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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2005

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A N A C T

RELATING TO INSURANCE - LIFE SETTLEMENTS ACT

Introduced By: Senator William A. Walaska

Date Introduced: March 02, 2005

Referred To: Senate Financial, Technology, Regulatory

It is enacted by the General Assembly as follows:

1 SECTION 1. Preamble.

2 WHEREAS, The general assembly seeks to ensure that Rhode Islanders have access to
3 consider the proper use of their personal assets; and

4 WHEREAS, The general assembly wants to ensure the protection of consumers in
5 considering the proper use of their assets by the sale of their insurance policy in a life and life
6 settlement; and

7 WHEREAS, The general assembly wants to provide for proper licensure and regulation
8 of the life and life settlement industry.

9 SECTION 2. Title 27 of the General Laws entitled "Insurance" is hereby amended by
10 adding thereto the following chapter:

11 CHAPTER 69

12 LIFE SETTLEMENTS ACT

13 **27-69-1. Short title.** -- This chapter shall be known and may be cited as "The Life
14 Settlements Act."

15 **27-69-2. Definitions.** -- (a) The following definitions apply to this chapter:

16 (1) "Advertising" means any written, electronic, or printed communication or any
17 communication by means of recorded telephone messages or transmitted on radio, television, the
18 Internet, or similar communications media, including film strips, motion pictures, and videos,
19 published, disseminated, circulated, or placed directly before the public in this state, for the

1 purpose of creating an interest in or inducing a person to sell, assign, devise, bequest or transfer
2 the death benefit or ownership of a policy pursuant to a life settlement contract.

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

7 (3) "Chronically ill" means:

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

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

12 (iii) Having a level of disability similar to that described in subdivision (a)(3)(i) of this
13 section as determined by the Secretary of the U.S. Department of Health and Human Services.

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

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

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

22 (ii) "Financing entity" does not include a nonaccredited investor.

23 (5) "Fraudulent life settlement act" includes:

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

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

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

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

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

34 (IV) Premiums paid on a policy;

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

3 (VI) The reinstatement or conversion of a policy;

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

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

6 (IX) A financing transaction;

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

8 (ii) In the furtherance of a fraud or to prevent the detection of a fraud a person commits or
9 permits its employees or its agents to:

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

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

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

17 (D) File with the director or the chief insurance regulatory official of another jurisdiction
18 a document containing false information or otherwise conceals information about a material fact
19 from the director;

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

23 (iv) Recklessly entering into, negotiating otherwise dealing in a life settlement contract,
24 the subject of which is a policy that was obtained by presenting false information concerning a
25 fact material to the policy, or by concealing, for the purpose of misleading another, information
26 concerning a fact material to the policy, where the seller or the seller's agent intended to defraud
27 the insurance company that issued the policy.

28 (6) "Recklessly" means engaging in the conduct in conscious and clearly unjustifiable
29 disregard of a substantial likelihood of the existence of the relevant facts or risks, this disregard
30 involving a gross deviation from acceptable standards of conduct; or

31 (v) Attempting to commit, assist, aid or abet in the commission of, or conspiracy to
32 commit the acts or omissions specified in this subdivision.

33 (7) "Life insurance producer" means a person licensed as a resident or nonresident
34 insurance producer pursuant to section 27-2.4-1 et. seq. who has received qualification for life

1 insurance coverage or a life line of coverage pursuant to section 27-2.4-9.

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

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

7 (10) "Purchased policy" means a policy that has been acquired by a life settlement
8 provider pursuant to a life settlement contract.

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

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

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

26 (ii) An accredited investor or qualified institutional buyer as defined, respectively, in
27 Regulation D, Rule 501 or Rule 144A of the Federal Securities Act of 1933, as amended;

28 (iii) A financing entity;

29 (iv) A special purpose entity; or

30 (v) A related provider trust.

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

34 (14) "Terminally ill" means having an illness or sickness that reasonably is expected to

1 result in death in twenty-four (24) months or less.

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

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

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

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

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

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

22 (v) A financing entity;

23 (vi) A special purpose entity;

24 (vii) A related provider trust; or

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

28 **27-69-3. Licensure.** -- (a)(1) A person shall not negotiate life settlement contracts
29 between a seller and one or more life settlement providers unless such person is a life insurance
30 producer.

31 (2) A life insurance producer, as defined in section 27-2.4-1 et. seq. who has been
32 licensed for at least one year, must be permitted to negotiate, as defined in section 27-2.4-2 (14),
33 life settlement contracts between a seller residing in this state and one or more life settlement
34 providers. For purposes of this section, the one year requirement is deemed to be satisfied if such

1 person has been licensed as a resident life insurance producer in his or her home state for at least
2 one year. Not later than thirty (30) days from the first day of negotiating a life settlement on
3 behalf of a seller, the producer shall notify the director of the activity on a form prescribed by the
4 director, and shall pay any applicable fees to be determined by the director. Notification must
5 include an acknowledgement by the producer that he/she operates in accordance with this chapter.

6 (3) Irrespective of the manner in which the life producer is compensated, a life insurance
7 producer is deemed to represent only the seller and owes a fiduciary duty to the seller to act
8 according to the seller's instructions and in the best interests of the seller.

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

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

16 (1) Application for a life settlement provider license must be made to the director by the
17 applicant on a form prescribed by the director, and an application must be accompanied by the
18 fees to be determined by the director.

19 (2) A license may be renewed from year to year on the anniversary date upon payment of
20 the annual renewal fees to be determined by the director. Failure to pay the fees by the renewal
21 date results in expiration of the license.

22 (3) Notwithstanding subdivisions (a)(1) and (a)(2) of this section, the license and renewal
23 fees for a life settlement provider license may not exceed that established for an insurer as
24 provided in section 27-2.1-1.

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

32 (5) A license issued to a legal entity authorizes all partners, officers, members, and
33 designated employees to act as life settlement providers, as applicable, under the license, and all
34 those persons must be named in the application and any supplements to the application.

1 (6) Upon the filing of an application and the payment of the license fee, the director shall
2 make an investigation of each applicant for a license as a life settlement provider and issue a
3 license if the director finds that the applicant:

4 (i) Has provided a detailed plan of operation;

5 (ii) Is competent and trustworthy and intends to act in good faith in the capacity involved
6 by the license for which he has applied;

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

9 (iv) If a legal entity, provides a certificate of good standing from the state of its domicile;
10 and

11 (v) Has provided an anti-fraud plan that meets the requirements of this chapter.

