

Senate Bill 217

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

AS PASSED

**A BILL TO BE ENTITLED
AN ACT**

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

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 **SECTION 1.**

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

13 "CHAPTER 59

14 33-59-1.

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

16 33-59-2.

17 As used in this chapter, the term:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (IV) Premiums paid on a policy;

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

(VI) The reinstatement or conversion of a policy;

(VII) In the solicitation, offer, effectuation, or sale of a life settlement contract or policy;

(VIII) The issuance of written evidence of a life settlement contract or insurance; or

(IX) A financing transaction;

(ii) Employing any device, scheme, or artifice to defraud related to purchased policies; or

(B) In the furtherance of a fraud or to prevent the detection of a fraud a person commits or permits its employees or its agents to commit any of the following acts:

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

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

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

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

(C) Embezzlement, theft, misappropriation, or conversion of moneys, funds, premiums, credits, or other property of a life settlement provider, life insurance producer, insurer, insured, seller, policy owner, or another person engaged in the business of life settlements or insurance;

(D) Recklessly entering into, negotiating, or otherwise dealing in a life settlement contract, the subject of which is a policy that was obtained by presenting false information concerning a fact material to the policy, or by concealing, for the purpose of misleading another, information concerning a fact material to the policy, where the seller or the seller's agent intended to defraud the insurance company that issued the policy. As used in this subparagraph, 'recklessly' means engaging in the conduct in conscious and clearly unjustifiable disregard of a substantial likelihood of the existence of the relevant facts or risks, this disregard involving a gross deviation from acceptable standards of conduct; or

(E) Attempting to commit, assist, aid, or abet in the commission of, or conspiracy to commit, the acts or omissions specified in this paragraph.

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

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

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

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

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

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

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

(E) A financing entity;

(F) A special purpose entity;

(G) A related provider trust; or

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

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

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

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

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

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

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

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

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

33-59-3.

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

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

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

(4) Irrespective of the manner in which the life insurance producer is compensated, a life insurance producer is deemed to represent only the seller and not the life settlement provider or any insurer, and the insurer that issued the seller's policy shall not be liable for any act or omission of the life insurance producer or the life settlement provider arising out of or in connection with the life settlement transaction, provided that the insurer shall remain liable for any of its own acts or omissions.

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

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

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

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

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

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

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

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

19 (A) Has provided a detailed plan of operation;

20 (B) Is competent and trustworthy and intends to act in good faith in the capacity
21 involved by the license for which he or she has applied;

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

24 (D) If a legal entity, provides a certificate of good standing from the state of its
25 domicile; and

26 (E) Has provided an antifraud plan that meets the requirements of this chapter.

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

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

33-59-4.

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

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

(2) The licensee or any officer, partner, member, or key management personnel has been convicted of fraudulent or dishonest practices, is subject to a final administrative action, or is otherwise shown to be untrustworthy or incompetent;

(3) The licensee demonstrates a pattern of unreasonable payments to sellers;

(4) The licensee or any officer, partner, member, or key management personnel has been found guilty of, or has pleaded guilty or nolo contendere to, any felony, or to a misdemeanor involving fraud or moral turpitude, regardless of whether a judgment or conviction has been entered by the court;

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

(6) The licensee has failed to honor contractual obligations set out in a life settlement contract;

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

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

(9) The applicant or licensee or any officer, partner, member, or key management personnel or any life producer has violated a provision of this chapter.

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

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

33-59-5.

A person may not use a life settlement contract or provide to a seller a disclosure statement form in this state unless filed with and approved by the Commissioner. Any life settlement contract form or disclosure form filed with the Commissioner shall be deemed approved if it has not been disapproved within 60 days of the filing. The Commissioner shall

disapprove a life settlement contract form or disclosure statement form if, in the Commissioner's opinion, the contract or provisions contained in it are unreasonable, contrary to the interests of the public, or otherwise misleading or unfair to the seller.

33-59-6.

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

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

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

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

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

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

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

(6) Required to purchase stop-loss coverage.

33-59-7.

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

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

(2) For purposes of completing an examination of a licensee under this chapter, the Commissioner may examine or investigate any person, or the business of any person, in

so far as the examination or investigation is, in the sole discretion of the Commissioner, necessary or material to the examination of the licensee.

