HOUSE DOCKET, NO. 1253 FILED ON: 1/20/2011

HOUSE . . . . . No. 1203

The Commonwealth of Massachusetts

PRESENTED BY:

Ronald Mariano

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying:

An Act relative to life settlements and stranger-originated life insurance

.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Ronald Mariano	*3rd Norfolk*
Mark J. Cusack	*5th Norfolk*

HOUSE DOCKET, NO. 1253 FILED ON: 1/20/2011

HOUSE . . . . . No. 1203

By Mr. Mariano of Quincy, a petition (accompanied by bill, House, No. 1203) of Ronald Mariano and Mark James Cusack relative to life settlements and stranger-originated life insurance. Financial Services.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
HOUSE
, NO. *4824* OF 2009-2010.]

The Commonwealth of Massachusetts

An Act relative to life settlements and stranger-originated life insurance
.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 175 of the General Laws is hereby amended by striking out sections 212 to 223, inclusive, as appearing in the 2008 Official Edition, and inserting in place thereof the following sections:

Section 212. Short title

Sections 212 to 223E, inclusive, may be cited as the Massachusetts Life Settlements Act.

Section 213. Definitions

"Act" or "Life settlement act" shall mean the Massachusetts Life Settlement Act, Sections 212 to 223E, inclusive.

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

16 “Business of life settlements”, an activity involved in, but not limited to, offering to enter
17 into, soliciting, negotiating, procuring, effectuating, monitoring, or tracking of life settlement
18 contracts.;

19 “Chronically ill’ means:

20 (1) being unable to perform at least two (2) activities of daily living (i.e., eating, toileting,
21 transferring, bathing, dressing or continence);

22 (2) requiring substantial supervision to protect the individual from threats to health and
23 safety due to severe cognitive impairment; or

24 (3) having a level of disability similar to that described in Paragraph (1) as determined
25 by the United States Secretary of Health and Human Services.

26 “Commissioner”’ means the commissioner of insurance, as defined in section 1 of this
27 chapter.

28 “Financing Entity”’ means an underwriter, placement agent, lender, purchaser of
29 securities, purchaser of a policy or certificate from a life settlement provider, credit enhancer, or
30 any entity that has a direct ownership in a policy or certificate that is the subject of a life
31 settlement contract, but:

32 (1) whose principal activity related to the transaction is providing funds to effect the life
33 settlement contract or purchase of one or more policies; and

34 (2) who has an agreement in writing with one or more life settlement providers to finance
35 the acquisition of life settlement contracts.

36 “Financing Entity” does not include a non-accredited investor or purchaser.

37 “Financing Transaction” means a transaction in which a licensed life settlement provider
38 obtains financing from a financing entity including, without limitation, any secured or unsecured
39 financing, any securitization transaction, or any securities offering which either is registered or
40 exempt from registration under federal and state securities law.

41 “Fraudulent life settlement act” includes all of the following:

42 (1) Acts or omissions committed by any person that, knowingly and with an intent to
43 defraud, for the purpose of depriving another of property or for pecuniary gain, commits or
44 permits its employees or its agents to engage in acts, including, but not limited to, the following:

45 (A) Presenting, causing to be presented, or preparing with knowledge and belief that it
46 will be presented to or by a life settlement provider, premium finance lender, life settlement
47 broker, insurer, insurance producer, or any other person, false material information, or

48 concealing material information, as part of, in support of, or concerning a fact material to one or
49 more of the following:

50 (i) An application for the issuance of a life settlement contract or insurance policy.

51 (ii) The underwriting of a life settlement contract or insurance policy.

52 (iii) A claim for payment or benefit pursuant to a life settlement contract or insurance
53 policy.

54 (iv) Premiums paid on an insurance policy.

55 (v) Payments and changes in ownership or beneficiary made in accordance with the terms
56 of a life settlement contract or insurance policy.

57 (vi) The reinstatement or conversion of an insurance policy.

58 (vii) The solicitation, offer to enter into, or effectuation of, a life settlement contract or
59 insurance policy.

60 (viii) The issuance of written evidence of life settlement contracts or insurance.

61 (ix) Any application for, or the existence of or any payments related to, a loan secured
62 directly or indirectly by any interest in a life insurance policy.

63 (x) Engaging in Stranger-Originated Life Insurance (STOLI).

64 (B) Failing to disclose to the insurer where the request for such disclosure has been asked
65 for by the insurer that the prospective insured has undergone a life expectancy evaluation by any
66 person or entity other than the insurer or its authorized representatives in connection with the
67 issuance of the policy.

68 (C) Employing any device, scheme, or artifice to defraud in the business of life
69 settlements.

70 (2) Any of the following that any person does, or permits his or her employees or agents
71 to do, in the furtherance of a fraud, or to prevent the detection of a fraud:

72 (A) Remove, conceal, alter, destroy, or sequester from the commissioner the assets or
73 records of a licensee or other person engaged in the business of life settlements.

74 (B) Misrepresent or conceal the financial condition of a licensee, financing entity,
75 insurer, or other person.

76 (C) Transact the business of life settlements in violation of laws requiring a license,
77 certificate of authority, or other legal authority for the transaction of the business of life
78 settlements.

79 (D) File with the commissioner or the chief insurance regulatory official of another
80 jurisdiction a document containing false information or otherwise concealing information about a
81 material fact from the commissioner.

82 (E) Engage in embezzlement, theft, misappropriation, or conversion of moneys, funds,
83 premiums, credits, or other property of a life settlement provider, insurer, insured, owner,
84 insurance policy owner, or any other person engaged in the business of life settlements or
85 insurance.