12 (7) The director may not issue a license to a nonresident applicant, unless a written
13 designation of an agent for service of process is filed and maintained with the director or the
14 applicant has filed with the director, the applicant's written irrevocable consent that any action
15 against the applicant may be commenced against the applicant by service of process on the
16 director.

17 (8) A life settlement provider shall provide to the director new or revised information
18 about officer, ten percent (10%) or more stockholders, partners, directors, members, or designated
19 employees within thirty (30) days of the change.

20 **27-69-4. Refusal to Issue, Suspension, Revocation of or Refusal to Renew Licensure.**

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

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

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

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

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

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

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

1 contract;

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

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

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

10 (b) If the director denies a license application or suspends, revokes, or refuses to renew
11 the license of a life settlement provider the director shall conduct a hearing in accordance with the
12 Administrative Procedures Act, chapter 35 of title 42.

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

16 **27-69-5. Forms approval. --** A person may not use a life settlement contract or provide
17 to a seller a disclosure statement form in this state unless filed with and approved by the director.
18 Any settlement contract form or disclosure form filed with the director shall be deemed approved
19 if it has not been disapproved within sixty (60) days of the filing. The director shall disapprove a
20 life settlement contract form or disclosure statement form if, in the director's opinion, the contract
21 or provisions contained in it are unreasonable, contrary to the interests of the public, or otherwise
22 misleading or unfair to the seller.

23 **27-69-6. Annual reports. --** (a) Each life settlement provider shall file with the director
24 by March 1st of each year an annual statement containing information as the director prescribes by
25 regulation. This information is limited to only those transactions where the seller is a resident of
26 this state and does not include individual transaction data regarding the business of life
27 settlements or data which compromises the privacy of personal, financial, and health information
28 of the seller or insured.

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

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

1 to the disclosure;

2 (2) Provided in response to an investigation or examination by the director or another
3 governmental officer or agency or pursuant to this chapter;

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

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

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

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

12 **27-69-7. Examinations. --** (a) Authority, scope and scheduling of examinations:

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

15 (2) For purposes of completing an examination of a licensee under this chapter, the
16 director may examine or investigate any person, or the business of any person, insofar as the
17 examination or investigation is, in the sole discretion of the director, necessary or material to the
18 examination of the licensee.

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

22 (b) Record retention requirements.

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

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

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

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

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

32 (3) Records required to be retained by this section must be legible and complete and may
33 be retained in paper, photograph, microprocess, magnetic, mechanical, or electronic media, or by
34 any process that accurately reproduces or forms a durable medium for the reproduction of a

1 record.

2 (c) Conduct of examinations.

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

9 (2) Every licensee or person from whom information is sought, its officers, directors and
10 agents shall provide to the examiners timely, convenient and free access at all reasonable hours at
11 its offices to all books, records, accounts, papers, documents, assets and computer or other
12 recordings relating to the property, assets, business and affairs of the licensee being examined.
13 The officers, directors, employees and agents of the licensee or person shall facilitate the
14 examination and aid in the examination so far as it is in their power to do so. The refusal of a
15 licensee, by its officers, directors, employees or agents, to submit to examination or to comply
16 with any reasonable written request of the director shall be grounds for suspension or refusal of,
17 or nonrenewal of any license or authority held by the licensee to engage in the life settlement
18 business or other business subject to the director's jurisdiction. Any proceedings for suspension,
19 revocation or refusal of any license or authority shall be conducted pursuant to the Administrative
20 Procedures Act, chapter 35 title 42.

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

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

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

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

6 (7) The licensee shall pay the charges incurred in the examination, including the expenses
7 of the director or his or her designee and the expenses and compensation of the director's
8 examiners and assistants. If a licensee feels the fees assessed are unreasonable in relation to the
9 examination performed, the licensee may appeal the assessments pursuant to the Administrative
10 Procedures Act, chapter 35 of title 42. If no hearing is requested, or if after a hearing and appeal
11 process, the licensee refuses or fails to pay, the director or his or her designee shall promptly
12 institute a civil action to recover the expenses of examination against a licensee. Examination fees
13 must be retained by the department and are considered "other funds."

14 (d) Examination reports.

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

20 (2) No later than sixty (60) days following completion of the examination, the examiner
21 in charge shall file with the director a verified written report of examination under oath. Upon
22 receipt of the verified report, the director shall transmit the report to the licensee examined,
23 together with a notice that shall afford the licensee examined a reasonable opportunity of not
24 more than thirty (30) days to make a written submission or rebuttal with respect to any matters
25 contained in the examination report.

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

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

34 (ii) Rejecting the examination report with directions to the examiners to reopen the

1 examination for purposes of obtaining additional data, documentation or information and
2 refilling; or

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

5 (4) All orders entered pursuant to this subdivision shall be accompanied by findings and
6 conclusions resulting from the director's consideration and review of the examination report,
7 relevant examiner work papers and any written submissions or rebuttals. Any order shall be
8 considered a final administrative decision and may be appealed pursuant to the Administrative
9 Procedures Act, chapter 35 of title 42 and shall be served upon the company by certified mail,
10 together with a copy of the adopted examination report. Within thirty (30) days of the issuance of
11 the adopted report the company shall file affidavits executed by each of its directors stating under
12 oath that they have received a copy of the adopted report and related orders.

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

15 (i) Any hearing conducted pursuant to this section by the director or the director's
16 authorized representative shall be conducted as a nonadversarial confidential investigatory
17 proceeding as necessary for the resolution of any inconsistencies, discrepancies or disputed issues
18 apparent upon the face of the filed examination report or raised by or as a result of the director's
19 review of relevant work papers or by the written submission or rebuttal of the company. Within
20 twenty (20) days of the conclusion of any hearing, the director shall enter an order pursuant to
21 this section;

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

32 (iii) The hearing shall proceed with the director or the director's representative posing
33 questions to the persons subpoenaed. Thereafter, the company and the department may present
34 testimony relevant to the investigation. Cross-examination may be conducted only by the director

1 or the director's representative. The company and the director shall be permitted to make closing
2 statements and may be represented by counsel of their choice.

