; access to institutional capital markets for a financing entity or licensed life~~
 318 ~~settlement provider; or in connection with a transaction in which the securities in the~~
 319 ~~special purpose entity are acquired by the owner or by a qualified institutional buyer as~~
 320 ~~defined in Rule 144 promulgated under the federal Securities Act of 1933, as amended,~~
 321 ~~or the securities pay a fixed rate of return commensurate with established asset-backed~~
 322 ~~institutional capital markets.~~

323 ~~(24) 'Stranger originated life insurance' is a series of acts or a practice to initiate a life~~
 324 ~~insurance policy for the benefit of a third-party investor who, at the time of policy~~
 325 ~~origination, has no insurable interest in the insured. Stranger originated life insurance~~
 326 ~~acts or practices include, but are not limited to, cases in which life insurance is purchased~~
 327 ~~with resources or guarantees from or through a person or entity who, at the time of policy~~
 328 ~~inception, could not lawfully initiate the policy himself or herself or itself, and where, at~~
 329 ~~the time of inception, there is an arrangement or agreement to directly or indirectly~~
 330 ~~transfer the ownership of the policy or the policy benefits to a third party. Trusts that are~~
 331 ~~created to give the appearance of insurable interest and are used to initiate policies for~~
 332 ~~investors violate insurable interest laws and the prohibition against wagering on life.~~
 333 ~~Stranger originated life insurance arrangements do not include those practices set forth~~
 334 ~~in subparagraph (C) of paragraph (11) of this Code section.~~

335 ~~(15)(25) 'Terminally ill' or 'having a terminal illness' means having an illness or sickness~~
 336 ~~that can reasonably is be expected to result in death in 24 months or less.~~

337 33-59-3.

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

347 ~~(2) A life insurance producer, as defined in paragraph (10) of subsection (a) of Code~~
 348 ~~Section 33-23-1, who has been licensed for at least one year, shall be permitted to~~
 349 ~~negotiate, as defined in paragraph (11) of subsection (a) of Code Section 33-23-1, life~~

350 ~~settlement contracts between a seller residing in this state and one or more life settlement~~
351 ~~providers. For purposes of this Code section, the one-year requirement is deemed to be~~
352 ~~satisfied if such person has been licensed as a resident life insurance producer in his or~~
353 ~~her home state for at least one year.~~

354 (b) Application for a provider license or life settlement broker registration shall be made
355 to the Commissioner by the applicant on a form prescribed by the Commissioner and the
356 application shall be accompanied by a fee in an amount established by the Commissioner;
357 provided, however, that the license and renewal fees for a provider license shall be
358 reasonable and that the registration and renewal fees for a life settlement broker registration
359 shall not exceed those established for an insurance producer, as such fees are otherwise
360 provided for in this title.

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

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

373 (e)(4) Irrespective of the manner in which the life insurance producer is compensated, a
374 life insurance producer is deemed to represent only the seller and not the life settlement
375 provider or any insurer, and the The insurer that issued the seller's policy that is the subject
376 of a life settlement contract shall not be liable responsible for any act or omission of the life
377 insurance producer or the a life settlement broker, provider, or purchaser arising out of or
378 in connection with the life settlement transaction, provided that the insurer shall remain
379 liable for any of its own acts or omissions unless the insurer receives compensation for the
380 placement of a life settlement contract from the provider, purchaser, or life settlement
381 broker in connection with the life settlement contract.

382 (f)(5) Notwithstanding paragraph (1) of this subsection, a A person licensed as an attorney,
383 certified public accountant, or financial planner accredited by a nationally recognized
384 accreditation agency; who is retained to represent the seller, owner and whose
385 compensation is not paid directly or indirectly by the life settlement provider; or purchaser

386 may negotiate life settlement contracts on behalf of the owner without having to obtain a
 387 license as a life ~~insurance producer~~ settlement broker.

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

391 ~~(2) Application for a life settlement provider license shall be made to the Commissioner~~
 392 ~~by the applicant on a form prescribed by the Commissioner, and an application shall be~~
 393 ~~accompanied by the fees to be determined by the Commissioner. Applications for license~~
 394 ~~under this Code section shall be approved or denied by the Commissioner within 60~~
 395 ~~calendar days following receipt of a completed application by the Commissioner. The~~
 396 ~~Commissioner shall notify applicants that the application is complete. Applications for~~
 397 ~~such license shall be deemed approved after such time if not disapproved.~~

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

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

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

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

423 ~~(j)(6)~~ A license issued to a legal partnership, corporation, or other entity authorizes all
 424 partners, members, officers, members, and designated employees to act ~~life settlement~~
 425 ~~providers, as applicable, as a licensee~~ under the license, ~~and all if~~ those persons ~~shall be~~ are
 426 named in the application and any supplements to the application.

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

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

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

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

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

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

440 (A) A description of the procedures for detecting and investigating possible fraudulent
 441 acts and procedures for resolving material inconsistencies between medical records and
 442 insurance applications;

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

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

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

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

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

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

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

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

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

471 (r) An individual registered as a life settlement broker shall complete on a biennial basis
 472 15 hours of training related to life settlements and life settlement transactions as required
 473 by the Commissioner; provided, however, that a life insurance producer who is operating
 474 as a life settlement broker pursuant to this Code section shall not be subject to the
 475 requirements of this subsection. Any person failing to meet the requirements of this
 476 subsection shall be subject to the penalties imposed by the Commissioner.

477 33-59-4.

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

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

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

485 (3) The ~~licensee~~ provider demonstrates a pattern of ~~unreasonable~~ unreasonably
 486 withholding payments to ~~seller's~~ policy owners;

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

488 ~~(4)(5)~~ (5) The licensee or any officer, partner, member, or ~~key management personnel~~
 489 director has been ~~found guilty~~ convicted of, or has ~~pleaded guilty or nolo contendere to,~~
 490 any a felony; or to a any misdemeanor of which criminal fraud is an element; or the
 491 licensee has pleaded guilty or nolo contendere to any felony or any misdemeanor of
 492 which criminal involving fraud or moral turpitude; is an element regardless of whether
 493 a judgment ~~or of~~ conviction has been entered by the court;

- 494 ~~(5)(6)~~ The licensee provider has entered into any life settlement contract using a form
 495 that has not been approved pursuant to this chapter;
- 496 ~~(6)(7)~~ The licensee provider has failed to honor contractual obligations set out in a life
 497 settlement contract;
- 498 ~~(7)~~ The licensee no longer meets the requirements for initial licensure;
- 499 (8) The licensee provider has assigned, transferred, or pledged a purchased settled policy
 500 to a person other than a life settlement provider licensed in this state, purchaser, an
 501 accredited investor or qualified institutional buyer as defined, respectively, in Regulation
 502 D, Rule 501, or Rule 144A of the ~~Federal~~ federal Securities Act of 1933, as amended, a
 503 financing entity, a special purpose entity, or a related provider trust; ~~or~~
- 504 (9) The ~~applicant or~~ licensee or any officer, partner, member, or key management
 505 personnel ~~or any life insurance producer~~ has violated a provision any of the provisions
 506 of this chapter; ~~or~~
- 507 (10) The provider has failed to maintain an adequate net worth.
- 508 (b) ~~The~~ Before the Commissioner ~~may suspend, revoke, or refuse~~ denies a license
 509 application or suspends, revokes, or refuses to renew the license of a ~~life insurance~~
 510 ~~producer if the Commissioner finds that such life insurance producer has violated the~~
 511 ~~provisions of any licensee under this chapter, the Commissioner shall conduct a hearing in~~
 512 accordance with Chapter 2 of this title.
- 513 ~~(c) If the Commissioner denies a license application or suspends, revokes, or refuses to~~
 514 ~~renew the license of a life settlement provider or suspends, revokes, or refuses to renew a~~
 515 ~~license of a life insurance producer pursuant to this chapter, the Commissioner shall~~
 516 ~~conduct a hearing in accordance with Chapter 13 of Title 50.~~
- 517 33-59-5.
- 518 (a) A No person may ~~not~~ use a any form of life settlement contract ~~or provide to a seller~~
 519 ~~a disclosure statement form~~ in this state unless it has been filed with and approved, if
 520 required, by the Commissioner in a manner that conforms with the filing procedures and
 521 any time restrictions or deeming provisions, if any, for life insurance forms, policies, and
 522 contracts.
- 523 (b) No insurer may, as a condition of responding to a request for verification of coverage
 524 or in connection with the transfer of a policy pursuant to a life settlement contract, require
 525 that the owner, insured, provider, or life settlement broker sign any form, disclosure,
 526 consent, waiver, or acknowledgment that has not been expressly approved by the
 527 Commissioner for use in connection with life settlement contracts in this state.
- 528 (c) A person shall not use a life settlement contract form or provide to an owner a
 529 disclosure statement form in this state unless first filed with and approved by the

530 Commissioner. The Commissioner shall disapprove a Any life settlement contract form
 531 or disclosure statement form filed with the Commissioner shall be deemed approved if it
 532 has not been disapproved within 60 days of the filing. The Commissioner shall disapprove
 533 a life settlement contract form or disclosure statement form if, in the Commissioner's
 534 opinion, the contract or provisions contained in it therein fail to meet the requirements of
 535 Code Sections 33-59-8, 33-59-9, 33-59-11, and 33-59-15 or are unreasonable, contrary to
 536 the interests of the public, or otherwise misleading or unfair to the seller owner. At the
 537 Commissioner's discretion, the Commissioner may require the submission of advertising
 538 material.