86 (F) Knowingly and with an intent to defraud, enter into, broker, or otherwise deal in a life
87 settlement contract, the subject of which is a life insurance policy that was obtained by
88 presenting false information concerning any fact material to the policy or by concealing, for the
89 purpose of misleading another, information requested concerning any fact material to the policy,
90 where the owner or the owner's agent intended to defraud the policy's issuer.

91 (G) Attempt to commit, assist, aid, or abet in the commission of, or conspiracy to commit
92 the acts or omissions specified in this sub-section.

93 (H) Misrepresent the state of residence of an owner to be a state or jurisdiction that does
94 not have a law substantially similar to this life settlement act for the purpose of evading or
95 avoiding the provisions of this life settlement act.

96 "Insured"' means the person covered under the policy being considered for sale in a Life
97 Settlement Contract.

98 "Life expectancy", the arithmetic mean of the number of months the insured under the
99 life insurance policy to be settled can be expected to live considering medical records and
100 appropriate experiential data.

101 "Life insurance producer", any person licensed in this state as a resident or nonresident
102 insurance producer who has received qualification or authority for life insurance coverage or a
103 life line of coverage pursuant to this life settlement act;

104 "Life settlement broker", a person who, on behalf of an owner and for a fee, commission
105 or other valuable consideration, offers or attempts to negotiate life settlement contracts between
106 an owner and life settlement providers. A life settlement broker represents only the owner and
107 owes a fiduciary duty to the owner to act according to the owner's instructions, and in the best
108 interest of the owner, notwithstanding the manner in which the life settlement broker is
109 compensated. A life settlement broker does not include an attorney, certified public accountant
110 or financial planner retained in the type of practice customarily performed in their professional

111 capacity to represent the owner whose compensation is not paid directly or indirectly by the life
112 settlement provider or any other person, except the owner.

113 'Life settlement contract' means (1) a written agreement entered into between a life
114 settlement provider and an owner, establishing the terms under which compensation or anything
115 of value will be paid, which compensation or thing of value is less than the expected death
116 benefit of the insurance policy or certificate, in return for the owner's assignment, transfer, sale,
117 devise or bequest of the death benefit or any portion of an insurance policy or certificate of
118 insurance for compensation, provided, however, that the minimum value for a life settlement
119 contract shall be greater than a cash surrender value or accelerated death benefit available at the
120 time of an application for a life settlement contract;

121 (2) the transfer for compensation or value of ownership or beneficial interest in a trust or
122 other entity that owns such policy if the trust or other entity was formed or availed of for the
123 principal purpose of acquiring one or more life insurance contracts, which life insurance contract
124 insures the life of a person residing in this State.; or

125 (3) a premium finance loan made for a policy on or before the date of issuance of the
126 policy where:

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

129 (B) The owner receives on the date of the premium finance loan a guarantee of the future
130 life settlement value of the policy; or

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

133 (4) 'Life Settlement Contract' does not include:

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

137 (B) A premium finance loan, as defined herein, or any loan made by a bank or other
138 licensed financial institution, provided that neither default on such loan nor the transfer of the
139 policy in connection with such default is pursuant to an agreement or understanding with any
140 other person for the purpose of evading regulation under this life settlement act;

141 (C) A collateral assignment of a life insurance policy by an owner;

142 (D) A loan made by a lender that does not violate chapter 255C, provided such loan is
143 not described in Paragraph (3) above, and is not otherwise within the definition of life settlement
144 contract;

145 (E) An agreement where all the parties (i) are closely related to the insured by blood
146 or law or (ii) have a lawful substantial economic interest in the continued life, heath and bodily
147 safety of the person insured, or are trusts established primarily for the benefit of such parties;

148 (F) Any designation, consent or agreement by an insured who is an employee of an
149 employer in connection with the purchase by the employer, or trust established by the employer,
150 of life insurance on the life of the employee;

151 (G) A bona fide business succession planning arrangement:

152 (i) Between one or more shareholders in a corporation or between a corporation and
153 one or more of its shareholders or one or more trust established by its shareholders;

154 (ii) Between one or more partners in a partnership or between a partnership and one
155 or more of its partners or one or more trust established by its partners; or

156 (iii) Between one or more members in a limited liability company or between a
157 limited liability company and one or more of its members or one or more trust established by its
158 members;

159 (H) An agreement entered into by a service recipient, or a trust established by the
160 service recipient, and a service provider, or a trust established by the service provider, who
161 performs significant services for the service recipient's trade or business; or

162 (I) Any other contract, transaction or arrangement from the definition of life
163 settlement contract that the commissioner determines is not of the type intended to be regulated
164 by this life settlement act.

165 "Life settlement provider" a person, other than an owner, who enters into a life settlement
166 contract with an owner. A life settlement provider does not include:

167 (1) a bank, savings bank, savings and loan association, credit union;

168 (2) a licensed lending institution or creditor or secured party pursuant to a Premium
169 Finance Loan agreement which takes an assignment of a life insurance policy or certificate
170 issued pursuant to a group life insurance policy as collateral for a loan;

171 (3) the issuer of a life insurance policy or rider to the extent of providing accelerated
172 death benefits pursuant to the contract or cash surrender value;

173 (4) a natural person who enters into or effectuates not more than one agreement in a
174 calendar year for the transfer of a life insurance policy or certificate issued pursuant to a group
175 life insurance policy, for compensation or anything of value less than the expected death benefit
176 payable under the policy;

177 (5) a financing entity;

178 (6) a purchaser;

179 (7) Any authorized or eligible insurer that provides stop loss coverage to a life settlement
180 provider, purchaser, financing entity, special purpose entity, or related provider trust.

181 (8) A related provider trust.

182 (9) A special purpose entity.

183 (10) A life settlement broker.