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

(b) *Record retention requirements.*

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

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

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

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

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

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

(c) *Conduct of examinations.*

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

(2) Every licensee or person from whom information is sought and its officers, directors, and agents shall provide to the examiners timely, convenient, and free access at all reasonable hours at its offices to all books, records, accounts, papers, documents, assets, and computer or other recordings relating to the property, assets, business, and affairs of the licensee being examined. The officers, directors, employees, and agents of the licensee or person shall facilitate the examination and aid in the examination so far as it is in their power to do so. The refusal of a licensee, by its officers, directors, employees,

1 or agents, to submit to examination or to comply with any reasonable written request of
2 the Commissioner shall be grounds for suspension or refusal of or nonrenewal of any
3 license or authority held by the licensee to engage in the life settlement business or other
4 business subject to the Commissioner's jurisdiction. Any proceedings for suspension,
5 revocation, or refusal of any license or authority shall be conducted pursuant to Code
6 Section 33-2-24.

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

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

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

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

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

1 (d) *Examination reports.*

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

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

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

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

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

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

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

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

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

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

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

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

(e) *Confidentiality of examination information.*

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

(2)(A) Except as otherwise provided in this chapter, all examination reports, working papers, recorded information, documents, and copies thereof produced by, obtained by,

1 or disclosed to the Commissioner or any other person in the course of an examination
2 made under this chapter or in the course of analysis or investigation by the
3 Commissioner of the financial condition or market conduct of a licensee are:

- 4 (i) Confidential by law and privileged;
- 5 (ii) Not subject to the provisions of Chapter 18 of Title 50;
- 6 (iii) Not subject to subpoena; and
- 7 (iv) Not subject to discovery or admissible in evidence in any private civil action.

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

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

- 14 (A) Confidential by law and privileged;
- 15 (B) Not subject to subpoena; and
- 16 (C) Not subject to discovery or admissible in evidence in any private civil action if
17 they are:

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

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

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

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

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

- 35 (A) May share documents, materials, or other information, including the confidential
36 and privileged documents, materials, or information subject to paragraph (1) of this
37 subsection, with other state, federal, and international regulatory agencies, with the

1 National Association of Insurance Commissioners and its affiliates and subsidiaries,
2 and with state, federal, and international law enforcement authorities, provided that the
3 recipient agrees to maintain the confidentiality and privileged status of the document,
4 material, communication, or other information;

5 (B) May receive documents, materials, communications, or information, including
6 otherwise confidential and privileged documents, materials, or information, from the
7 National Association of Insurance Commissioners and its affiliates and subsidiaries and
8 from regulatory and law enforcement officials of other foreign or domestic jurisdictions
9 and shall maintain as confidential or privileged any document, material, or information
10 received with notice or the understanding that it is confidential or privileged under the
11 laws of the jurisdiction that is the source of the document, material, or information; and

12 (C) May enter into agreements governing sharing and use of information consistent
13 with this subsection.

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

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

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

29 (f) *Conflict of interest.*

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

34 (A) A seller;

35 (B) An insured in a purchased policy; or

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

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

(g) *Cost of examinations.*

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

(h) *Immunity from liability.*

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

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

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

(i) *Investigative authority of the commissioner.*

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

33-59-8.

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

- 1 (1) That there exist possible alternatives to a life settlement contract including any
- 2 accelerated death benefits or policy loans offered under the seller's life insurance policy;
- 3 (2) That some or all of the proceeds of the life settlement contract may be taxable under
- 4 federal income tax and state franchise and income taxes and assistance may be sought
- 5 from a professional tax adviser;
- 6 (3) That proceeds of the life settlement contract may be subject to the claims of creditors;
- 7 (4) That receipt of the proceeds of a life settlement contract may adversely affect the
- 8 seller's eligibility for Medicaid or other government benefits or entitlements and advice
- 9 may be obtained from the appropriate government agencies;
- 10 (5) That the seller has the right to rescind a life settlement contract before the earlier of
- 11 30 calendar days after the date upon which the life settlement contract is executed by all
- 12 parties or for 15 calendar days after the receipt of the life settlement proceeds by the
- 13 seller. Rescission, if exercised by the seller, is effective only if both notice of the
- 14 rescission is given and repayment of all proceeds and any premiums, loans, and loan
- 15 interest to the life settlement provider is made within the rescission period. If the insured
- 16 dies during the rescission period, the life settlement contract is deemed to have been
- 17 rescinded, subject to repayment being made to the life settlement provider within the
- 18 rescission period of all life settlement proceeds and any premiums, loans, and loan
- 19 interest;
- 20 (6) That funds shall be sent to the seller within three business days after the life
- 21 settlement provider has received the insurer or group administrator's acknowledgment
- 22 that ownership of the purchased policy has been transferred and the beneficiary has been
- 23 designated;
- 24 (7) That entering into a life settlement contract may cause other rights or benefits,
- 25 including conversion rights and waiver of premium benefits that may exist under the
- 26 policy, to be forfeited by the seller and assistance may be sought from a financial adviser;
- 27 (8) That the disclosure to a seller shall include distribution of a brochure, approved by
- 28 the Commissioner, describing the process of life settlements;
- 29 (9) That the disclosure document shall contain the following language: 'All medical,
- 30 financial, or personal information solicited or obtained by a life settlement provider or a
- 31 life insurance producer about an insured, including the insured's identity or the identity
- 32 of family members, a spouse, or a significant other, may be disclosed as necessary to
- 33 effect the life settlement contract between the seller and the life settlement provider. If
- 34 you are asked to provide this information, you will be asked to consent to the disclosure.
- 35 The information may be provided to someone who buys the policy or provides funds for
- 36 the purchase. You may be asked to renew your permission to share information every
- 37 two years.'; and