539 33-59-6.

540 (a)(1) Each ~~life settlement~~ provider shall file with the Commissioner ~~by March first on~~
 541 ~~or before May 1~~ of each year an annual statement containing such information as the
 542 Commissioner ~~prescribes~~ may prescribe by rule or regulation in addition to any other
 543 requirements for any policy settled within five years of policy issuance. In addition to
 544 any other requirements, the annual statement shall specify the total number, aggregate
 545 face amount, and life settlement proceeds of policies settled during the immediately
 546 preceding calendar year, together with a breakdown of the information by policy issue
 547 year. The annual statement shall also include the names of the insurance companies
 548 whose policies have been settled and the life settlement brokers that have settled said
 549 policies.

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

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

560 (b) Except as otherwise allowed or required by law, a ~~life settlement~~ provider, life
 561 settlement broker, insurance company, life insurance producer, information bureau, rating
 562 agency or company, or another any other person with actual knowledge of a seller's or an
 563 insured's identity may shall not disclose ~~that the identity as a seller or of an insured or the~~
 564 seller's or insured's financial or medical information that there is a reasonable basis to

565 believe could be used to identify the insured or the insured's financial or medical
 566 information to another any other person unless the disclosure is:

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

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

574 (2)(3) ~~Provided~~ Is provided in response to an investigation or examination by the
 575 Commissioner or ~~another any other~~ governmental officer or agency or pursuant to the
 576 requirements of Code Section 33-59-7;

577 (3)(4) ~~A~~ Is a term of or condition to the transfer of a policy by one ~~life settlement~~
 578 ~~provider to another life settlement provider, in which case the receiving provider shall be~~
 579 required to comply with the confidentiality requirements of this subsection;

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

583 (5) ~~Necessary~~ Is necessary to allow the ~~life settlement~~ provider or life settlement broker
 584 or its authorized representatives to make contacts for the purpose of determining health
 585 status. For the purposes of this paragraph, the term 'authorized representative' shall not
 586 include any person who has or may have any financial interest in the settlement contract
 587 other than a provider, registered life settlement broker, financing entity, related provider
 588 trust, or special purpose entity. A provider or life settlement broker shall require its
 589 authorized representative to agree in writing to adhere to the privacy provisions of this
 590 chapter; or

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

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

596 33-59-7.

597 (a) *Authority, scope, and scheduling of examinations:*

598 (†) The Commissioner may, when the Commissioner deems it reasonably necessary to
 599 protect the interests of the public, conduct an examination under this chapter of a licensee
 600 as often as the Commissioner in his or her sole discretion deems appropriate examine the

601 business and affairs of any licensee or applicant for a license. The Commissioner may
 602 order any licensee or applicant to produce any records, books, files, or other information
 603 reasonably necessary to ascertain whether such licensee or applicant is acting or has acted
 604 in violation of the law or otherwise contrary to the interests of the public. The expenses
 605 incurred in conducting any examination shall be paid by the licensee or applicant.

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

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

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

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

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

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

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

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

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

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

636 ~~(e)(e)~~ Conduct of examinations.

637 (1) Upon determining that an examination should be conducted, the Commissioner shall
638 issue an examination warrant appointing one or more examiners to perform the
639 examination and instructing them as to the scope of the examination. In conducting the
640 examination, the examiner shall ~~observe those guidelines and procedures set forth in the~~
641 ~~Examiners' Handbook adopted by the National Association of Insurance Commissioners.~~
642 ~~The Commissioner may also employ such other guidelines or procedures as the~~
643 ~~Commissioner may deem appropriate~~ use methods common to the examination of any life
644 settlement licensee and should use those guidelines and procedures set forth in an
645 examiners' handbook adopted by a national organization. The Commissioner may also
646 employ such other guidelines as the Commissioner may deem appropriate.

647 (2) Every licensee or person from whom information is sought, ~~and~~ its officers, directors,
648 and agents shall provide to the examiners timely, convenient, and free access at all
649 reasonable hours at its offices to all books, records, accounts, papers, documents, assets,
650 and computer or other recordings relating to the property, assets, business, and affairs of
651 the licensee being examined. The officers, directors, employees, and agents of the
652 licensee or person shall facilitate the examination and aid in the examination so far as it
653 is in their power to do so. The refusal of a licensee, by its officers, directors, employees,
654 or agents, to submit to examination or to comply with any reasonable written request of
655 the Commissioner shall be grounds for suspension or refusal of or nonrenewal of any
656 license or authority held by the licensee to engage in the life settlement business or other
657 business subject to the Commissioner's jurisdiction. Any proceedings for suspension,
658 revocation, or refusal of any license or authority shall be conducted pursuant to ~~Code~~
659 ~~Section 33-2-24~~ Chapter 2 of this title.

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

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

670 (5) Nothing contained in this ~~chapter~~ Code section shall be construed to limit the
671 Commissioner's authority to terminate or suspend an examination in order to pursue other
672 legal or regulatory action pursuant to the insurance laws of this state. Findings of fact

673 and conclusions made pursuant to any examination shall be prima-facie evidence in any
674 legal or regulatory action.

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

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

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

690 (1) Examination reports shall ~~comprise~~ be composed of (A) only facts appearing upon
691 the books, records, or other documents of the licensee, its agents, or other persons
692 examined or as ascertained from the testimony of its the licensee's officers or agents or
693 other persons examined concerning its the licensee's affairs and (B) such conclusions and
694 recommendations as the examiners find reasonably warranted from the facts.

695 (2) No later than 60 days following completion of the examination, the examiner in
696 charge shall file with the Commissioner a verified written report of examination under
697 oath. Upon receipt of the verified report, the Commissioner shall transmit the report to
698 the licensee examined, together with a notice that shall afford the licensee examined a
699 reasonable opportunity of not more than 30 days to make a written submission or rebuttal
700 with respect to any matters contained in the examination report and which shall become
701 part of the report or to request a hearing on any matter in dispute if the Commissioner
702 deems such written submission or rebuttal comments appropriate and consistent with the
703 findings of the examination.

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

708 ~~(A) Adopting the examination report as filed or with modification or corrections. If~~
709 ~~the examination report reveals that the company is operating in violation of any law,~~

710 rule, or prior order of the Commissioner, the Commissioner may order the company to
711 take any action the Commissioner considers necessary and appropriate to cure the
712 violation;

713 (B) ~~Rejecting the examination report with directions to the examiners to reopen the~~
714 ~~examination for purposes of obtaining additional data, documentation, or information~~
715 ~~and refileing, or~~

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

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

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

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

739 (B) ~~The Commissioner may not appoint an examiner as an authorized representative~~
740 ~~to conduct the hearing. The hearing shall proceed expeditiously with discovery by the~~
741 ~~company limited to the examiner's work papers which tend to substantiate any~~
742 ~~assertions set forth in any written submission or rebuttal. The Commissioner or the~~
743 ~~Commissioner's representative may issue subpoenas for the attendance of any witnesses~~
744 ~~or the production of any documents considered relevant to the investigation whether~~
745 ~~under the control of the Commissioner, the company, or other persons. The documents~~
746 ~~produced shall be included in the record and testimony taken by the Commissioner or~~

747 ~~the Commissioner's representative shall be under oath and preserved for the record.~~
 748 ~~Nothing contained in this Code section shall require the Commissioner to disclose any~~
 749 ~~information or records which would indicate or show the existence or content of any~~
 750 ~~investigation or activity of a criminal justice agency; and~~

751 ~~(C) The hearing shall proceed with the Commissioner or the Commissioner's~~
 752 ~~representative posing questions to the persons subpoenaed. Thereafter, the company~~
 753 ~~and the department may present testimony relevant to the investigation.~~
 754 ~~Cross-examination may be conducted only by the Commissioner or the Commissioner's~~
 755 ~~representative. The company and the Commissioner shall be permitted to make closing~~
 756 ~~statements and may be represented by counsel of their choice.~~

757 ~~(6)(3)~~ In the event the Commissioner determines that regulatory action is appropriate as
 758 a result of an examination, the Commissioner may initiate any proceedings or actions
 759 provided by law.

760 ~~(e)(g) Confidentiality of examination information.~~

761 (1) Names and individual identification data for all ~~sellers~~ owners, purchasers, and
 762 insureds shall be considered private and confidential information and shall not be
 763 disclosed by the Commissioner; unless the disclosure is to another regulator or is required
 764 by law.