184 (11) An accredited investor or qualified institutional buyer as defined respectively in
185 Regulation D, Rule 501 or Rule 144A of the federal Securities Act of 1933, as amended, who
186 purchases a

187 life settlement policy from a life settlement provider.

188 "Net death benefit", the amount of the life insurance policy or certificate to be settled less
189 any outstanding debts or liens.

190 "Owner", the owner of a life insurance policy or a certificate holder under a group policy
191 who enters or seeks to enter into a life settlement contract. For the purposes of this article, an
192 owner shall not be limited to an owner of a life insurance policy or a certificate holder under a
193 group policy that insures the life of an individual with a terminal illness or chronic illness or
194 condition except where specifically addressed. The term "owner" does not include any of the
195 following:

196 (1) Any life settlement provider or other licensee under this life settlement act.

197 (2) A qualified institutional buyer as defined in Rule 144A of the federal Securities Act
198 of 1933, as amended.

199 (3) A financing entity.

200 (4) A special purpose entity.

201 (5) A related provider trust.

202 "Patient identifying information", an insured's address, telephone number, facsimile
203 number, electronic mail address, photograph or likeness, employer, employment status, social
204 security number, or any other information that is likely to lead to the identification of the
205 insured.;

206 “Person”, means any natural person or legal entity, including but not limited to, a
207 partnership, Limited Liability Company, association, trust or corporation;

208 “Policy”, an individual or group policy, group certificate, contract, or arrangement of life
209 insurance owned by a resident of this state, regardless of whether delivered or issued for delivery
210 in this state.

211 “Premium finance loan” is a loan made primarily for the purpose of making premium
212 payments on a life insurance policy, which loan is secured by an interest in such life insurance
213 policy.

214 “Purchaser”, a person who pays compensation or anything of value as consideration for a
215 beneficial interest in a trust which is vested with, or for the assignment, transfer, or sale of, an
216 ownership or other interest in a life insurance policy or a certificate issued pursuant to a group
217 life insurance policy which has been the subject of a life settlement contract.

218 “Related provider trust”, a titling trust or other trust established by a licensed life
219 settlement provider or a financing entity for the sole purpose of holding the ownership or
220 beneficial interest in purchased policies in connection with a financing transaction. In order to
221 qualify as a related provider trust, the trust must have a written agreement with the licensed life
222 settlement provider under which the licensed life settlement provider is responsible for ensuring
223 compliance with all statutory and regulatory requirements and under which the trust agrees to
224 make all records and files relating to life settlement transactions available to the commissioner as
225 if those records and files were maintained directly by the licensed life settlement provider.

226 “Settled policy” means a life insurance policy or certificate that has been acquired by a
227 provider pursuant to a life settlement contract.

228 “Special purpose entity”, a corporation, partnership, trust, limited liability company, or
229 other legal entity formed solely to provide either directly or indirectly access to institutional
230 capital markets:

231 (1) For a financing entity or life settlement provider; or

232 (2) In connection with a transaction in which the securities in the special purpose entity
233 are acquired by the owner or by a “qualified institutional buyer” as defined in Rule 144
234 promulgated under the federal Securities Act of 1933, as amended, or the securities pay a fixed
235 rate of return commensurate with established asset-backed institutional capital markets.

236 “Stranger-originated life insurance” or “STOLI” is an act, practice, or arrangement to
237 initiate the issuance of a life insurance policy in this state for the benefit of a third-party investor
238 who, at the time of policy origination, has no insurable interest in the life of the insured. STOLI
239 practices include, but are not limited to, cases in which life insurance is purchased with resources
240 or guarantees from or through a person or entity, who, at the time of policy inception, could not

241 lawfully initiate the policy himself, herself, or itself, and where, at the time of inception, there is
242 an arrangement or agreement, whether verbal or written, to directly or indirectly transfer the
243 ownership of the policy or the policy benefits to a third party. Trusts that are created to give the
244 appearance of insurable interest and that are used to initiate policies for investors violate
245 insurable interest laws and the prohibition against wagering on life. STOLI arrangements do not
246 include lawful life settlement contracts as permitted by this life settlement act or those practices
247 set forth in subsection (4) of the definition of life settlement contract in this section, provided
248 that such life settlement contracts or practices are not part of a transaction otherwise prohibited
249 by this life settlement act.

250 "Terminally ill", having an illness or sickness that can reasonably be expected to result in
251 death in 24 months or less.;

252 Section 214. Licensing. (a) This section applies to any person entering into, brokering, or
253 soliciting life settlements pursuant to this life settlement act.

254 (b) (1) No Person, wherever located, shall act as a life settlement provider or, except as
255 provided for in subdivisions (C) and (D) of this subsection, a life settlement broker with an
256 owner or multiple owners who is a resident of this state, without first having obtained a license
257 from the Commissioner. If there is more than one owner on a single policy and the owners are
258 residents of different states, the life settlement contract shall be governed by the law of the state
259 in which the owner having the largest percentage ownership resides or, if the owners hold equal
260 ownership, the state of residence of one owner agreed upon in writing by all owners.

261 (c) A person licensed to act as a viatical settlement broker or viatical settlement provider
262 as of December 31, 2010, shall be deemed qualified for licensure as a life settlement broker or
263 life settlement provider, respectively, and shall be subject to all the provisions of this article as if
264 such person were originally licensed as a life settlement broker or life settlement provider,
265 respectively.

266 (d) (i) A life insurance producer who has been duly licensed as a resident insurance
267 producer with a life line of authority in this state, or his or her home state, for at least one year
268 and is licensed as nonresident producer in this state shall be deemed to meet the licensing
269 requirements of this section and shall be permitted to operate as a life settlement broker.