(10) That the insured may be contacted by either the life settlement provider or its authorized representative for the purpose of determining the insured's health status. This contact is limited to once every three months if the insured has a life expectancy of more than one year and no more than once each month if the insured has a life expectancy of one year or less.

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

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

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

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

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

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

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

33-59-9.

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

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

(B) A document in which the insured consents to the release of his or her medical records to a life settlement provider or insurance producer and, if the policy was issued

1 less than two years from the date of application for a life settlement contract, to the
2 insurance company that issued the policy.

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

13 (3) Before or at the time of execution of the life settlement contract, the life settlement
14 provider shall obtain a witnessed document in which the seller consents to the life
15 settlement contract, represents that the seller has a full and complete understanding of the
16 life settlement contract, represents that the seller has a full and complete understanding
17 of the benefits of the policy, acknowledges that the seller is entering into the life
18 settlement contract freely and voluntarily, and, for persons with a terminal or chronic
19 illness or condition, acknowledges that the insured has a terminal or chronic illness and
20 that the terminal or chronic illness or condition was diagnosed after the policy was issued.

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

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

27 (c) A life settlement contract entered into in this state shall provide the seller with an
28 unconditional right to rescind the contract before the earlier of 30 calendar days after the
29 date upon which the life settlement contract is executed by all parties or 15 calendar days
30 after the receipt of the life settlement proceeds by the seller. Rescission, if exercised by the
31 seller, is effective only if both notice of the rescission is given and repayment of all
32 proceeds and any premiums, loans, and loan interest to the life settlement provider is made
33 within the rescission period. If the insured dies during the rescission period, the life
34 settlement contract shall be deemed to have been rescinded, subject to repayment of all life
35 settlement proceeds and any premiums, loans, and loan interest to the life settlement
36 provider.

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

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

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

33-59-10.

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

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

carriers, provided the coverage has been continuous and under the same group sponsorship; or

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

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

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

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

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

33-59-11.

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

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

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

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

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

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

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

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

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

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

(i) Be genuine;

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

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

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

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

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

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

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

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

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

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

34 (i) An advertisement may not use a trade name, group designation, name of the parent
35 company of a licensee, name of a particular division of the licensee, service mark, slogan,
36 symbol, or other device or reference without disclosing the name of the licensee, if the
37 advertisement has the capacity or tendency to mislead or deceive as to the true identity of

1 the licensee, or to create the impression that a company other than the licensee has any
2 responsibility for the financial obligation under a life settlement contract.

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

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

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

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

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

- 27 (1) A licensee or its business practices or methods of operation;
28 (2) The merits, desirability, or advisability of a life settlement contract;
29 (3) Any life settlement contract; or
30 (4) Any policy or life insurance company.

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

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

33-59-12.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) This chapter does not:

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

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

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

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

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

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

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

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

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

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

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

33-59-13.

(a) In addition to the penalties and other enforcement provisions of this chapter, if a person violates the provisions of this chapter or any regulation implementing this chapter, the Commissioner may seek an injunction in a court of competent jurisdiction and may apply

1 for temporary and permanent orders as the Commissioner determines are necessary to
2 restrain the person from committing the violation.

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

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

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

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

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

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

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

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

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

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

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

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

33-59-14.

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

33-59-15.

The Commissioner shall have the authority to:

(1) Promulgate rules and regulations implementing this chapter;

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

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

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

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

33-59-16.

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

33-59-17.

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

33-59-18.

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

SECTION 2.

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

SECTION 3.

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

SECTION 4.

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