3 (6) Publication and use:

4 (i) Upon the adoption of the examination report under this section, the director shall
5 continue to hold the content of the examination report as private and confidential information for
6 a period of thirty (30) days following the mailing of the notice of order, except to the extent
7 provided in subdivision (b) of this section. After this, the commissioner may open the report for
8 public inspection so long as no court of competent jurisdiction has stayed its publication; and

9 (ii) Nothing contained in this title, or any other provision of law, shall prevent or be
10 construed as prohibiting the commissioner from disclosing the content of an examination report,
11 preliminary examination report or results, or any matter relating to the report, to the insurance
12 department of this or any other state or country, or to law enforcement officials of this or any
13 other state or agency of the federal government at any time, so long as the agency or office
14 receiving the report or matters relating to it agrees in writing to hold it confidential and in a
15 manner consistent with this chapter.

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

18 (e) Confidentiality of examination information.

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

21 (2)(i) Except as otherwise provided in this chapter, all examination reports, working
22 papers, recorded information, documents and copies thereof produced by, obtained by or
23 disclosed to the director or any other person in the course of an examination made under this
24 chapter, or in the course of analysis or investigation by the director of the financial condition or
25 market conduct of a licensee are:

26 (A) Confidential by law and privileged;

27 (B) Not subject to the provisions of chapter 38-2 "Access to Public Records";

28 (C) Not subject to subpoena; and

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

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

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

1 (i) Confidential by law and privileged;
2 (ii) Not subject to subpoena; and
3 (iii) Not subject to discovery or admissible in evidence in any private civil action if they
4 are:

5 (A) Created, produced or obtained by or disclosed to the NAIC and its affiliates and
6 subsidiaries in the course of assisting an examination made under this chapter, or assisting a
7 director in the analysis or investigation of the financial condition or market conduct of a licensee;
8 or

9 (B) Disclosed to the NAIC and its affiliates and subsidiaries under subdivision (e)(4) of
10 this section by a director or commissioner of another state.

11 (4) For the purposes of subdivision (e)(2) of this section, "Chapter" includes the law of
12 another state or jurisdiction that is substantially similar to this chapter.

13 (5) The director or any person that received the documents, material or other information
14 while acting under the authority of the director, including the NAIC and its affiliates and
15 subsidiaries, is permitted to testify in any private civil action concerning any confidential
16 documents, materials or information subject to subdivision (e)(1) of this section.

17 (5) In order to assist in the performance of the director's duties, the director:

18 (i) May share documents, materials or other information, including the confidential and
19 privileged documents, materials or information subject to subdivision (e)(1) of this section, with
20 other state, federal and international regulatory agencies, with the NAIC and its affiliates and
21 subsidiaries, and with state, federal and international law enforcement authorities; provided, that
22 the recipient agrees to maintain the confidentiality and privileged status of the document,
23 material, communication or other information;

24 (ii) May receive documents, materials, communications or information, including
25 otherwise confidential and privileged documents, materials or information, from the NAIC and its
26 affiliates and subsidiaries, and from regulatory and law enforcement officials of other foreign or
27 domestic jurisdictions, and shall maintain as confidential or privileged any document, material or
28 information received with notice or the understanding that it is confidential or privileged under
29 the laws of the jurisdiction that is the source of the document, material or information; and

30 (iii) May enter into agreements governing sharing and use of information consistent with
31 this subdivision.

32 (7) No waiver of any applicable privilege or claim of confidentiality in the documents,
33 materials or information shall occur as a result of disclosure to the director under this section or
34 as a result of sharing as authorized in subdivision (e)(4) of this section.

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

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

10 (f) Conflict of interest.

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

15 (i) A seller;

16 (ii) An insured in a purchased policy; or

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

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

24 (g) Costs of examinations.

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

27 (h) Immunity from liability.

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

32 (2) No cause of action shall arise, nor shall any liability be imposed against any person
33 for the act of communicating or delivering information or data to the director or the director's
34 authorized representative or examiner pursuant to an examination made under this chapter, if the

1 act of communication or delivery was performed in good faith and without fraudulent intent or
2 the intent to deceive. This paragraph does not abrogate or modify in any way, any common law
3 or statutory privilege or immunity heretofore enjoyed by any person identified in subdivision (h)
4 (1) of this section.

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

11 (i) Investigative authority of the director. The director may investigate suspected
12 fraudulent life settlement acts and persons engaged in the business of life settlements.

13 **27-69-8. Disclosures.** -- (a) With each application for a life settlement contract, a life
14 settlement provider or life insurance producer shall provide the seller with at least the following
15 disclosures no later than the time the application for the life settlement contract is signed by all
16 parties. The disclosures must be provided in a separate document that is signed by the seller and
17 the life settlement provider or life insurance producer, and shall provide the following
18 information:

19 (1) That there exist possible alternatives to a life settlement contract including any
20 accelerated death benefits or policy loans offered under the seller's life insurance policy;

21 (2) That some or all of the proceeds of the life settlement contract may be taxable under
22 federal income tax and state franchise and income taxes, and assistance may be sought from a
23 professional tax advisor;

24 (3) That proceeds of the life settlement contract may be subject to the claims of creditors;

25 (4) That receipt of the proceeds of a life settlement contract may adversely affect the
26 seller's eligibility for Medicaid or other government benefits or entitlements, and advice may be
27 obtained from the appropriate government agencies;

28 (5) That the seller has the right to rescind a life settlement contract before the earlier of
29 thirty (30) calendar days after the date upon which the life settlement contract is executed by all
30 parties or for fifteen (15) calendar days after the receipt of the life settlement proceeds by the
31 seller. Rescission, if exercised by the seller, is effective only if both notice of the rescission is
32 given and repayment of all proceeds and any premiums, loans, and loan interest to the life
33 settlement provider is made within the rescission period. If the insured dies during the rescission
34 period, the life settlement contract is deemed to have been rescinded, subject to repayment being

1 made to the life settlement provider within the rescission period of all life settlement proceeds
2 and any premiums, loans, and loan interest;

3 (6) That funds must be sent to the seller within three (3) business days after the life
4 settlement provider has received the insurer or group administrator's acknowledgment that
5 ownership of the purchased policy has been transferred and the beneficiary has been designated;

6 (7) That entering into a life settlement contract may cause other rights or benefits,
7 including conversion rights and waiver of premium benefits that may exist under the policy, to be
8 forfeited by the seller. Assistance may be sought from a financial adviser;

9 (8) That the disclosure to a seller must include distribution of a brochure, approved by the
10 director, describing the process of life settlements;

11 (9) That the disclosure document must contain the following language: "All medical
12 financial, or personal information solicited or obtained by a life settlement provider or a life
13 insurance producer about an insured, including the insured's identity or the identity of family
14 members, a spouse, or a significant other may be disclosed as necessary to effect the life
15 settlement contract between the seller and the life settlement provider. If you are asked to
16 provide this information, you will be asked to consent to the disclosure. The information may be
17 provided to someone who buys the policy or provides funds for the purchase. You may be asked
18 to renew your permission to share information every two (2) years";

19 (10) That the insured may be contacted by either the life settlement provider or its
20 authorized representative for the purpose of determining the insured's health status. This contact
21 is limited to once every three (3) months if the insured has a life expectancy of more than one
22 year, and no more than once each month if the insured has a life expectancy of one year or less.