270 (ii) Not later than 30 days from the first day of operating as a life settlement broker, the
271 life insurance producer shall notify the commissioner that he or she is acting as a life settlement
272 broker, on a form prescribed by the commissioner, and shall pay any applicable and reasonable
273 fee attendant to such notice as determined by the secretary of administration and finance.
274 Notification shall include an acknowledgment by the life insurance producer that he or she will
275 operate as a life settlement broker in accordance with this life settlement act.

276 (iii) The insurer that issued the policy that is the subject of a life settlement contract shall
277 not be responsible for any act or omission of a life settlement broker or life settlement provider
278 or purchaser arising out of, or in connection with, the life settlement transaction, unless the
279 insurer receives compensation for the placement of the life settlement contract from the life
280 settlement provider or life settlement broker or purchaser.

281 (e) A person licensed as an attorney, certified public accountant or financial planner
282 accredited by a nationally recognized accreditation agency, who is retained to represent the
283 owner, whose compensation is not paid directly or indirectly by the life settlement provider or
284 purchaser, may negotiate life settlement contracts on behalf of the owner without having to
285 obtain a license as a life settlement broker.

286 (f) The term of a life settlement provider license shall be equal to that of a domestic
287 stock life insurance company and the term of a life settlement broker license shall be equal to
288 that of an insurance producer license. Licenses requiring periodic renewal may be renewed on
289 their anniversary date upon payment of the periodic renewal fee as specified in this section.
290 Failure to pay the fees on or before the renewal date shall result in expiration of the license.

291 (g) The applicant for a license under this section shall provide such information as the
292 Commissioner may require on forms prepared by the Commissioner. The Commissioner shall
293 have authority, at any time, to require such applicant to fully disclose the identity of its
294 stockholders (except stockholders owning fewer than ten percent of the shares of an applicant
295 whose shares are publicly traded), partners, officers and employees, and the Commissioner may,
296 in the exercise of the Commissioner's sole discretion, refuse to issue such a license in the name
297 of any person if not satisfied that any officer, employee, stockholder or partner thereof who may
298 materially influence the applicant's conduct meets the standards of this life settlement act.

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

302 (i) Upon the filing of an application and the payment of the license fee, the
303 Commissioner shall make an investigation of each applicant and may issue a license if the
304 Commissioner finds that the applicant:

305 (i) if a life settlement provider, has provided a detailed plan of operation;

306 (ii) is competent and trustworthy and intends to transact its business in good faith;

307 (iii) has a good business reputation and has had experience, training or education so as to
308 be qualified in the business for which the license is applied;

309 (iv) if the applicant is a legal entity, is formed or organized pursuant to the laws of this
310 state or is a foreign legal entity authorized to transact business in this state, or provides a
311 certificate of good standing from the state of its domicile; and

312 (v) if a life settlement provider, has provided to the Commissioner an anti-fraud plan that
313 meets the requirements of this life settlement act and includes:

314 (a) a description of the procedures for detecting and investigating possible

315 fraudulent acts and procedures for resolving material inconsistencies between medical
316 records and insurance applications;

317 (b) a description of the procedures for reporting fraudulent insurance acts to the
318 Commissioner;

319 (c) a description of the plan for anti-fraud education and training of its

320 underwriters and other personnel; and

321 (d) a written description or chart outlining the arrangement of the anti-fraud

322 personnel who are responsible for the investigation and reporting of possible

323 fraudulent insurance acts and investigating unresolved material inconsistencies between
324 medical records and insurance applications.

325 (j) The Commissioner shall not issue any license to any nonresident applicant, unless a
326 written designation of an agent for service of process is filed and maintained with the
327 Commissioner or unless the applicant has filed with the Commissioner the applicant's written
328 irrevocable consent that any action against the applicant may be commenced against the
329 applicant by service of process on the Commissioner.

330 (k) A life settlement provider may not use any person to perform the functions of a life
331 settlement broker unless the person holds a current, valid license as a broker, and as provided in
332 this section.

333 (l) A life settlement broker may not use any person to perform the functions of a life
334 settlement provider unless such person holds a current, valid license as a life settlement provider,
335 and as provided in this life settlement act.

336 (m) All licensees under this section shall provide to the Commissioner new or revised
337 information about officers, ten percent or more stockholders, partners, directors, members or
338 designated employees within thirty days of the change.

339 (n) An individual licensed as a life settlement broker shall complete on a biennial basis
340 fifteen (15) hours of training related to life settlements and life settlement transactions, as

341 required by the Commissioner; provided, however, that a life insurance producer who is
342 operating as a life settlement broker pursuant to this section shall not be subject to the
343 requirements of this subsection. Any person failing to meet the requirements of this subsection
344 shall be subject to the penalties imposed by the Commissioner.

345 Section 215. License Suspension, Revocation or Refusal to Renew.

346 (a) The Commissioner may suspend, revoke or refuse to renew the license of any licensee
347 if the Commissioner finds that:

348 (i) there was any material misrepresentation in the application for the license;

349 (ii) the licensee or any officer, partner, member or director has been guilty of fraudulent
350 or dishonest practices, is subject to a final administrative action or is otherwise shown to be
351 untrustworthy or incompetent to act as a licensee;

352 (iii) if a life settlement provider, the licensee demonstrates a pattern of unreasonably
353 withholding payments to policy Owners;

354 (iv) the licensee no longer meets the requirements for initial licensure;

355 (v) the licensee or any officer, partner, member or director has been convicted of a
356 felony, or of any misdemeanor of which criminal fraud is an element; or the licensee has pleaded
357 guilty or nolo contendere with respect to any felony or any misdemeanor of which criminal fraud
358 or moral turpitude is an element, regardless whether a judgment of conviction has been entered
359 by the court;

360 (vi) the life settlement provider has entered into any life settlement contract using a form
361 that has not been approved pursuant to this life settlement act;

362 (vii) the life settlement provider has failed to honor contractual obligations set out in a
363 life settlement contract;

364 (viii) the life settlement provider has assigned, transferred or pledged a settled policy to a
365 person other than a life settlement provider licensed in state, a purchaser, an accredited investor
366 or qualified institutional buyer as defined respectively in Regulation D, Rule 501 or Rule 144A
367 of the Federal Securities Act of 1933, as amended, financing entity, special purpose entity, or
368 related provider trust; or

369 (ix) the licensee or any officer, partner, member or key management personnel has
370 violated any of the provisions of this life settlement act.