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

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

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

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

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

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

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

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

784 ~~(B) Not subject to subpoena; and~~
785 ~~(C) Not subject to discovery or admissible in evidence in any private civil action if~~
786 ~~they are:~~

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

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

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

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

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

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

810 ~~(B) May receive documents, materials, communications, or information, including~~
811 ~~otherwise confidential and privileged documents, materials, or information, from the~~
812 ~~National Association of Insurance Commissioners and its affiliates and subsidiaries and~~
813 ~~from regulatory and law enforcement officials of other foreign or domestic jurisdictions~~
814 ~~and shall maintain as confidential or privileged any document, material, or information~~
815 ~~received with notice or the understanding that it is confidential or privileged under the~~
816 ~~laws of the jurisdiction that is the source of the document, material, or information; and~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

874 33-59-8.

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

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

881 (c) No person or trust shall:

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

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

886 ~~33-59-8.~~ 33-59-9.

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

892 ~~and shall provide~~ the following information no later than the date of the application for a
 893 life settlement contract:

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

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

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

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

906 (5) ~~That~~ The fact that the ~~seller~~ owner has ~~the~~ a right to ~~rescind~~ terminate a life
 907 settlement contract ~~before the earlier of 30 calendar~~ within 15 days ~~after of~~ the date upon
 908 ~~which the life settlement contract~~ it is executed by all parties ~~or for 15 calendar days after~~
 909 ~~the receipt of the life settlement proceeds by the seller~~ and the owner has received the
 910 disclosures contained in this Code section. Rescission, if exercised by the ~~seller~~ owner,
 911 is effective only if both notice of the rescission is given and ~~repayment of the owner~~
 912 repays all proceeds and any premiums, loans, and loan interest ~~to the life settlement paid~~
 913 on account of the provider is made within the rescission period. If the insured dies during
 914 the rescission period, the ~~life settlement~~ contract is shall be deemed to have been
 915 rescinded; subject to repayment ~~being made to the life settlement provider within the~~
 916 ~~rescission period~~ by the owner or the owner's estate of all ~~life settlement~~ proceeds and
 917 any premiums, loans, and loan interest to the provider;

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

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

927 (8) The method of calculating the compensation paid or to be paid to the life settlement
 928 broker or any other person acting for the owner in connection with the transaction, where
 929 the term 'compensation' includes any thing of value paid or given;

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

932 ~~(8)(10) The fact that That the disclosure to a seller shall include distribution of a~~
 933 ~~brochure, approved by the Commissioner, describing the process of life settlements shall~~
 934 ~~require delivery of a buyer's guide or a similar consumer advisory package in the form~~
 935 ~~prescribed by the Commissioner to owners during the solicitation process;~~

936 ~~(9)(11) That the~~ The disclosure document shall contain the following language:

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

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

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

951 ~~(10)(13) The fact that~~ That the insured may be contacted by either the ~~life settlement~~
 952 provider or ~~life settlement broker~~ or its authorized representative for the purpose of
 953 determining the insured's health status or to verify the insured's address. This contact is
 954 limited to once every three months if the insured has a life expectancy of more than one
 955 year and no more than once ~~each~~ per month if the insured has a life expectancy of one
 956 year or less.;

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

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

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

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

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

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

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

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

980 ~~(2)~~(1) The name, business address, and telephone number of the life settlement ~~provider~~
 981 broker;

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

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

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

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

998 (3) A written disclosure at the inception of the brokerage arrangement of any affiliations
 999 or contractual arrangements between the life settlement broker and any person making
 1000 an offer in connection with the proposed life settlement contracts;

1001 (4) The name of each life settlement broker who receives compensation and the amount
 1002 of compensation received by that life settlement broker, which compensation includes
 1003 any thing of value paid or given to the life settlement broker in connection with the life
 1004 settlement contract; and

1005 (5) A complete reconciliation of the gross offer or bid by the provider to the net amount
 1006 of proceeds or value to be received by the owner. For the purpose of this paragraph,
 1007 'gross offer or bid' means the total amount or value offered by the provider for the
 1008 purchase of one or more life insurance policies, inclusive of commissions and fees.

1009 ~~(c) If the life settlement provider transfers ownership or changes the beneficiary of the~~
 1010 ~~policy, the life settlement provider shall communicate the change in ownership or~~
 1011 ~~beneficiary to the insured within 20 days after the change.~~

1012 (d) The failure to provide the disclosures or rights described in this Code section shall be
 1013 deemed an unfair trade practice pursuant to Code Section 33-59-17.

1014 33-59-10.

1015 (a) In addition to other questions an insurance carrier may lawfully pose to a life insurance
 1016 applicant, insurance carriers may inquire in the application for insurance whether the
 1017 proposed owner intends to pay premiums with the assistance of financing from a lender
 1018 that will use the policy as collateral to support the financing.

1019 (b) If, as described in paragraph (11) of Code Section 33-59-2, the loan provides funds
 1020 which can be used for a purpose other than paying for the premiums, costs, and expenses
 1021 associated with obtaining and maintaining the life insurance policy and loan, the
 1022 application shall be rejected as a violation of the prohibited practices in Code
 1023 Section 33-59-13.

1024 (c) If the financing does not violate Code Section 33-59-13 in this manner, the insurance
 1025 carrier:

1026 (1) May make disclosures, including, but not limited to, disclosures such as the
 1027 following, to the applicant and the insured, either on the application or an amendment to
 1028 the application to be completed no later than the delivery of the policy:

1029 'If you have entered into a loan arrangement where the policy is used as collateral and
 1030 the policy changes ownership at some point in the future in satisfaction of the loan, the
 1031 following may be true:

1032 (A) A change of ownership could lead to a stranger owning an interest in the
 1033 insured's life;

1034 (B) A change of ownership could in the future limit your ability to purchase future
 1035 insurance on the insured's life because there is a limit to how much coverage insurers
 1036 will issue on one life;

1037 (C) Should there be a change of ownership and you wish to obtain more insurance
 1038 coverage on the insured's life in the future, the insured's higher issue age, a change in
 1039 health status, or other factors may reduce the ability to obtain coverage or may result
 1040 in significantly higher premiums; and

1041 (D) You should consult a professional adviser since a change in ownership in
 1042 satisfaction of the loan may result in tax consequences to the owner, depending on the
 1043 structure of the loan.'; and

1044 (2) May require certifications, such as the following, from the applicant and the insured:

1045 '(A) I have not entered into any agreement or arrangement providing for the future sale
 1046 of this life insurance policy;

1047 (B) My loan arrangement for this policy provides funds sufficient to pay for some or
 1048 all of the premiums, costs, and expenses associated with obtaining and maintaining my
 1049 life insurance policy, but I have not entered into any agreement by which I am to
 1050 receive consideration in exchange for procuring this policy; and

1051 (C) The borrower has an insurable interest in the insured.'

1052 ~~33-59-9.~~ 33-59-11.

1053 (a)(1) A ~~life settlement~~ provider entering into a life settlement contract, wherein the
 1054 insured is terminally or chronically ill, shall first shall obtain:

1055 ~~(A)(1)~~ If the ~~seller~~ owner is the insured, a written statement from a licensed attending
 1056 physician that the ~~seller~~ owner is of sound mind and under no constraint or undue
 1057 influence to enter into a ~~life~~ settlement contract; and

1058 ~~(B)(2)~~ A document in which the insured consents to the release of his or her medical
 1059 records to a ~~life settlement~~ provider, life settlement broker, or insurance producer and, if
 1060 the policy was issued less than two years from the date of application for a ~~life~~ settlement
 1061 contract, to the insurance company that issued the policy.

1062 ~~(2)(b)~~ The insurer shall respond to a request for verification of coverage submitted by a
 1063 ~~life settlement~~ provider, life settlement broker, or life insurance producer not later than 30
 1064 calendar days ~~from~~ after the date the request is received. The request for verification of
 1065 coverage ~~shall~~ must be made on a form approved by the Commissioner. The insurer shall
 1066 complete and issue the verification of coverage or indicate in which respects it is unable
 1067 to respond. In its response, the insurer shall indicate whether, based on the medical
 1068 evidence and documents provided, the insurer intends to pursue an investigation at this
 1069 time regarding the validity of the insurance contract ~~or possible fraud and shall provide~~
 1070 ~~sufficient detail of all reasons for the investigation to the life settlement provider or the life~~
 1071 ~~insurance producer.~~

1072 ~~(3)(c)~~ Before or at the time of execution of the life settlement contract, the life settlement
 1073 provider shall obtain a witnessed document in which the seller owner consents to the life
 1074 settlement contract, represents that the seller owner has a full and complete understanding
 1075 of the life settlement contract, represents that the seller owner has a full and complete
 1076 understanding of the benefits of the policy, acknowledges that the seller owner is entering
 1077 into the life settlement contract freely and voluntarily, and, for persons with a terminal or
 1078 chronic illness or condition, acknowledges that the insured has a terminal or chronic illness
 1079 and that the terminal or chronic illness or condition was diagnosed after the policy was
 1080 issued.