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

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

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

31 (3) If a policy to be acquired pursuant to a life settlement contract has been issued as a
32 joint policy or involves family riders or any coverage of a life other than the insured under the
33 policy to be acquired pursuant to a life settlement contract, the seller must be informed of the
34 possible loss of coverage on the other lives under the policy and must be advised to consult with

1 his insurance producer or the insurer issuing the policy for advice on the proposed life settlement
2 contract;

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

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

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

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

18 (1) When an insurance company receives for such owner a request to surrender, in whole
19 or in part a policy;

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

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

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

25 (5) Or at any other time that the superintendent may require by rule or regulation.

26 **27-69-9. General rules. --** (a)(1) A life settlement provider entering into a life settlement
27 contract first shall obtain:

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

31 (ii) A document in which the insured consents to the release of his medical records to a
32 life settlement provider or insurance producer and, if the policy was issued less than two (2) years
33 for the date of application for a life settlement contract, to the insurance company that issued the
34 policy.

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

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

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

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

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

33 (d) The life settlement provider shall instruct the seller to send the executed documents
34 required to effect the change in ownership, assignment, or change in beneficiary directly to the

1 independent escrow agent. Within three (3) business days after the date the escrow agent receives
2 the documents, or from the date the life settlement provider receives the documents, if the seller
3 erroneously provides the documents directly to the life settlement provider, the life settlement
4 provider shall pay or transfer the proceeds of the life settlement contract into an escrow or trust
5 account maintained in a state or federally-chartered financial institution whose deposits are
6 insured by the Federal Deposit Insurance Corporation (FDIC). Upon payment of the life
7 settlement proceeds into the escrow account, the escrow agent shall deliver the original change in
8 ownership, assignment, or change in beneficiary forms to the life settlement provider or related
9 provider trust. Upon the escrow agent's receipt of the acknowledgment of the properly completed
10 transfer of ownership, assignment, or designation of beneficiary from the insurance company, the
11 escrow agent shall pay the life settlement proceeds to the seller.

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

15 (f) A contact with the insured, for the purpose of determining the health status of the
16 insured by the life settlement provider after the life settlement contract has been executed, only
17 may be made by the licensed life settlement provider or its authorized representatives and is
18 limited to once every three (3) months for insureds with a life expectancy of more than one year,
19 and not more than once each month for insureds with a life expectancy of one year or less. The
20 settlement provider shall explain the procedure for these contacts at the time the life settlement
21 contract is entered into. The limitations provided for in this subdivision do not apply to a contact
22 with an insured for reasons other than determining the insured's health status. A life settlement
23 provider is responsible for the actions of his authorized representative.

24 **27-69-10. Limited purchase in incontestability period. --** (a) It is a violation of this
25 chapter for a person to enter into a life settlement contract within a two (2) year period
26 commencing with the date of issuance of the policy unless the seller certifies to the life settlement
27 provider that one or more of the following conditions have been met within the two (2) year
28 period:

29 (1) The policy was issued upon the seller's exercise of conversion rights arising out of a
30 group or individual policy, provided the total of the time covered under the conversion policy
31 plus the time covered under the prior policy is at least twenty-four (24) months. The time covered
32 under a group policy must be calculated without regard to a change in insurance carriers,
33 provided the coverage has been continuous and under the same group sponsorship; or

34 (2)(i) The seller submits independent evidence to the life settlement provider that one or

1 more of the following conditions have been met within the two (2) year period:

2 (A) The seller or insured is terminally or chronically ill; or

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

6 (ii) Copies of the independent evidence described in subdivision (h)(2) of this section and
7 documents required must be submitted to the insurer when the life settlement provider submits a
8 request to the insurer for verification of coverage. The copies must be accompanied by a letter of
9 attestation from the life settlement provider that the copies are true and correct copies of the
10 documents received by the life settlement provider;

11 (iii) If the life settlement provider submits to the insurer a copy of independent evidence
12 provided for in subdivision (h)(2)(i) of this section when the life settlement provider submits a
13 request to the insurer to effect the transfer of the policy to the life settlement provider, the copy is
14 deemed to conclusively establish that the life settlement contract satisfies the requirements of this
15 section and the insurer shall respond timely to the request.

16 **27-69-11. Advertising.** -- (a) The purpose of this section is to provide a prospective seller
17 with clear and unambiguous statements in the advertisement of a life settlement contract and to
18 assure the clear, truthful, and adequate disclosure of the benefits, risks, limitations, and exclusions
19 of a life settlement contract. This purpose is to be accomplished by the establishment of
20 guidelines and standards of permissible and impermissible conduct in the advertising of a life
21 settlement contract to assure that a product description is presented in a manner that prevents
22 unfair, deceptive, or misleading advertising and is conducive to accurate presentation and
23 description of a life settlement contract through the advertising media and material used by a
24 licensee.

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

30 (c) Each life settlement licensee shall establish and at all times maintain a system of
31 control over the content, form, and method of dissemination of an advertisement of its contracts,
32 products, and services. An advertisement, regardless of by whom written, created, designed, or
33 presented, is the responsibility of the licensee, as well as the individual who created or presented
34 the advertisement. A system of control by the licensee must include regular routine notification,

1 at least once a year, to agents and others authorized to disseminate advertisements, of the
2 requirements and procedures for approval before the use of an advertisement not furnished by the
3 licensee.

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

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

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

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

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

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

29 (5)(i) Any testimonial, appraisal, or analysis used in an advertisement must:

30 (A) Be genuine;

31 (B) Represent the current opinion of the author;

32 (C) Be applicable to the life settlement contract, product, or service advertised, if any;

33 and

34 (D) Be accurately reproduced with sufficient completeness to avoid misleading or

1 deceiving prospective sellers as to the nature or scope of any testimonial, appraisal, analysis, or
2 endorsement.

3 (ii) In using any testimonial, appraisal, or analysis, the life settlement licensee makes as
4 its own all the statements contained in them, and the statements are subject to all the provisions of
5 this section.