371 (x) Before the Commissioner denies a license application or suspends, revokes or refuses
372 to renew the license of any licensee under this life settlement act, the Commissioner shall
373 conduct a hearing in accordance with Chapter 30A.

374 Section 216. Contract Requirements

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

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

384 (c) A person shall not use a life settlement contract form or provide to an owner a
385 disclosure statement form in this state unless first filed with and approved by the Commissioner.
386 The Commissioner shall disapprove a life settlement contract form or disclosure statement form
387 if, in the Commissioner's opinion, the contract or provisions contained therein fail to meet the
388 requirements of Sections 219, 220, 222, and 223C(b) of this life settlement act or are
389 unreasonable, contrary to the interests of the public, or otherwise misleading or unfair to the
390 owner. At the Commissioner's discretion, the Commissioner may require the submission of
391 advertising material.

392 Section 217. Reporting Requirements and Privacy

393 (a) Each life settlement provider shall file with the Commissioner on or before March 1
394 of each year an annual statement containing such information as the Commissioner may
395 prescribe by regulation. In addition to any other requirements, the annual statement shall specify
396 the total number, aggregate face amount and life settlement proceeds of policies settled during
397 the immediately preceding calendar year, together with a breakdown of the information by policy
398 issue year for each carrier. The annual statement shall also include the names of the insurance
399 companies whose policies have been settled.

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

404 (i) Every life settlement provider that willfully fails to file an annual statement as
405 required in this section, or willfully fails to reply within thirty days to a written inquiry by the
406 Commissioner in connection therewith, shall, in addition to other penalties provided by this life
407 settlement act, be subject, upon due notice and opportunity to be heard, to a penalty of up to two
408 hundred fifty dollars per day of delay, not to exceed twenty-five thousand dollars in the
409 aggregate, for each such failure.

410 (b) Except as otherwise allowed or required by law, a life settlement provider, life
411 settlement broker, insurance company, insurance producer, information bureau, rating agency or
412 company, or any other person with actual knowledge of an insured's identity, shall not disclose
413 the identity of an insured or information that there is a reasonable basis to believe could be used
414 to identify the insured or the insured's financial or medical information to any other person
415 unless the disclosure:

416 (i) is necessary to effect a life settlement contract between the owner and a life settlement
417 provider and the owner and insured have provided prior written consent to the disclosure;

418 (ii) is necessary to effectuate the sale of life settlement contracts, or interests therein, as
419 investments, provided the sale is conducted in accordance with applicable state and federal
420 securities law and provided further that the owner and the insured have both provided prior
421 written consent to the disclosure;

422 (iii) is provided in response to an investigation or examination by the Commissioner or
423 any other governmental officer or agency.

424 (iv) is a term or condition to the transfer of a policy by one life settlement provider to
425 another life settlement provider, in which case the receiving life settlement provider shall be
426 required to comply with the confidentiality requirements of subsection (b) of this section;

427 (v) is necessary to allow the life settlement provider or life settlement broker or their
428 authorized representatives to make contacts for the purpose of determining health status. For the
429 purposes of this section, the term "authorized representative" shall not include any person who
430 has or may have any financial interest in the settlement contract other than a licensed life
431 settlement provider, licensed life settlement broker, financing entity, related provider trust or
432 special purpose entity; further, a life settlement provider or life settlement broker shall require its
433 authorized representative to agree in writing to adhere to the privacy provisions of this life
434 settlement act; or

435 (vi) is required to purchase stop loss coverage.

436 (c) Non-public personal information solicited or obtained in connection with a proposed
437 or actual life settlement contract shall be subject to the provisions applicable to financial
438 institutions under the federal Gramm Leach Bliley Act, P.L. 106-102 (1999), and all other state
439 and federal laws relating to confidentiality of non-public personal information.

440 Section 218. Examination

441 (a) The Commissioner may, when the Commissioner deems it reasonably necessary to
442 protect the interests of the public, examine the business and affairs of any licensee or applicant
443 for a license. The Commissioner may order any licensee or applicant to produce any records,
444 books, files or other information reasonably necessary to ascertain whether such licensee or

445 applicant is acting or has acted in violation of the law or otherwise contrary to the interests of the
446 public. The expenses incurred in conducting any examination shall be paid by the licensee or
447 applicant.

448 (b) In lieu of an examination under this life settlement act of any foreign or alien licensee
449 licensed in this state, the Commissioner may, at the Commissioner's discretion, accept an
450 examination report on the licensee as prepared by the Commissioner for the licensee's state of
451 domicile or port-of-entry state.

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

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

458 (e) Conduct of Examinations. (i) Upon determining that an examination should be
459 conducted, the Commissioner shall issue an examination warrant appointing one or more
460 examiners to perform the examination and instructing them as to the scope of the examination. In
461 conducting the examination, the examiner shall use methods common to the examination of any
462 licensee and should use those guidelines and procedures set forth in an examiners' handbook
463 adopted by a national organization.