1081 ~~(4) If a life insurance producer performs any of these activities required of the life~~
 1082 ~~settlement provider, the life settlement provider is deemed to have fulfilled the~~
 1083 ~~requirements of this Code section.~~

1084 (d) The insurer shall not unreasonably delay effecting change of ownership or beneficiary
 1085 with any life settlement contract lawfully entered into in this state or with a resident of this
 1086 state.

1087 (e) If a life settlement broker or life insurance producer performs any of these activities
 1088 required of the provider, the provider is deemed to have fulfilled the requirements of this
 1089 Code section.

1090 (f) If a life settlement broker performs those verification of coverage activities required of
 1091 the provider, the provider is deemed to have fulfilled the requirements of subsection (a) of
 1092 Code Section 33-5-9.

1093 (g) Within 20 days after an owner executes the life settlement contract, the provider shall
 1094 give written notice to the insurer that issued that insurance policy that the policy has
 1095 become subject to a life settlement contract. The notice shall be accompanied by the
 1096 documents required by Code Section 33-59-10.

1097 ~~(b)(h) Medical~~ All medical information solicited or obtained by a any licensee ~~is~~ shall be
 1098 subject to the applicable ~~provisions~~ provision of state law relating to confidentiality of
 1099 medical ~~or protected health~~ information if not otherwise provided in this chapter.

1100 ~~(c)(i) A~~ All life settlement contract contracts entered into in this state shall provide that the
 1101 seller with an unconditional right to owner may rescind the contract on or before the earlier
 1102 of 30 calendar 15 days after the date upon which the life settlement contract it is executed
 1103 by all parties ~~or 15 calendar days after the receipt of the life settlement proceeds by the~~
 1104 seller thereto. Rescission, if exercised by the seller owner, is effective only if both notice
 1105 of the rescission is given and ~~repayment of~~ the owner repays all proceeds and any
 1106 premiums, loans, and loan interest ~~to the life settlement provider is made~~ paid on account
 1107 of the provider within the rescission period. If the insured dies during the rescission period,
 1108 the ~~life settlement~~ contract shall be deemed to have been rescinded; subject to repayment

1109 by the owner or the owner's estate of all ~~life settlement~~ proceeds and any premiums, loans,
1110 and loan interest to the ~~life settlement~~ provider.

1111 ~~(j)(d) The life settlement provider shall instruct the seller to send the executed documents~~
1112 ~~required to effect the change in ownership, assignment, or change in beneficiary directly~~
1113 ~~to the independent escrow agent. Within three business days after the date the escrow~~
1114 ~~agent receives the receipt from the owner of documents or from the date the life settlement~~
1115 ~~provider receives the documents, if the seller erroneously provides the documents directly~~
1116 ~~to the life settlement provider to effect the transfer of the insurance policy, the life~~
1117 ~~settlement provider shall pay or transfer the proceeds of the life settlement contract into to~~
1118 ~~an escrow or trust account maintained managed by a trustee or escrow agent in a state or~~
1119 ~~federally chartered financial institution whose deposits are insured by the Federal Deposit~~
1120 ~~Insurance Corporation. Upon payment of the life settlement proceeds into the escrow~~
1121 ~~account, the escrow agent shall deliver the original change in ownership, assignment, or~~
1122 ~~change in beneficiary forms to the life settlement provider or related provider trust. Upon~~
1123 ~~the escrow agent's receipt of the acknowledgment of the properly completed transfer of~~
1124 ~~ownership, assignment, or designation of beneficiary from the insurance company, the~~
1125 ~~escrow agent shall pay the life settlement proceeds to the seller pending acknowledgment~~
1126 ~~of the transfer by issuer of the policy. The trustee or escrow agent shall be required to~~
1127 ~~transfer the proceeds due to the owner within three business days of acknowledgment of~~
1128 ~~the transfer from the insurer.~~

1129 ~~(e)(k) Failure to tender consideration the life settlement contract proceeds to the seller for~~
1130 ~~the life settlement contract within the time owner by the date disclosed to the owner renders~~
1131 ~~the life settlement contract voidable by the seller owner for lack of consideration until the~~
1132 ~~time consideration is the proceeds are tendered to and accepted by the seller owner. A~~
1133 ~~failure to give written notice of the right of rescission hereunder shall toll the right of~~
1134 ~~rescission until 30 days after the written notice of the right of rescission has been given.~~

1135 ~~(f) A contact with the insured, for the purpose of determining the health status of the~~
1136 ~~insured by the life settlement provider after the life settlement contract has been executed,~~
1137 ~~may only be made by the licensed life settlement provider or its authorized representatives~~
1138 ~~and is limited to once every three months for insureds with a life expectancy of more than~~
1139 ~~one year and not more than once each month for insureds with a life expectancy of one year~~
1140 ~~or less. The life settlement provider shall explain the procedure for these contacts at the~~
1141 ~~time the life settlement contract is entered into. The limitations provided for in this~~
1142 ~~subsection do not apply to a contact with an insured for reasons other than determining the~~
1143 ~~insured's health status. A life settlement provider is responsible for the actions of his or her~~
1144 ~~authorized representatives.~~

1145 (l) Any fee paid by a provider, party, individual, or an owner to a life settlement broker in
 1146 exchange for services provided to the owner pertaining to a life settlement contract shall
 1147 be computed as a percentage of the offer obtained, not the face value of the policy.
 1148 Nothing in this Code section shall be construed to prohibit a life settlement broker from
 1149 reducing such life settlement broker's fee below this percentage if the life settlement broker
 1150 so chooses.

1151 (m) The life settlement broker shall disclose to the owner any thing of value paid or given
 1152 to a life settlement broker which relates to a life settlement contract.

1153 (n) No person at any time prior to, or at the time of, the application for, or issuance of, a
 1154 policy, or during a two-year period commencing with the date of issuance of the policy,
 1155 shall enter into a life settlement contract regardless of the date the compensation is to be
 1156 provided and regardless of the date the assignment, transfer, sale, devise, bequest, or
 1157 surrender of the policy is to occur. This prohibition shall not apply if the owner certifies
 1158 to the provider that:

1159 (1) The policy was issued upon the owner's exercise of conversion rights arising out of
 1160 a group or individual policy, provided that the total of the time covered under the
 1161 conversion policy plus the time covered under the prior policy is at least 24 months. The
 1162 time covered under a group policy shall be calculated without regard to a change in
 1163 insurance carriers, provided that the coverage has been continuous and under the same
 1164 group sponsorship; or

1165 (2) The owner submits independent evidence to the provider that one or more of the
 1166 following conditions have been met within the two-year period:

1167 (A) The owner or insured is terminally or chronically ill;

1168 (B) The owner or insured disposes of his or her ownership interests in a closely held
 1169 corporation, pursuant to the terms of a buyout or other similar agreement in effect at the
 1170 time the insurance policy was initially issued;

1171 (C) The owner's spouse dies;

1172 (D) The owner divorces his or her spouse;

1173 (E) The owner retires from full-time employment;

1174 (F) The owner becomes physically or mentally disabled and a physician determines
 1175 that the disability prevents the owner from maintaining full-time employment; or

1176 (G) A final order, judgment, or decree is entered by a court of competent jurisdiction,
 1177 on the application of a creditor of the owner, adjudicating the owner bankrupt or
 1178 insolvent, or approving a petition seeking reorganization of the owner or appointing a
 1179 receiver, trustee, or liquidator to all or a substantial part of the owner's assets.

1180 Copies of the independent evidence required by paragraph (2) of this subsection shall be
 1181 submitted to the insurer when the provider submits a request to the insurer for verification

1182 of coverage. The copies shall be accompanied by a letter of attestation from the provider
 1183 that the copies are true and correct copies of the documents received by the provider.
 1184 Nothing in this Code section shall prohibit an insurer from exercising its right to contest
 1185 the validity of any policy. If the provider submits to the insurer a copy of independent
 1186 evidence provided for in paragraph (2) of this subsection when the provider submits a
 1187 request to the insurer to effect the transfer of the policy to the provider, the copy is deemed
 1188 to establish that the settlement contract satisfies the requirements of this subsection.