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

10 (iv) An advertisement may not state or imply that a life settlement contract, benefit, or
11 service has been approved or endorsed by a group of individuals, society, association, or other
12 organization, unless that is the fact and unless any relationship between an organization and the
13 licensee is disclosed. If the entity making the endorsement or testimonial is owned, controlled, or
14 managed by the licensee or receives payment or other consideration from the licensee for making
15 an endorsement or testimonial, that fact must be disclosed in the advertisement.

16 (v) If an endorsement refers to benefits received under a life settlement contract, all
17 pertinent information must be retained for a period of five (5) years after its use.

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

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

22 (h) The name of the life settlement licensee must be identified clearly in all
23 advertisements about the licensee or its life settlement contract, products, or services, and if any
24 specific life settlement contract is advertised, the life settlement contract must be identified either
25 by form number or some other appropriate description. If an application is part of the
26 advertisement, the name of the life settlement provider must be shown on the application.

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

33 (j) An advertisement may not use any combination of words, symbols, or physical
34 materials that by their content, phraseology, shape, color, or other characteristics are so similar to

1 a combination of words, symbols, or physical materials used by a government program or agency
2 or otherwise appear to be of such a nature that they tend to mislead prospective sellers into
3 believing that the solicitation is in some manner connected with a government program or
4 agency.

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

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

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

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

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

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

23 (3) Any life settlement contract; or

24 (4) Any policy or life insurance company.

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

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

31 **27-69-12. Fraudulent acts. --** (a)(1) A person may not commit a fraudulent life
32 settlement act.

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

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

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

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

10 (2) The lack of a statement as provided for in subdivision (b)(1) of this section does not
11 constitute a defense in any prosecution for a fraudulent life settlement act.

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

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

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

23 (i) The director or the director's employees, agents, or representatives;

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

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

28 (iv)The National Association of Insurance Commissioners (NAIC), National Association
29 if Securities Dealers (NASD), the North American Securities Administrators Association
30 (NASAA), or their employees, agents, or representatives, or other regulatory body overseeing life
31 insurance or life settlement contracts; or

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

33 (2) Subdivision (d)(1) of this section does not apply to a statement made with actual
34 malice. In an action brought against a person for filing a report or furnishing other information

1 concerning a fraudulent life settlement act or fraudulent insurance act, the party bringing the
2 action shall plead specifically any allegation that subdivision (d)(1) does not apply because the
3 person filing the report or furnishing the information did so with actual malice.

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

10 (4) This section does not abrogate or modify common law or statutory privileges or
11 immunities enjoyed by a person described in subdivision (d)(1) of this section.

12 (5) Subdivision (d)(1) of this section does not apply to a person's furnishing information
13 concerning his own suspected, anticipated, or completed fraudulent life settlement acts or
14 suspected, anticipated, or completed fraudulent insurance acts.

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

19 (2) Subdivision (e)(1) of this section does not prohibit release by the director, of
20 documents and evidence obtained in an investigation of suspected or actual fraudulent life
21 settlement acts;

22 (i) In administrative or judicial proceedings to enforce laws administered by the director;

23 (ii) To federal, state or local law enforcement or regulatory agencies, to an organization
24 established for the purpose of detecting and preventing fraudulent life settlement acts, or to the
25 NAIC; or

26 (iii) At the discretion of the director, to a person in the business of life settlements that is
27 aggrieved by a fraudulent life settlement act.

28 (3) Release of documents and evidence provided by subdivision (e)(2) of this section
29 does not abrogate or modify the privilege granted in subdivision (e)(1) of this section.

30 (f) This chapter does not:

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

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

1 department; or

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

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

11 (1) Fraud investigators, who may be a life settlement provider or employee or
12 independent contractor of those life settlement providers; and

13 (2) An anti-fraud plan that is submitted to the director. The anti-fraud plan must include,
14 but not be limited to, a description:

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

18 (ii) Of the procedures for reporting fraudulent settlement acts to the director;

19 (iii) Of the plan for anti-fraud education and training of underwriters and other personnel;

20 and

21 (iv) A chart outlining the organizational arrangement of the anti-fraud personnel who are
22 responsible for the investigation and reporting of possible fraudulent life settlement acts and
23 investigating unresolved material inconsistencies between medical records and insurance
24 applications.

25 (3) Anti-fraud plans submitted to the director are privileged and confidential and are not a
26 public record pursuant to the provisions of this chapter, and are not subject to discovery or
27 subpoena in a civil or criminal action.

28 **27-69-13. Penalties.** -- (a) In addition to the penalties and other enforcement provisions
29 of this chapter, if a person violates the provisions of this chapter or any regulation implementing
30 this chapter, the director may seek an injunction in a court of competent jurisdiction and may
31 apply for temporary and permanent orders as the director determines are necessary to restrain the
32 person from committing the violation.

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

1 (c) The director may issue, in accordance with a cease and desist order upon a person that
2 violates any provision of this chapter, any regulation, or order by the director, or any written
3 agreement entered into with the director.

4 (d) When the director finds that an activity in violation of this chapter presents an
5 immediate danger to the public that requires an immediate final order, the director may issue an
6 emergency cease and desist order reciting with particularity the facts underlying the findings.
7 The emergency cease and desist order is effective immediately upon service of a copy of the
8 order on the respondent and remains effective for ninety (90) days. If the director begins
9 nonemergency cease and desist proceedings, the emergency cease and desist order remains
10 effective, absent an order by a court of competent jurisdiction pursuant to the administrative
11 procedures act, chapter 35 of title 42.

12 (e) In addition to the penalties and other enforcement provisions of this chapter, a person
13 who violates this chapter is subject to civil penalties of up to ten thousand dollars (\$10,000) for
14 each violation. Imposition of civil penalties is pursuant to an order of the director. The director's
15 order may require a person found to be in violation of this chapter to make restitution to a person
16 aggrieved by violations of this chapter.

17 (f)(1) A person who violates a provision of this chapter, upon conviction, must be ordered
18 to pay restitution to a person aggrieved by the violation of this chapter. Restitution must be
19 ordered in addition to a fine or imprisonment, but not instead of a fine or imprisonment.