464 (ii) Every licensee or person from whom information is sought, its officers, directors and
465 agents shall provide to the examiners timely, convenient and free access at all reasonable hours
466 at its offices to all books, records, accounts, papers, documents, assets and computer or other
467 recordings relating to the property, assets, business and affairs of the licensee being examined.
468 The officers, directors, employees and agents of the licensee or person shall facilitate the
469 examination and aid in the examination so far as it is in their power to do so. The refusal of a
470 licensee, by its officers, directors, employees or agents, to submit to examination or to comply
471 with any reasonable written request of the Commissioner shall be grounds for suspension or
472 refusal of, or nonrenewal of any license or authority held by the licensee to engage in the life
473 settlement business or other business subject to the Commissioner's jurisdiction. Any
474 proceedings for suspension, revocation or refusal of any license or authority shall be conducted
475 pursuant to Chapter 30A.

476 (iii) The Commissioner shall have the power to issue subpoenas, to administer oaths and
477 to examine under oath any person as to any matter pertinent to the examination. Upon the failure
478 or refusal of a person to obey a subpoena, the Commissioner may petition a court of competent
479 jurisdiction, and upon proper showing, the Court may enter an order compelling the witness to
480 appear and testify or produce documentary evidence.

481 (iv) When making an examination under this life settlement act, the Commissioner may
482 retain attorneys, appraisers, independent actuaries, independent certified public accountants or
483 other professionals and specialists as examiners, the reasonable cost of which shall be borne by
484 the licensee that is the subject of the examination.

485 (v) Nothing contained in this life settlement act shall be construed to limit the
486 Commissioner's authority to terminate or suspend an examination in order to pursue other legal
487 or regulatory action pursuant to the insurance laws of this state. Findings of fact and conclusions
488 made pursuant to any examination shall be prima facie evidence in any legal or regulatory action.

489 (vi) Nothing contained in this life settlement act shall be construed to limit the
490 Commissioner's authority to use and, if appropriate, to make public any final or preliminary
491 examination report, any examiner or licensee work papers or other documents, or any other
492 information discovered or developed during the course of any examination in the furtherance of
493 any legal or regulatory action which the Commissioner may, in his or her sole discretion, deem
494 appropriate.

495 (f) Examination Reports. (i) Examination reports shall be comprised of only facts
496 appearing upon the books, from the testimony of its officers or agents or other persons examined
497 concerning its affairs, and such conclusions and recommendations as the examiners find
498 reasonably warranted from the facts.

499 (ii) No later than sixty (60) days following completion of the examination, the examiner
500 in charge shall file with the Commissioner a verified written report of examination under oath.
501 Upon receipt of the verified report, the Commissioner shall transmit the report to the licensee
502 examined, together with a notice that shall afford the licensee examined a reasonable opportunity
503 of not more than thirty (30) days to make a written submission or rebuttal with respect to any
504 matters contained in the examination report and which shall become part of the report or to
505 request a hearing on any matter in dispute.

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

509 (g) Confidentiality of Examination Information. (i) Names and individual identification
510 data for all owners, purchasers, and insureds shall be considered private and confidential
511 information and shall not be disclosed by the Commissioner, unless the disclosure is to another
512 regulator or is required by law.

513 (h) Except as otherwise provided in this life settlement act, all examination reports,
514 working papers, recorded information, documents and copies thereof produced by, obtained by
515 or disclosed to the Commissioner or any other person in the course of an examination made
516 under this life settlement act, or in the course of analysis or investigation by the Commissioner of

517 the financial condition or market conduct of a licensee shall be confidential by law and
518 privileged, shall not be subject to Ch. 66 and clause 26 of section 7 of Ch. 4, shall not be subject
519 to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil
520 action. The Commissioner is authorized to use the documents, materials or other information in
521 the furtherance of any regulatory or legal action brought as part of the Commissioner's official
522 duties. The licensee being examined may have access to all documents used to make the report.

523 (h) Conflict of Interest. (i) An examiner may not be appointed by the Commissioner if the
524 examiner, either directly or indirectly, has a conflict of interest or is affiliated with the
525 management of or owns a pecuniary interest in any person subject to examination under this life
526 settlement act. This section shall not be construed to automatically preclude an examiner from
527 being:

528 (A) an owner;

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

530 (C) a beneficiary in an insurance policy that is proposed for a life settlement contract.

531 (ii) Notwithstanding the requirements of this clause, the Commissioner may retain from
532 time to time, on an individual basis, qualified actuaries, certified public accountants, or other
533 similar individuals who are independently practicing their professions, even though these persons
534 may from time to time be similarly employed or retained by persons subject to examination
535 under this life settlement act.

536 (i) Immunity from Liability. (i) No cause of action shall arise nor shall any liability be
537 imposed against the Commissioner, the Commissioner's authorized representatives or any
538 examiner appointed by the Commissioner for any statements made or conduct performed in good
539 faith while carrying out the provisions of this life settlement act.

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

547 (iii) A person identified in Paragraph (i) or (ii) shall be entitled to an award of attorney's
548 fees and costs if he or she is the prevailing party in a civil cause of action for libel, slander or any
549 other relevant tort arising out of activities in carrying out the provisions of this life settlement act
550 and the party bringing the action was not substantially justified in doing so. For purposes of this

551 section a proceeding is "substantially justified" if it had a reasonable basis in law or fact at the
552 time that it was initiated.

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

555 (k) Cost of Examinations. The charge for each such examination shall be determined
556 annually by the secretary of administration and finance under the provision of section three B of
557 chapter seven, and shall be paid by each company within thirty days after notice from the
558 commissioner of such charge. Such charge shall include an amount equal to the cost of fringe
559 benefits as established by the secretary of administration and finance pursuant to section six B of
560 chapter twenty-nine. If in the course of an examination of a domestic company or foreign
561 company which maintains a branch office outside the commonwealth, it becomes necessary or
562 expedient for the commissioner or any deputies or examiners to travel outside the
563 commonwealth, such company shall pay the proper expenses of the commissioner, or any
564 deputies or examiners incurred by reason thereof. Whenever the commissioner deems it
565 advisable the commissioner shall cause a complete audit of the books of the company to be made
566 by a disinterested expert accountant, and such company shall pay the proper expenses of such
567 audit.