1189 ~~33-59-10.~~

1190 ~~It is a violation of this chapter for a person to enter into a life settlement contract within a~~
 1191 ~~two-year period commencing with the date of issuance of the policy unless the seller~~
 1192 ~~certifies to the life settlement provider that one or more of the following conditions have~~
 1193 ~~been met within the two-year period:~~

1194 ~~(1) The policy was issued upon the seller's exercise of conversion rights arising out of~~
 1195 ~~a group or individual policy, provided the total of the time covered under the conversion~~
 1196 ~~policy plus the time covered under the prior policy is at least 24 months. The time~~
 1197 ~~covered under a group policy shall be calculated without regard to a change in insurance~~
 1198 ~~carriers, provided the coverage has been continuous and under the same group~~
 1199 ~~sponsorship; or~~

1200 ~~(2)(A) The seller submits independent evidence to the life settlement provider that one~~
 1201 ~~or more of the following conditions have been met within the two-year period:~~

1202 ~~(i) The seller or insured is terminally or chronically ill; or~~

1203 ~~(ii) The seller or insured disposes of his or her ownership interests in a closely held~~
 1204 ~~corporation, pursuant to the terms of a buyout or other similar agreement in effect at~~
 1205 ~~the time the insurance policy was initially issued.~~

1206 ~~(B) Copies of the independent evidence described in paragraph (2) of this Code section~~
 1207 ~~and documents required in subsection (a) of Code Section 33-59-9 shall be submitted~~
 1208 ~~to the insurer when the life settlement provider submits a request to the insurer for~~
 1209 ~~verification of coverage. The copies shall be accompanied by a letter of attestation~~
 1210 ~~from the life settlement provider that the copies are true and correct copies of the~~
 1211 ~~documents received by the life settlement provider;~~

1212 ~~(C) If the life settlement provider submits to the insurer a copy of independent~~
 1213 ~~evidence provided for in subparagraph (A) of paragraph (2) of this Code section when~~
 1214 ~~the life settlement provider submits a request to the insurer to effect the transfer of the~~
 1215 ~~policy to the life settlement provider, the copy is deemed to conclusively establish that~~
 1216 ~~the life settlement contract satisfies the requirements of this Code section and the~~
 1217 ~~insurer shall respond timely to the request.~~

1218 ~~33-59-11.~~

1219 ~~(a) The purpose of this Code section is to provide a prospective seller with clear and~~
1220 ~~unambiguous statements in the advertisement of a life settlement contract and to assure the~~
1221 ~~clear, truthful, and adequate disclosure of the benefits, risks, limitations, and exclusions of~~
1222 ~~a life settlement contract. This purpose is to be accomplished by the establishment of~~
1223 ~~guidelines and standards of permissible and impermissible conduct in the advertising of a~~
1224 ~~life settlement contract to assure that a product description is presented in a manner that~~
1225 ~~prevents unfair, deceptive, or misleading advertising and is conducive to accurate~~
1226 ~~presentation and description of a life settlement contract through the advertising media and~~
1227 ~~material used by a licensee.~~

1228 ~~(b) This Code section applies to an advertising of a life settlement contract or a related~~
1229 ~~product or service intended for dissemination in this state, including Internet advertising~~
1230 ~~viewed by a person located in this state. Where disclosure requirements are established~~
1231 ~~pursuant to federal regulation, this Code section shall be interpreted so as to minimize or~~
1232 ~~eliminate conflict with federal regulation wherever possible.~~

1233 ~~(c) Each life settlement licensee shall establish and at all times maintain a system of~~
1234 ~~control over the content, form, and method of dissemination of an advertisement of its~~
1235 ~~contracts, products, and services. An advertisement regardless of by whom written,~~
1236 ~~created, designed, or presented, is the responsibility of the licensee, as well as the~~
1237 ~~individual who created or presented the advertisement. A system of control by the licensee~~
1238 ~~shall include regular routine notification, at least once a year, to agents and others~~
1239 ~~authorized to disseminate advertisements of the requirements and procedures for approval~~
1240 ~~before the use of an advertisement not furnished by the licensee.~~

1241 ~~(d) An advertisement shall be truthful and not misleading in fact or by implication. The~~
1242 ~~form and content of an advertisement of a life settlement contract shall be sufficiently~~
1243 ~~complete and clear so as to avoid deception. It may not have the capacity or tendency to~~
1244 ~~mislead or deceive. Whether an advertisement has the capacity or tendency to mislead or~~
1245 ~~deceive shall be determined by the Commissioner from the overall impression that the~~
1246 ~~advertisement may be reasonably expected to create upon a person of average education~~
1247 ~~or intelligence within the segment of the public to which it is directed.~~

1248 ~~(e)(1) The information required to be disclosed under this Code section may not be~~
1249 ~~minimized, rendered obscure, or presented in an ambiguous fashion or intermingled with~~
1250 ~~the text of the advertisement so as to be confusing or misleading.~~

1251 ~~(2) An advertisement may not omit material information or use words, phrases,~~
1252 ~~statements, references, or illustrations if the omission or use has the capacity, tendency,~~
1253 ~~or effect of misleading or deceiving the public as to the nature or extent of any benefit,~~
1254 ~~loss covered, or state or federal tax consequence. The fact that the life settlement contract~~

1255 offered is made available for inspection before consummation of the sale or an offer is
1256 made to refund the payment if the seller is not satisfied or that the life settlement contract
1257 includes a 'free look' period that satisfies or exceeds legal requirements does not remedy
1258 misleading statements.

1259 ~~(3) An advertisement may not use the name or title of a life insurance company or a life
1260 insurance policy unless the advertisement has been approved by the insurer.~~

1261 ~~(4) An advertisement may not state or imply that interest charged on an accelerated death
1262 benefit or a policy loan is unfair, inequitable, or in any manner an incorrect or improper
1263 practice.~~

1264 ~~(5) The words 'free,' 'no cost,' 'without cost,' 'no additional cost,' 'at no extra cost,' or
1265 words of similar import may not be used with respect to a benefit or service unless true.
1266 An advertisement may specify the charge for a benefit or service or may state that a
1267 charge is included in the payment or use other appropriate language.~~

1268 ~~(6)(A) Any testimonial, appraisal, or analysis used in an advertisement shall:~~

1269 ~~(i) Be genuine;~~

1270 ~~(ii) Represent the current opinion of the author;~~

1271 ~~(iii) Be applicable to the life settlement contract, product, or service advertised, if
1272 any; and~~

1273 ~~(iv) Be accurately reproduced with sufficient completeness to avoid misleading or
1274 deceiving prospective sellers as to the nature or scope of any testimonial, appraisal,
1275 analysis, or endorsement.~~

1276 ~~(B) In using any testimonials, appraisals, or analyses, the life settlement licensee makes
1277 as its own all the statements contained in them, and the statements are subject to all the
1278 provisions of this Code section.~~

1279 ~~(C) If the individual making a testimonial, appraisal, analysis, or an endorsement has
1280 a financial interest in the life settlement provider or related entity as a stockholder,
1281 director, officer, employee, or otherwise, or receives a benefit, directly or indirectly,
1282 other than required union scale wages, that fact shall be disclosed prominently in the
1283 advertisement.~~

1284 ~~(D) An advertisement may not state or imply that a life settlement contract, benefit, or
1285 service has been approved or endorsed by a group of individuals, society, association,
1286 or other organization, unless that is the fact and unless any relationship between an
1287 organization and the licensee is disclosed. If the entity making the endorsement or
1288 testimonial is owned, controlled, or managed by the licensee or receives payment or
1289 other consideration from the licensee for making an endorsement or testimonial, that
1290 fact shall be disclosed in the advertisement.~~

- 1291 ~~(E) If an endorsement refers to benefits received under a life settlement contract, all~~
1292 ~~pertinent information shall be retained for a period of five years after its use.~~
- 1293 ~~(f) An advertisement may not contain statistical information unless it accurately reflects~~
1294 ~~recent and relevant facts. The source of all statistics used in an advertisement shall be~~
1295 ~~identified.~~
- 1296 ~~(g) An advertisement may not disparage insurers, life settlement providers, insurance~~
1297 ~~producers, policies, services, or methods of marketing.~~
- 1298 ~~(h) The name of the life settlement licensee shall be identified clearly in all advertisements~~
1299 ~~about the licensee or its life settlement contract, products, or services and, if any specific~~
1300 ~~life settlement contract is advertised, the life settlement contract shall be identified either~~
1301 ~~by form number or some other appropriate description. If an application is part of the~~
1302 ~~advertisement, the name of the life settlement provider shall be shown on the application.~~
- 1303 ~~(i) An advertisement may not use a trade name, group designation, name of the parent~~
1304 ~~company of a licensee, name of a particular division of the licensee, service mark, slogan,~~
1305 ~~symbol, or other device or reference without disclosing the name of the licensee, if the~~
1306 ~~advertisement has the capacity or tendency to mislead or deceive as to the true identity of~~
1307 ~~the licensee, or to create the impression that a company other than the licensee has any~~
1308 ~~responsibility for the financial obligation under a life settlement contract.~~
- 1309 ~~(j) An advertisement may not use any combination of words, symbols, or physical~~
1310 ~~materials that by their content, phraseology, shape, color, or other characteristics are so~~
1311 ~~similar to a combination of words, symbols, or physical materials used by a government~~
1312 ~~program or agency or otherwise appear to be of such a nature that they tend to mislead~~
1313 ~~prospective sellers into believing that the solicitation is in some manner connected with a~~
1314 ~~government program or agency.~~
- 1315 ~~(k) An advertisement may state that a licensee is licensed in the state where the~~
1316 ~~advertisement appears, provided it does not exaggerate that fact or suggest or imply that~~
1317 ~~the competing licensee may not be so licensed. The advertisement may ask the audience~~
1318 ~~to consult the licensee's website or contact the Department of Insurance to find out if that~~
1319 ~~state requires licensing and, if so, whether the licensee or any other company is licensed.~~
- 1320 ~~(l) An advertisement may not create the impression that the life settlement provider, its~~
1321 ~~financial condition or status, the payment of its claims, or the merits, desirability, or~~
1322 ~~advisability of its life settlement contracts are recommended or endorsed by any~~
1323 ~~government entity.~~
- 1324 ~~(m) The name of the actual licensee shall be stated in all of its advertisements. An~~
1325 ~~advertisement may not use a trade name, any group designation, name of any affiliate or~~
1326 ~~controlling entity of the licensee, service mark, slogan, symbol, or other device in a manner~~
1327 ~~that has the capacity or tendency to mislead or deceive as to the true identity of the actual~~