20 (2) A person who violates a provision of this chapter, upon conviction, must be sentenced
21 based on the greater of the value of property, services, or other benefits wrongfully obtained or
22 attempted to be obtained, or the aggregate economic loss suffered by any person as a result of the
23 violation. A person may be fined not more than:

24 (i) One hundred thousand dollars (\$100,000) or imprisoned not more than twenty (20)
25 years, or both, if the value of life settlement contract is more than thirty-five thousand dollars
26 (\$35,000);

27 (ii) Twenty thousand dollars (\$20,000) or imprisoned not more than ten (10) years, or
28 both, f the value of life settlement contract is more than two thousand five hundred dollars
29 (\$2,500) but not more than thirty-five thousand dollars (\$35,000);

30 (iii) Ten thousand dollars (\$10,000) or imprisoned not more than five (5) years, or both, if
31 the value of life settlement contract is more than five hundred dollars (\$500) but not more than
32 two thousand five hundred dollars (\$2,500); or

33 (iv) Three thousand dollars (\$3,000) or imprisoned not more than one year, or both, if the
34 value of life settlement contract is five hundred dollars (\$500) or less.

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

4 (4) In a prosecution provided by this section under subdivision (f)(3) of this section, the
5 value of a life settlement contract within a six (6) month period may be aggregated and the
6 defendant charged accordingly in applying the provisions of this section. If two (2) or more
7 offenses are committed by the same person in two (2) or more counties, the accused may be
8 prosecuted in a county in which one of the offenses was committed for all of the offenses
9 aggregated as provided by this section. The statute of limitations does not begin to run until the
10 insurance company or law enforcement agency is aware of the fraud, but the prosecution may not
11 be commenced later than seven (7) years after the act has occurred.

12 **27-69-14. Unfair trade practices.** -- (a) It is unlawful for any person or entity licensed
13 under this chapter or any person or entity licensed under title 27 to prohibit, restrict, limit, or
14 impair a licensed life insurance producer from aiding and assisting the owner of a policy with a
15 settlement, or otherwise participating in a settlement transaction under this part; or to engage in
16 any transaction, act, practice, or course of business or dealing which restricts, limits, or impairs in
17 any way the lawful transfer of ownership, change of beneficiary, or assignment of a policy to
18 effectuate a settlement contract.

19 (b) A violation of this chapter is considered an unfair trade practice pursuant to the
20 provisions of section 27-29-1, et seq., and subject to the penalties contained in that chapter.

21 **27-69-15. Regulations.** -- (a) The Director has the authority to:

22 (1) Promulgate regulations implementing this chapter;

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

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

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

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

4 **27-69-16. Application.** -- A life settlement provider lawfully transacting business in this
5 state may continue to do so pending approval or disapproval of the person's application for a
6 license as long as the application is filed with the director not later than thirty (30) days after
7 publication by the director of an application form for licensure of these life settlement providers.
8 If the publication of the application form is prior to the effective date of this act, then the filing of
9 the application shall not be later than thirty (30) days after the effective date of this act.

10 **27-69-17. Continuation of business.** -- Notwithstanding the provisions of this act, a
11 person who has lawfully negotiated life settlement contracts between a seller and one or more life
12 settlement providers for at least one year immediately prior to the effective date of this act may
13 continue to negotiate life settlements in this state for a period of one year from the effective date
14 of this act; provided, that such person registers with the director on a form that may be prescribed
15 by the director. Such registration from shall be published by the director not later than thirty (30)
16 days from the effective date of this act and shall require a person registering to evidence that he or
17 she has lawfully negotiated life settlement contracts and include an acknowledgement by such
18 person that he or she will operate in accordance with and comply with this act.

19 SECTION_3. Section 7-11-101 of the General Laws in Chapter 7-11 entitled "Rhode
20 Island Uniform Securities Act" is hereby amended to read as follows:

21 **7-11-101. Definitions.** -- In this chapter:

22 (1) "Broker dealer" means a person engaged in the business of effecting transactions in
23 securities for the account of others or for the person's own account. "Broker dealer" does not
24 include:

25 (i) A sales representative;

26 (ii) An issuer, except when effecting transactions other than as to its own securities;

27 (iii) Any other person that the director, by rule or order, designates; or

28 (iv) A depository institution if the depository institution is not considered to be a
29 "broker" or "dealer" within the meaning of the Securities Exchange Act of 1934 (15 U.S.C.
30 sections 78C(a)(4) and (5)) or any regulation or rule adopted by the Securities and Exchange
31 Commission under the Act (the "Act") because the depository institution engages in any one or
32 more of the activities described in the following provisions of the Act, under the conditions set
33 forth in:

34 (a) Sections 3(a)(4)(B)(i) through (vi);

1 (b) Section 3(a)(4)(B)(vii), so long as the depository institution is a regulated financial
2 institution as defined in section 19-1-1(11) and the offer and sale is made to a sophisticated or
3 institutional investor;

4 (c) Sections 3(a)(4)(B)(viii) through (x);

5 (d) Section 3(a)(4)(B)(xi), if limited to unsolicited transactions; or

6 (e) Section 3(a)(5)(C).

7 (2) "Depository institution" means:

8 (i) A person which is organized, chartered, or holding an authorization certificate under
9 the laws of a state or of the United States which authorizes the person to receive deposits,
10 including a savings, share, certificate, or deposit account, and which is supervised and examined
11 for the protection of depositors by an official or agency of a state or the United States;

12 (ii) A trust company or other institution that is authorized by federal or state law to
13 exercise fiduciary powers of the type a national bank is permitted to exercise under the authority
14 of the comptroller of the currency and is supervised and examined by an official or agency of a
15 state or the United States; and

16 (iii) "Depository institution" does not include an insurance company or other
17 organization primarily engaged in the insurance business, or a Morris plan bank, industrial loan
18 company, or a similar bank or company unless its deposits are insured by a federal agency.

19 (3) "Director" means the director of the department of business regulation.

20 (4) "Federal covered adviser" means a person who is:

21 (i) Registered under section 203 of the Investment Advisers Act of 1940, 15 U.S.C.
22 section 80b-3; or

23 (ii) Is excluded from the definition of "investment adviser" under section 202(a)(11) of
24 the Investment Advisers Act of 1940, 15 U.S.C. section 80b-1(a)(11).

25 (5) "Federal covered security" means any security that is a covered security under
26 section 18(b) of the Securities Act of 1933, 15 U.S.C. section 77r(b), or rules or regulations
27 promulgated under that section.

28 (6) "Filed" means the actual delivery of a document or application to the director or
29 designee of the director or to the principal office of the director.