568 Section 219. Advertising.

569 (a) A life settlement broker, or life settlement provider licensed pursuant to this life
570 settlement act may conduct or participate in advertisements within this state. Such
571 advertisements shall comply with all advertising laws or rules and regulations promulgated by
572 the Commissioner that are applicable to life insurers or to life insurance producers, brokers, and
573 providers licensed pursuant to this life settlement act.

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

576 (c) No person in the business of insurance or the business of life settlements shall:

577 (i) directly or indirectly market, advertise, or solicit the purchase of a new policy for the
578 purpose of or with a significant emphasis on settling the policy; or

579 (ii) use the words “free”, “no cost” or words of similar import in the marketing,
580 advertising, soliciting or otherwise promoting of the purchase of a policy.

581 Section 220. Disclosures to Owners.

582 (a) The life settlement provider shall provide in writing, in a separate document that is
583 signed by the owner, the following information to the owner no later than the date of application
584 for a life settlement contract:

585 (i) the fact that possible alternatives to life settlement contracts exist, including, but not
586 limited to, accelerated benefits offered by the issuer of the life insurance policy;

587 (ii) the fact that some or all of the proceeds of a life settlement contract may be taxable
588 and that assistance should be sought from a professional tax advisor;

589 (iii) the fact that the proceeds from a life settlement contract could be subject to the
590 claims of creditors;

591 (iv) the fact that receipt of proceeds from a life settlement contract may adversely affect
592 the recipients' eligibility for public assistance or other government benefits or entitlements and
593 that advice should be obtained from the appropriate agencies;

594 (v) the fact that the owner has a right to terminate a life settlement contract within fifteen
595 (15) days of the date it is executed by all parties and the owner has received the disclosures
596 contained herein. Rescission, if exercised by the owner, is effective only if both notice of the
597 rescission is given, and the owner repays all proceeds and any premiums, loans, and loan interest
598 paid on account of the life settlement provider within the rescission period. If the insured dies
599 during the rescission period, the life settlement contract shall be deemed to have been rescinded
600 subject to repayment by the owner or the owner's estate of all proceeds and any premiums, loans,
601 and loan interest to the life settlement provider;

602 (vi) the fact that proceeds will be sent to the owner within three (3) business days after
603 the life settlement provider has received the insurer or group administrator's acknowledgement
604 that ownership of the policy or interest in the certificate has been transferred and the beneficiary
605 has been designated in accordance with the terms of the life settlement contract;

606 (vii) the fact that entering into a life settlement contract may cause other rights or
607 benefits, including conversion rights and waiver of premium benefits that may exist under the
608 policy or certificate of a group policy to be forfeited by the owner and that assistance should be
609 sought from a professional financial advisor;

610 (viii) the amount and method of calculating the compensation paid or to be paid to the life
611 settlement broker, or any other person acting for the owner in connection with the transaction,
612 wherein the term compensation includes anything of value paid or given;

613 (ix) the date by which the funds will be available to the owner and the transmitter of the
614 funds;

615 (x) the fact that the Commissioner shall require delivery of a Buyer's Guide or a similar
616 consumer advisory package in the form prescribed by the Commissioner to Owners during the
617 solicitation process;

618 (xi) the disclosure document shall contain the following language: “all medical, financial
619 or personal information solicited or obtained by a life settlement provider or life settlement
620 broker about an insured, including the insured’s identity or the identity of family members, a
621 spouse or a significant other may be disclosed as necessary to effect the life settlement contract
622 between the owner and life settlement provider. If you are asked to provide this information, you
623 will be asked to consent to the disclosure. The information may be provided to someone who
624 buys the policy or provides funds for the purchase. You may be asked to renew your permission
625 to share information every two years”;

626 (xii) the fact that the Commissioner shall require life settlement providers and life
627 settlement brokers to print separate signed fraud warnings on their applications and on their life
628 settlement contracts is as follows:

629 “Any person who knowingly presents false information in an application for insurance or
630 life settlement contract is guilty of a crime and may be subject to fines and confinement in
631 prison.”

632 (xiii) the fact that the insured may be contacted by either the life settlement provider or
633 life settlement broker or its authorized representative for the purpose of determining the
634 insured’s health status or to verify the insured's address. This contact is limited to once every
635 three (3) months if the insured has a life expectancy of more than one year, and no more than
636 once per month if the insured has a life expectancy of one year or less;

637 (xiv) the affiliation, if any, between the life settlement provider and the issuer of the
638 insurance policy to be settled;

639 (xv) that a life settlement broker represents exclusively the owner, and not the insurer or
640 the life settlement provider or any other person, and owes a fiduciary duty to the owner,
641 including a duty to act according to the owner’s instructions and in the best interest of the
642 owner;

643 (xvi) the document shall include the name, address and telephone number of the provider;

644 (xvii) the name, business address, and telephone number of the independent third party
645 escrow agent, and the fact that the owner may inspect or receive copies of the relevant escrow or
646 trust agreements or documents;

647 (xviii) the fact that a change of ownership could in the future limit the insured’s ability to
648 purchase future insurance on the insured’s life because there is a limit to how much coverage
649 insurers will issue on one life;

650 (xix) The written disclosures shall be conspicuously displayed in any life settlement
651 contract furnished to the owner by a life settlement provider including any affiliations or
652 contractual arrangements between the life settlement provider and the life settlement broker.