1328 ~~licensee or create the false impression that an affiliate or controlling entity has any~~
 1329 ~~responsibility for the financial obligation of the licensee.~~

1330 ~~(n) An advertisement may not, directly or indirectly, create the impression that any~~
 1331 ~~division or agency of the state or of the United States government endorses, approves, or~~
 1332 ~~favors:~~

1333 ~~(1) A licensee or its business practices or methods of operation;~~

1334 ~~(2) The merits, desirability, or advisability of a life settlement contract;~~

1335 ~~(3) Any life settlement contract; or~~

1336 ~~(4) Any policy or life insurance company.~~

1337 ~~(o) If the advertiser emphasizes the speed with which the life settlement contract occurs,~~
 1338 ~~the advertising shall disclose the average time frame from completed application to the date~~
 1339 ~~of offer and from acceptance of the offer to receipt of the funds by the seller.~~

1340 ~~(p) If the advertising emphasizes the dollar amounts available to sellers, the advertising~~
 1341 ~~shall disclose the average purchase price as a percent of face value obtained by sellers~~
 1342 ~~contracting with the licensee during the past six months.~~

1343 33-59-12.

1344 (a) The Commissioner may promulgate regulations implementing this chapter and
 1345 regulating the activities and relationships of providers, life settlement brokers, insurers, and
 1346 their agents subject to statutory limitations on administrative rule making.

1347 (b)(1) If there is more than one owner on a single policy, and the owners are residents
 1348 of different states, the life settlement contract shall be governed by the law of the state
 1349 in which the owner having the largest percentage ownership resides or, if the owners hold
 1350 equal ownership, the state of residence of one owner agreed upon in writing by all of the
 1351 owners. The law of the state of the insured shall govern in the event that equal owners
 1352 fail to agree in writing upon a state of residence for jurisdictional purposes.

1353 (2) A provider from this state who enters into a life settlement contract with an owner
 1354 who is a resident of another state that has enacted statutes or adopted regulations
 1355 governing life settlement contracts shall be governed in the effectuation of that life
 1356 settlement contract by the statutes and regulations of the owner's state of residence. If the
 1357 state in which the owner is a resident has not enacted statutes or regulations governing
 1358 life settlement contracts, the provider shall give the owner notice that neither state
 1359 regulates the transaction upon which he or she is entering. For transactions in those
 1360 states, however, the provider is to maintain all records required if the transactions were
 1361 executed in the state of residence. The forms used in those states need not be approved
 1362 by the Commissioner.

1363 (3) If there is a conflict in the laws that apply to an owner and a purchaser in any
1364 individual transaction, the laws of the state that apply to the owner shall take precedence
1365 and the provider shall comply with those laws.

1366 33-59-13.

1367 (a) It shall be unlawful for any person to:

1368 (1) Enter into a life settlement contract if such person knows or reasonably should have
1369 known that the life insurance policy was obtained by means of a false, deceptive, or
1370 misleading application for such policy;

1371 (2) Engage in any transaction, practice, or course of business if such person knows or
1372 reasonably should have known that the intent was to avoid the notice requirements of this
1373 Code section;

1374 (3) Engage in any fraudulent act or practice in connection with any transaction relating
1375 to any settlement involving an owner who is a resident of this state;

1376 (4) Issue, solicit, market, or otherwise promote the purchase of an insurance policy for
1377 the purpose of or with an emphasis on settling the policy;

1378 (5) Enter into a premium finance agreement with any person or agency, or any person
1379 affiliated with such person or agency, pursuant to which such person shall receive any
1380 proceeds, fees, or other consideration, directly or indirectly, from the policy or owner of
1381 the policy or any other person with respect to the premium finance agreement or any
1382 settlement contract or other transaction related to such policy that are in addition to the
1383 amounts required to pay the principal, interest, service charges, and any cost or expense
1384 incurred by the lender or borrower in connection with the premium finance agreement or
1385 subsequent sale of such agreement; provided, further, that any payments, charges, fees,
1386 or other amounts in addition to the amounts required to pay the principal, interest,
1387 service charges, and any cost or expense incurred by the lender or borrower in connection
1388 with the premium finance agreement shall be remitted to the original owner of the policy
1389 or to his or her estate if he or she is not living at the time of the determination of the
1390 overpayment;

1391 (6) With respect to any settlement contract or insurance policy and a life settlement
1392 broker, knowingly solicit an offer from, effectuate a life settlement contract with, or make
1393 a sale to any provider, financing entity, or related provider trust that is controlling,
1394 controlled by, or under common control with such life settlement broker unless such
1395 relationship is disclosed to the owner in accordance with paragraph (3) of subsection (c)
1396 of Code Section 33-59-9;

1397 (7) With respect to any life settlement contract or insurance policy and a provider,
1398 knowingly enter into a life settlement contract with a owner, if, in connection with such

1399 life settlement contract, any thing of value will be paid to a life settlement broker that is
 1400 controlling, controlled by, or under common control with such provider or the financing
 1401 entity or related provider trust that is involved in such settlement contract unless such
 1402 relationship is disclosed to the owner in accordance with paragraph (3) of subsection (c)
 1403 of Code Section 33-59-9;

1404 (8) With respect to a provider, enter into a life settlement contract unless the life
 1405 settlement promotional, advertisement, and marketing materials, as may be prescribed by
 1406 rule or regulation, have been filed with the Commissioner. In no event shall any
 1407 marketing materials expressly reference that the insurance is 'free' for any period of time.
 1408 The inclusion of any reference in the marketing materials that would cause an owner to
 1409 reasonably believe that the insurance is free for any period of time shall be considered a
 1410 violation of this chapter; or

1411 (9) With respect to any life insurance producer, insurance company, life settlement
 1412 broker, or provider, make any statement or representation to the applicant or policyholder
 1413 in connection with the sale or financing of a life insurance policy to the effect that the
 1414 insurance is free or without cost to the policyholder for any period of time unless
 1415 provided in the policy.

1416 (b) A violation of this Code section shall be deemed a fraudulent life settlement act.

1417 ~~33-59-12.~~ 33-59-14.

1418 (a)(1) ~~A~~ It shall be illegal for a person shall not to commit a fraudulent life settlement
 1419 act.

1420 (2) A person; shall not knowingly ~~or and~~ intentionally; ~~shall not~~ interfere with the
 1421 enforcement of the provisions of this chapter or investigations of suspected or actual
 1422 violations of this chapter.

1423 (3) A person in the business of life settlements; shall not knowingly or intentionally;
 1424 ~~shall not~~ permit a any person convicted of a felony involving dishonesty or breach of trust
 1425 to participate in the business of life settlements.

1426 (b)(1) ~~A life~~ Life settlement contract contracts and ~~an application~~ applications for a life
 1427 settlement ~~contract contracts~~, regardless of the form of transmission, shall contain the
 1428 following statement or a substantially similar statement:

1429 'Any person who knowingly presents false information in an application for insurance
 1430 or life settlement contract is guilty of a crime and, ~~upon conviction,~~ may be subject to
 1431 fines or confinement in prison, ~~or both.~~'

1432 (2) The lack of a statement as ~~provided for~~ required in paragraph (1) of this subsection
 1433 does not constitute a defense in any prosecution for a fraudulent life settlement act.

1434 (c)(1) ~~A~~ Any person engaged in the business of life settlements having knowledge or a
 1435 reasonable belief that a fraudulent life settlement act is being, will be, or has been
 1436 committed shall provide to the Commissioner the information required by, and in a
 1437 manner prescribed by, the Commissioner.

1438 (2) ~~Another~~ Any other person having knowledge or a reasonable belief that a fraudulent
 1439 life settlement act is being, will be, or has been committed may provide to the
 1440 Commissioner the information required by, and in a manner prescribed by, the
 1441 Commissioner.

1442 (d)(1) ~~A~~ No civil liability ~~may not~~ shall be imposed on and a no cause of action ~~may not~~
 1443 shall arise from a person's furnishing information concerning suspected, anticipated, or
 1444 completed fraudulent life settlement acts or suspected or completed fraudulent insurance
 1445 acts; if the information is provided to or received from:

1446 (A) The Commissioner or the Commissioner's employees, agents, or representatives;

1447 (B) Federal, state, or local law enforcement or regulatory officials or their employees,
 1448 agents, or representatives;

1449 (C) A person involved in the prevention and detection of fraudulent life settlement acts
 1450 or that person's agents, employees, or representatives;

1451 (D) ~~The National Association of Insurance Commissioners, National Association of~~
 1452 ~~Securities Dealers, the North American Securities Administrators Association, Any~~
 1453 regulatory body or their employees, agents, or representatives ~~or any other regulatory~~
 1454 body overseeing life insurance or life ~~settlement contracts~~ settlements, securities, or
 1455 investment fraud; or

1456 (E) The life insurer that issued the life insurance policy covering the life of the insured;
 1457 or

1458 (F) The licensee and any agents, employees, or representatives.