30 (7) "Financial or institutional investor" means any of the following, whether acting for
31 itself or another in a fiduciary capacity:

32 (i) A depository institution;

33 (ii) An insurance company;

34 (iii) A separate account of an insurance company;

1 (iv) An investment company as defined in the Investment Company Act of 1940, 15
2 U.S.C. section 80a-1 et seq.;

3 (v) An employee pension, profit sharing or benefit plan if the plan has total assets in
4 excess of five million dollars (\$5,000,000), or if investment decisions are made by a plan
5 fiduciary, as defined in the Employee Retirement Income Security Act of 1974, 29 U.S.C. section
6 1001 et seq., which is either a broker dealer registered under the Securities Exchange Act of
7 1934, 15 U.S.C. section 78a et seq., an investment adviser registered or exempt from registration
8 under the Investment Advisers Act of 1940, 15 U.S.C. section 80b-1 et seq., a depository
9 institution, or an insurance company; and

10 (vi) Any other institutional buyer.

11 (8) "Fraud", "deceit", and "defraud" are not limited to common law fraud or deceit.

12 (9) For purposes of section 7-11-401, "guaranteed" means guaranteed as to payment of
13 all or substantially all of principal and interest or dividends.

14 (10) For purposes of section 7-11-401, "insured" means insured as to payment of all or
15 substantially all of principal and interest or dividends.

16 (11) "Investment adviser" means a person who, for compensation, engages in the
17 business of advising others, either directly or through publications or writings, as to the value of
18 securities or as to the advisability of investing in, purchasing, or selling securities, or who, for
19 compensation and as part of a regular business, issues or promulgates analyses or reports
20 concerning securities. "Investment adviser" does not include:

21 (i) An investment adviser representative;

22 (ii) A trust company or other institution described in subdivision (2)(ii) of this section;

23 (iii) A lawyer, accountant, engineer, or teacher whose performance of investment
24 advisory services is solely incidental to the practice of the person's profession;

25 (iv) A broker dealer or its agent whose performance of investment advisory services is
26 solely incidental to the conduct of business as a broker dealer and who receives no special
27 compensation for the investment advisory services;

28 (v) A publisher of any bona fide newspaper, news column, newsletter, news magazine,
29 or business or financial publication or service, whether communicated in hard copy form, or by
30 electronic means, or otherwise, that does not consist of the rendering of advice on the basis of the
31 specific investment situation of each client;

32 (vi) A person whose advice, analyses, or reports relate only to securities exempt under
33 section 7-11-401(1);

34 (vii) Any person as the director, by rule or order, designates; and

1 (viii) A person who is a federal covered adviser.

2 (12) (i) "Investment adviser representative" means any partner, officer, director of (or a
3 person occupying a similar status or performing similar functions) or other individual, except
4 clerical or ministerial personnel, who is employed by or associated with;

5 (A) An investment adviser that is registered or required to be registered under this
6 chapter and who does any of the following:

7 (I) Makes any recommendations or otherwise renders advice regarding securities to
8 clients;

9 (II) Manages accounts or portfolios of clients;

10 (III) Determines which recommendation or advice regarding securities should be given;

11 (IV) Solicits, offers, or negotiates for the sale of or sells investment advisory services;

12 (V) Supervises employees who perform any of the preceding; or

13 (B) A federal covered adviser, subject to the limitations of sections 203(A) of the
14 Investment Advisors Act of 1940, 15 U.S.C. section 80b-3(A), as the director may designate by
15 rule or order.

16 (ii) Notwithstanding subdivisions (12)(i)(A) and (12)(i)(B), an investment adviser
17 representative shall not include any other persons employed by or associated with either an
18 investment adviser or a federal covered adviser not within the intent of subdivision (12) that the
19 director may designate by rule or order or as otherwise specifically excluded by rule of the U.S.
20 Securities and Exchange Commission.

21 (13) (i) Except as provided in subdivisions (13)(ii) through (13)(iv), "issuer" means a
22 person who issues or proposes to issue a security.

23 (ii) The "issuer" of a collateral trust certificate, voting trust certificate, certificate of
24 deposit for a security, or share in an investment company without a board of directors or persons
25 performing similar functions, is a person performing the acts and assuming the duties of depositor
26 or manager pursuant to the trust or other agreement or instrument under which the security is
27 issued.

28 (iii) The "issuer" of an equipment trust certificate, including a conditional sales contract
29 or similar security serving the same purpose, is the person to whom the equipment or property is
30 or is to be leased or conditionally sold.

31 (iv) The "issuer" of a fractional undivided interest to an oil, gas, or other mineral lease or
32 in payments out of production under a lease, right, or royalty, is the owner of an interest in the
33 lease or in payments out of production under a lease, right, or royalty, whether whole or
34 fractional, who creates fractional interest for the purpose of sale.

1 (14) "Nonissuer transaction" means a transaction not directly or indirectly for the benefit
2 of the issuer.

3 (15) "Person" means a natural person, corporation, business trust, estate, trust,
4 partnership, association, joint venture, government in its private or public capacity, governmental
5 subdivision or agency, or any other legal or commercial entity.

6 (16) "Person associated with" a named party or parties or "associated person of" a named
7 party or parties means any partner, officer, director, or branch manager of the named party or
8 parties (or any person occupying a similar status or performing similar functions), any person
9 directly or indirectly controlling, controlled by, or under common control with the named party or
10 parties or any employee of the named party or parties, except that any associated person whose
11 functions are solely clerical or ministerial are not included in the meaning of the term for
12 purposes of this chapter.

13 (17) "Price amendment" means the amendment to a registration statement filed under the
14 Securities Act of 1933, 15 U.S.C. section 77a et seq., or, if no amendment is filed, the prospectus
15 or prospectus supplement filed under the Securities Act of 1933, which includes a statement of
16 the offering price, underwriting and selling discounts or commissions, amounts of proceeds,
17 conversion rates, call prices, and other matters dependent on the offering price.

18 (18) "Promoter" includes:

19 (i) A person who, acting alone or in concert with one or more other persons, takes the
20 entrepreneurial initiative in founding or organizing the business or enterprise of an issuer;

21 (ii) An officer or director owning securities of an issuer or a person who owns,
22 beneficially or of record, ten percent (10%) or more of a class of securities of the issuer if the
23 officer, director, or person acquires any of those securities in a transaction within three (3) years
24 before the filing by the issuer of a registration statement under this chapter and the transaction
25 does not possess the indicia of arms length bargaining; and

26 (iii) A member of the immediate family of a person within subparagraph (i) or (ii) if the
27 family member receives securities of the issuer from that person in a transaction within three (3)
28 years before the filing by the issuer of a registration statement under this chapter and the
29 transaction does not possess the indicia of arms length bargaining.

30 (19) (i) "Sale" or "sell" includes every contract of sale, contract to sell, or other
31 disposition, of a security or interest in a security for value.

32 (ii) "Offer to sell" includes every attempt to offer to dispose of, or solicitation of an offer
33 to purchase, a security or interest in a security for value.

34 (iii) "Offer to purchase" includes every attempt or offer to obtain, or solicitation of an

1 offer to sell, a security or interest in a security for value, but the term does not include a
2 transaction that is subject to section 14(d) of the Securities Exchange Act of 1934, 15 U.S.C.
3 section 78n(d).

4 (iv) A security given or delivered with or as a bonus on account of a purchase of
5 securities or other item is considered to constitute part of the subject of the purchase and to have
6 been offered and sold for value.

7 (v) A gift of assessable stock is deemed to involve an offer and sale.

8 (vi) A sale or offer of a warrant or right to purchase or subscribe to another security of
9 the same or another issuer, or a sale or offer of a security that gives the holder a present or future
10 right or privilege to convert into another security of the same or another issuer, is deemed to
11 include an offer of the other security.

12 (vii) The terms defined in this paragraph do not include:

13 (A) the creation of a security interest or a loan;

14 (B) a stock dividend, whether or not the corporation distributing the dividend is the
15 issuer of the stock, if nothing of value is given by stockholders for the dividend other than the
16 surrender of a right to a cash or property dividend and each stockholder may elect to take the
17 dividend in cash, property, or stock; or

18 (C) an act incident to a judicially approved reorganization in which a security is issued in
19 exchange for one or more outstanding securities, claims, or property interests, or partly in
20 exchange and partly for cash.

21 (20) "Sales representative" means a person, other than a broker dealer, associated with a
22 broker dealer or issuer in effecting or attempting to effect purchases or sales of securities.

23 (21) "Securities Act of 1933", 15 U.S.C. section 77a et seq., "Securities Exchange Act of
24 1934", 15 U.S.C. section 78a et seq., "Public Utility Holding Company Act of 1935", 15 U.S.C.
25 section 79 et seq., "Investment Company Act of 1940", 15 U.S.C. section 80a-1 et seq.,
26 "Investment Advisers Act of 1940", 15 U.S.C. section 80b-1 et seq., "Employee Retirement
27 Income Security Act of 1974", 29 U.S.C. section 1001 et seq., "National Housing Act", 12 U.S.C.
28 section 1701 et seq., and "Commodity Exchange Act", 7 U.S.C. section 2 et seq., mean the
29 federal statutes of those names as amended before or after July 6, 1990.

30 (22) Unless the context requires otherwise, "security" means a note; stock; treasury
31 stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in a profit
32 sharing agreement; a limited partnership interest; collateral trust certificate; variable annuity;
33 preorganization certificate or subscription; transferable share; investment contract; [life settlement](#)
34 [contract](#); voting trust certificate; certificate of deposit for a security; fractional undivided interest

1 in an oil, gas, or other mineral lease or in payments out of production under a lease, right, or
2 royalty; a put, call, straddle, or option entered into on a national securities exchange relating to
3 foreign currency; a put, call, straddle, or option on a security, certificate of deposit, or group or
4 index of securities, including an interest in or based on the value of any of the preceding; or, in
5 general, an interest or instrument commonly known as a "security", or a certificate of interest or
6 participation in, temporary or interim certificate for, receipt for, whole or partial guarantee of, or
7 warrant or right to subscribe to or purchase, any of the preceding. The term does not include:

8 (i) An insurance or endowment policy or annuity contract under which an insurance
9 company promises to pay a fixed sum of money either in a lump sum or periodically for life or
10 some other specified period; or

11 (ii) An interest in a contributory or noncontributory pension or welfare plan subject to
12 the Employee Retirement Income Security Act of 1974, 29 U.S.C. section 1001 et seq.

13 (23) "Self regulatory organization" means a national securities exchange registered under
14 section 7 of the Securities Exchange Act of 1934, 15 U.S.C. section 78g, a national securities
15 association of brokers and dealers registered under section 15A of the Securities Exchange Act of
16 1934, 15 U.S.C. section 78o-3, a clearing agency registered under section 17A of the Securities
17 Exchange Act of 1934, 15 U.S.C. section 78k-1, or the municipal securities rule making board
18 established under section 15B(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. section
19 78o-4(b)(1).

20 (24) "State" means a state, commonwealth, territory, or possession of the United States,
21 including both the District of Columbia and the Commonwealth of Puerto Rico.

22 (25) "Willfully" means intentionally committing the act which constitutes a violation;
23 there being no requirement that the actor also be aware that he or she is violating any provision of
24 this chapter or any rule or order under this chapter.

25 (26) "Life Settlement Investment" means the contractual right to receive any portion of
26 the death benefit or ownership of a life insurance policy or certificate, for consideration that is
27 less than the expected death benefit of the life insurance policy or certificate. Life investment
28 does not include:

29 (i) Any transaction between a seller and a life settlement provider as defined by the "Life
30 Settlements Act", chapter 69 of title 27 of the general laws;

31 (ii) Any transfer of ownership or beneficial interest in a life insurance policy from a life
32 settlement provider to another life settlement provider as defined by the "Life Settlements Act",
33 chapter 69 of title 27 of the general laws or to any legal entity formed solely for the purpose of
34 holding ownership or beneficial interest in a life insurance policy or policies;

1 (iii) The bona fide assignment of a life insurance policy to a bank, savings bank, savings
2 and loan association, credit union, or other licensed lending institution as collateral for a loan; or

3 (iv) The exercise of accelerated benefits pursuant to the terms of a life insurance policy
4 issued in accordance with title 27 of the Rhode Island Insurance Code.

5 SECTION 4. If any section, subdivision, paragraph, subparagraph, sentence, clause,
6 phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding
7 shall not affect the constitutionality or validity of the remaining portions of this act, the general
8 assembly hereby declaring that it would have passed this act, and each and every section,
9 subdivision, paragraph, subparagraph, sentence, clause, phrase, and word thereof , irrespective of
10 the fact that any one or more other sections, subdivisions, paragraphs, subparagraphs, sentences,
11 clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise
12 ineffective.

13 SECTION 5. This act shall take effect one hundred and eighty (180) days after passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO INSURANCE - LIFE SETTLEMENTS ACT

- 1 This act would establish rules and procedures and would establish licensing requirements
- 2 governing the sale of insurance policies in a life settlement contract.
- 3 This act would take effect one hundred and eighty (180) days after passage.

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