1459 (2) Paragraph (1) of this subsection ~~does~~ shall not apply to ~~a statement~~ statements made
 1460 with actual malice. In an action brought against a person for filing a report or furnishing
 1461 other information concerning a fraudulent life settlement act or a fraudulent insurance act,
 1462 the party bringing the action shall plead specifically any allegation that paragraph (1) of
 1463 this subsection does not apply because the person filing the report or furnishing the
 1464 information did so with actual malice.

1465 (3) A person identified in paragraph (1) of this subsection is ~~is~~ shall be entitled to an award
 1466 of attorney's fees and costs if he or she is the prevailing party in a civil cause of action for
 1467 libel, slander, or ~~another~~ any other relevant tort arising out of activities in carrying out the
 1468 provisions of this chapter and the party bringing the action was not substantially justified
 1469 in doing so. For purposes of this ~~Code section~~ paragraph, a proceeding is 'substantially
 1470 justified' if it had a reasonable basis in law or fact at the time that it was initiated.

1471 (4) This ~~Code section~~ subsection does not abrogate or modify common law or statutory
 1472 privileges or immunities enjoyed by a person described in paragraph (1) of this
 1473 subsection.

1474 ~~(5) Paragraph (1) of this subsection does not apply to a person's furnishing information~~
 1475 ~~concerning his or her own suspected, anticipated, or completed fraudulent life settlement~~
 1476 ~~acts or suspected, anticipated, or completed fraudulent insurance acts.~~

1477 (e)(1) The documents and evidence provided pursuant to subsection (d) of this Code
 1478 section or obtained by the Commissioner in an investigation of suspected or actual
 1479 fraudulent life settlement acts ~~are~~ shall be privileged and confidential and ~~are~~ shall
 1480 be a public record and ~~are~~ shall not be subject to discovery or subpoena in a civil or
 1481 criminal action.

1482 (2) Paragraph (1) of this subsection ~~does~~ shall not prohibit release by the Commissioner
 1483 of documents and evidence obtained in an investigation of suspected or actual fraudulent
 1484 life settlement acts:

1485 (A) In administrative or judicial proceedings to enforce laws administered by the
 1486 Commissioner;

1487 (B) To federal, state, or local law enforcement or regulatory agencies, to an
 1488 organization established for the purpose of detecting and preventing fraudulent life
 1489 settlement acts, or to the National Association of Insurance Commissioners; or

1490 (C) At the discretion of the Commissioner, to a person in the business of life
 1491 settlements that is aggrieved by a fraudulent life settlement act.

1492 (3) Release of documents and evidence ~~provided by~~ under paragraph (2) of this
 1493 subsection does not abrogate or modify the privilege granted in paragraph (1) of this
 1494 subsection.

1495 (f) This chapter ~~does~~ shall not:

1496 (1) Preempt the authority or relieve the duty of other law enforcement or regulatory
 1497 agencies to investigate, examine, and prosecute suspected violations of law;

1498 (2) Preempt, supersede, or limit any provision of any state securities law or any rule,
 1499 order, or notice issued thereunder;

1500 ~~(2)(3)~~ (3) Prevent or prohibit a person from disclosing voluntarily information concerning
 1501 ~~fraudulent~~ life settlement acts fraud to a law enforcement or regulatory agency other than
 1502 the ~~insurance~~ department; or

1503 ~~(3)(4)~~ (4) Limit the powers granted elsewhere by the laws of this state to the Commissioner
 1504 or an insurance fraud unit to investigate and examine possible violations of law and to
 1505 take appropriate action against wrongdoers.

1506 (g)(1) ~~A life settlement provider~~ Providers and life settlement brokers shall ~~adopt~~ have
 1507 in place antifraud initiatives reasonably calculated to detect, ~~assist in the prosecution of~~

1508 ~~prosecute~~, and prevent fraudulent life settlement acts. ~~The~~ At the discretion of the
 1509 Commissioner, the Commissioner may order, or, if a licensee requests, may request and
 1510 the Commissioner may grant, these such modifications of the following required
 1511 initiatives as necessary to ensure an effective antifraud program. The modifications may
 1512 be more or less restrictive than the required initiatives so long as the modifications
 1513 reasonably may reasonably be expected to accomplish the purpose of this ~~Code section~~
 1514 subsection. Antifraud initiatives shall include:

1515 ~~(1)(A)~~ (A) Fraud investigators, who may be ~~life settlement providers~~ provider or life
 1516 settlement broker employees or independent contractors ~~of those life settlement~~
 1517 providers; and

1518 ~~(2)(B)~~ (B) An antifraud plan ~~that is, which shall be~~ submitted to the Commissioner. The
 1519 antifraud plan shall include, but not be limited to, ~~a description~~:

1520 ~~(i)(A)~~ (i)(A) ~~Of A description of~~ the procedures for detecting and investigating possible
 1521 fraudulent life settlement acts and procedures for resolving material inconsistencies
 1522 between medical records and insurance applications;

1523 ~~(ii)(B)~~ (ii)(B) ~~Of A description of~~ the procedures for reporting possible fraudulent life
 1524 settlement acts to the Commissioner;

1525 ~~(iii)(C)~~ (iii)(C) ~~Of A description of~~ the plan for antifraud education and training of
 1526 underwriters and other personnel; and

1527 ~~(iv)(D)~~ (iv)(D) A description or chart outlining the organizational arrangement of the
 1528 antifraud personnel who are responsible for the investigation and reporting of possible
 1529 fraudulent life settlement acts and investigating unresolved material inconsistencies
 1530 between medical records and insurance applications.

1531 ~~(3)(2)~~ (2) Antifraud plans submitted to the Commissioner ~~are~~ shall be privileged and
 1532 confidential; ~~are and shall not be~~ a public record; and ~~are~~ shall not be subject to discovery
 1533 or subpoena in a civil or criminal action.

1534 ~~33-59-13. 33-59-15.~~

1535 (a) In addition to the penalties and other enforcement provisions of this chapter, if a any
 1536 person violates ~~the provisions of~~ this chapter or any rule or regulation implementing this
 1537 chapter, the Commissioner may seek an injunction in a court of competent jurisdiction in
 1538 the county where the person resides or has a principal place of business and may apply for
 1539 temporary and permanent orders as the Commissioner determines ~~are~~ necessary to restrain
 1540 the person from further committing the violation.

1541 (b) ~~A~~ Any person damaged by the acts of a any other person in violation of this chapter
 1542 or any rule or regulation implementing this chapter may bring a civil action for damages
 1543 against the person committing the violation in a court of competent jurisdiction.

1544 (c) The Commissioner may issue, ~~in accordance with Code Section 33-2-24,~~ a cease and
 1545 desist order upon a person ~~that~~ who violates any provision of this chapter, any rule,
 1546 regulation, or order adopted by the Commissioner, or any written agreement entered into
 1547 with the Commissioner, in accordance with Chapter 2 of this title.

1548 (d) When the Commissioner finds that ~~an activity in violation of this chapter~~ such an
 1549 action presents an immediate danger to the public ~~that~~ and requires an immediate final
 1550 order, ~~the Commissioner~~ he or she may issue an emergency cease and desist order reciting
 1551 with particularity the facts underlying ~~the~~ such findings. The emergency cease and desist
 1552 order ~~is~~ shall become effective immediately upon service of a copy of the order on the
 1553 respondent and ~~remains~~ shall remain effective for 90 days. If the ~~Commissioner~~
 1554 ~~department~~ begins nonemergency cease and desist proceedings under subsection (a) of this
 1555 Code section, the emergency cease and desist order ~~remains~~ shall remain effective, absent
 1556 an order by a an appellate court of competent jurisdiction pursuant to ~~Code Section 33-2-24~~
 1557 Chapter 13 of Title 50. In the event of a willful violation of this chapter, the trial court may
 1558 award statutory damages in addition to actual damages in an additional amount up to three
 1559 times the actual damage award. The provisions of this chapter may not be waived by
 1560 agreement. No choice of law provision may be utilized to prevent the application of this
 1561 chapter to any settlement in which a party to the settlement is a resident of this state.

1562 (e) ~~In addition to the penalties and other enforcement provisions of this chapter, a person~~
 1563 ~~who violates this chapter is subject to civil penalties of up to \$25,000.00 for each violation.~~
 1564 ~~Imposition of civil penalties is pursuant to an order of the Commissioner issued under~~
 1565 ~~Chapter 2 of this title. The Commissioner's order may require a person found to be in~~
 1566 ~~violation of this chapter to make restitution to a person aggrieved by violations of this~~
 1567 ~~chapter.~~

1568 (f)(1) ~~A person convicted of a violation of this chapter by a court of competent~~
 1569 ~~jurisdiction shall be ordered to pay restitution to a person aggrieved by the violation of~~
 1570 ~~this chapter. Restitution shall be ordered in addition to a fine or imprisonment but not in~~
 1571 ~~lieu of a fine or imprisonment.~~

1572 (2) ~~A person who is convicted of a violation of this chapter may be sentenced based on~~
 1573 ~~the greater of the value of property, services, or other benefits wrongfully obtained or~~
 1574 ~~attempted to be obtained or the aggregate economic loss suffered by any person as a~~
 1575 ~~result of the violation. A person may be sentenced to:~~

1576 (A) ~~Imprisonment for not less than one nor more than 20 years or to payment of a fine~~
 1577 ~~of not more than \$100,000.00, or both, if the value of life settlement contract is more~~
 1578 ~~than \$35,000.00;~~

1579 ~~(B) Imprisonment for not less than one nor more than ten years or to payment of a fine~~
 1580 ~~of not more than \$20,000.00, or both, if the value of life settlement contract is more~~
 1581 ~~than \$2,500.00 but not more than \$35,000.00;~~

1582 ~~(C) Imprisonment for not less than one nor more than five years or to payment of a fine~~
 1583 ~~of not more than \$10,000.00, or both, if the value of life settlement contract is more~~
 1584 ~~than \$500.00 but not more than \$2,500.00; or~~

1585 ~~(D) Imprisonment for not less than one year nor more than three years or to payment~~
 1586 ~~of a fine of not more than \$3,000.00, or both, if the value of life settlement contract is~~
 1587 ~~\$500.00 or less.~~

1588 ~~(3) A person convicted of a fraudulent life settlement act shall be ordered to pay~~
 1589 ~~restitution to a person aggrieved by the fraudulent life settlement act. Restitution shall~~
 1590 ~~be ordered in addition to a fine or imprisonment but not instead of a fine or~~
 1591 ~~imprisonment.~~

1592 ~~(4) In a prosecution under this Code section, the value of a life settlement contract within~~
 1593 ~~a six-month period may be aggregated and the defendant charged accordingly in applying~~
 1594 ~~the provisions of this Code section. If two or more offenses are committed by the same~~
 1595 ~~person in two or more counties, the accused may be prosecuted in a county in which one~~
 1596 ~~of the offenses was committed for all of the offenses aggregated as provided by this Code~~
 1597 ~~section. The statute of limitations shall not begin to run until the insurance company or~~
 1598 ~~law enforcement agency is aware of the fraud, but the prosecution may not be~~
 1599 ~~commenced later than seven years after the act has occurred.~~

1600 33-59-16.

1601 (a) It is a violation of this chapter for any person, provider, life settlement broker, or any
 1602 other party related to the business of life settlements to commit a fraudulent life settlement
 1603 act.

1604 (b) For criminal liability purposes, a person that commits a fraudulent life settlement act
 1605 shall be guilty of committing insurance fraud and shall be guilty of a felony and, upon
 1606 conviction, shall be punished by imprisonment for not less than two nor more than ten
 1607 years, or by a fine of not more than \$10,000.00, or both.

1608 (c) The Commissioner shall be empowered to levy a civil penalty:

1609 (1) Not exceeding \$1,000.00 for each and every act in violation of this chapter or, if the
 1610 person knew or reasonably should have known the acts that he or she committed were in
 1611 violation of this chapter, the monetary penalty provided for in this subsection may be
 1612 increased to an amount up to \$5,000.00 for each and every act in violation; and

1613 (2) The amount of the claim for each violation upon any person, including those persons
 1614 and their employees licensed pursuant to this chapter, who is found to have committed
 1615 a fraudulent life settlement act or violated any other provision of this chapter.

1616 (d) The license of a person licensed under this chapter that commits a fraudulent life
 1617 settlement act shall be revoked for a period of at least one year.

1618 ~~33-59-14. 33-59-17.~~

1619 A violation of this chapter shall be considered an unfair trade practice ~~under Chapter 6 of~~
 1620 ~~this title pursuant to state law~~ and subject to the penalties ~~contained in that chapter provided~~
 1621 ~~by state law.~~

1622 ~~33-59-15.~~

1623 ~~The Commissioner shall have the authority to:~~

1624 ~~(1) Promulgate rules and regulations implementing this chapter;~~

1625 ~~(2) Establish standards for evaluating reasonableness of payments under a life settlement~~
 1626 ~~contract for a person who is terminally or chronically ill. This authority includes, but is~~
 1627 ~~not limited to, regulation of discount rates used to determine the amount paid in exchange~~
 1628 ~~for assignment, transfer, sale, devise, or bequest of a benefit under a policy. A life~~
 1629 ~~settlement provider, where the insured is not terminally or chronically ill, shall pay an~~
 1630 ~~amount greater than the cash surrender value or accelerated death benefit then available;~~

1631 ~~(3) Establish appropriate licensing requirements, fees, and standards for continued~~
 1632 ~~licensure for a life settlement provider and a fee for life insurance producers;~~

1633 ~~(4) Require a bond or other mechanism for financial accountability for a life settlement~~
 1634 ~~provider; and~~

1635 ~~(5) Adopt rules and regulations governing the relationship and responsibilities of an~~
 1636 ~~insurer and a life settlement provider, life insurance producer, and others in the business~~
 1637 ~~of life settlements during the period of consideration or effectuation of a life settlement~~
 1638 ~~contract.~~

1639 ~~33-59-16.~~

1640 ~~Nothing in this chapter preempts or otherwise limits the provisions of Chapter 5 of Title~~
 1641 ~~10, the 'Georgia Securities Act of 1973,' or any regulations, orders, policy statements,~~
 1642 ~~notices, bulletins, or other interpretations issued by or through the commissioner of~~
 1643 ~~securities or his or her designee acting pursuant to Chapter 5 of Title 10. Compliance with~~
 1644 ~~this chapter does not constitute compliance with any applicable provision of Chapter 5 of~~
 1645 ~~Title 10 and any amendments thereto or any regulations, orders, policy statements, notices,~~

1646 bulletins, or other interpretations issued by or through the commissioner of securities or his
 1647 or her designee acting pursuant to Chapter 5 of Title 10.

1648 ~~33-59-17.~~ 33-59-18.

1649 (a) A life settlement provider lawfully transacting business in this state prior to July 1,
 1650 2009, may continue to do so pending approval or disapproval of ~~the~~ that person's
 1651 application for a license so long as the application is filed with the Commissioner not later
 1652 than 30 days after publication by the Commissioner of an application form and instructions
 1653 for licensure of ~~these life settlement~~ providers. If the publication of the application form
 1654 and instructions is prior to ~~November 5, 2005,~~ July 1, 2009, then the filing of the
 1655 application shall not be later than ~~30 days after November 5, 2005~~ August 1, 2009. During
 1656 the time that such an application is pending with the Commissioner, the applicant may use
 1657 any form of life settlement contract that has been filed with the Commissioner pending
 1658 approval thereof, provided that such form is otherwise in compliance with the provisions
 1659 of this chapter. Any person transacting business in this state under this provision shall be
 1660 obligated to comply with all other requirements of this chapter.

1661 (b) A person who has lawfully negotiated life settlement contracts between any owner
 1662 residing in this state and one or more providers for at least one year immediately prior to
 1663 July 1, 2009, may continue to do so pending approval or disapproval of that person's
 1664 application for a license so long as the application is filed with the Commissioner not later
 1665 than 30 days after publication by the Commissioner of an application form and instructions
 1666 for registration of life settlement brokers. If the publication of the application form and
 1667 instructions is prior July 1, 2009, then the filing of the application shall not be later than
 1668 August 1, 2009. Any person transacting business in this state under this provision shall be
 1669 obligated to comply with all other requirements of this chapter.

1670 ~~33-59-18.~~

1671 ~~Notwithstanding the provisions of this chapter to the contrary, a person who has lawfully~~
 1672 ~~negotiated life settlement contracts between a seller and one or more life settlement~~
 1673 ~~providers for at least one year immediately prior to November 5, 2005, may continue to~~
 1674 ~~negotiate life settlements in this state for a period of one year from November 5, 2005,~~
 1675 ~~provided that such person registers with the Commissioner on a form prescribed by the~~
 1676 ~~Commissioner. Such registration form shall be published by the Commissioner not later~~
 1677 ~~than December 5, 2005, and shall require a person registering to evidence that he or she has~~
 1678 ~~lawfully negotiated life settlement contracts and include an acknowledgment by such~~
 1679 ~~person that he or she will operate in accordance with and comply with this chapter."~~

1680

SECTION 2.

1681 For purposes of the promulgation of rules and regulations by the Commissioner of Insurance,
1682 this Act shall become effective upon its approval by the Governor or upon its becoming law
1683 without such approval. For all other purposes, this Act shall become effective on July 1,
1684 2009.

1685

SECTION 3.

1686 All laws and parts of laws in conflict with this Act are repealed.