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

657 (i) The name, business address and telephone number of the life settlement broker;

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

660 (iii) A written disclosure of any affiliations or contractual arrangements between the life
661 settlement broker and any person making an offer in connection with the proposed life settlement
662 contracts;

663 (iv) The name of each life settlement broker who receives compensation and the amount
664 of compensation received by that broker, which compensation includes anything of value paid or
665 given to the life settlement broker in connection with the life settlement contract;

666 (v) A complete reconciliation of the gross offer or bid by the life settlement provider to
667 the net amount of proceeds or value to be received by the owner. For the purpose of this section,
668 gross offer or bid shall mean the total amount or value offered by the life settlement provider for
669 the purchase of one or more life insurance policies, inclusive of commissions and fees; and

670 (vi) The failure to provide the disclosures or rights described in this section shall be
671 deemed an Unfair Trade Practice pursuant to Chapter 176D.

672 Section 221. Disclosure to Insurer

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

677 (i) If, as described in the definition of life settlement contract in Section 213, the
678 premium financing loan provides funds which can be used for a purpose other than paying for
679 the premiums, costs, and expenses associated with obtaining and maintaining the life insurance
680 policy and loan, the application shall be rejected as a violation of this life settlement act.

681 (ii) The insurance carrier:

682 (A) may make disclosures, including but not limited to such as the following, to the
683 applicant and the insured, either on the application or an amendment to the application to be
684 completed no later than the delivery of the policy:

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

688 (I) a change of ownership could lead to a stranger owning an interest in the insured's
689 life;

690 (II) a change of ownership could in the future limit your ability to purchase future
691 insurance on the insured's life because there is a limit to how much coverage insurers will issue
692 on one life;

693 (III) should there be a change of ownership and you wish to obtain more insurance
694 coverage on the insured's life in the future, the insured's higher issue age, a change in health
695 status, and/or other factors may reduce the ability to obtain coverage and/or may result in
696 significantly higher premiums;

697 (IV) you should consult a professional advisor, since a change in ownership in
698 satisfaction of the loan may result in tax consequences to the owner, depending on the structure
699 of the loan."; and

700 (B) may require certifications, such as the following, from the applicant and/or the
701 insured:

702 (I) "I have not entered into any agreement or arrangement providing for the future
703 sale of this life insurance policy;

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

708 (III) the borrower has an insurable interest in the insured."

709 Section 222. General Rules

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

712 (i) if the owner is the insured, a written statement from a licensed attending physician that
713 the owner is of sound mind and under no constraint or undue influence to enter into a life
714 settlement contract; and

715 (ii) a document in which the insured consents to the release of his medical records to a
716 life settlement provider, life settlement broker, or insurance producer and, if the policy was

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

719 (b) The insurer shall respond to a request for verification of coverage submitted by a life
720 settlement provider, life settlement broker, or life insurance producer not later than thirty
721 calendar days of the date the request is received. The request for verification of coverage must
722 be made on a form approved by the Commissioner. The insurer shall complete and issue the
723 verification of coverage or indicate in which respects it is unable to respond. In its response, the
724 insurer shall indicate whether, based on the medical evidence and documents provided, the
725 insurer intends to pursue an investigation at this time regarding the validity of the insurance
726 contract.

727 (c) Before or at the time of execution of the settlement contract, the life settlement
728 provider shall obtain a witnessed document in which the owner consents to the life settlement
729 contract, represents that the owner has a full and complete understanding of the life settlement
730 contract, that the owner has a full and complete understanding of the benefits of the policy,
731 acknowledges that the owner is entering into the life settlement contract freely and voluntarily,
732 and, for persons with a terminal or chronic illness or condition, acknowledges that the insured
733 has a terminal or chronic illness and that the terminal or chronic illness or condition was
734 diagnosed after the policy was issued.

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

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

740 (f) If a life settlement broker performs those verification of coverage activities required of
741 the life settlement provider, the life settlement provider is deemed to have fulfilled the
742 requirements of this section.

743 (g) Within twenty (20) days after an owner executes the life settlement contract, the life
744 settlement provider shall give written notice to the insurer that issued that insurance policy that
745 the policy has become subject to a life settlement contract. The notice shall be accompanied by
746 the documents required by subsection (a) of this section.

747 (h) All medical information solicited or obtained by any licensee shall be subject to the
748 applicable provision of state law relating to confidentiality of medical information, if not
749 otherwise provided in this life settlement act.

750 (i) All life settlement contracts entered into in this state shall provide that the owner may
751 rescind the life settlement contract on or before fifteen (15) days after the date it is executed by

752 all parties thereto. Rescission, if exercised by the owner, is effective only if both notice of the
753 rescission is given, and the owner repays all proceeds and any premiums, loans, and loan interest
754 paid on account of the life settlement provider within the rescission period. If the insured dies
755 during the rescission period, the life settlement contract shall be deemed to have been rescinded
756 subject to repayment by the owner or the owner's estate of all proceeds and any premiums, loans,
757 and loan interest to the life settlement provider.

758 (j) Within three business days after receipt from the owner of documents to effect the
759 transfer of the policy pursuant to the life settlement contract, the life settlement provider shall
760 pay the proceeds of the life settlement contract to an escrow or trust account managed by a
761 trustee or escrow agent in a state or federally chartered financial institution pending
762 acknowledgement of the transfer by the issuer of the policy. The trustee or escrow agent shall be
763 required to transfer the proceeds due to the owner within three business days of
764 acknowledgement of the transfer from the insurer.

765 (k) Failure to tender the life settlement contract proceeds to the owner by the date
766 disclosed to the owner renders the life settlement contract voidable by the owner for lack of
767 consideration until the time the proceeds are tendered to and accepted by the owner. A failure to
768 give written notice of the right of rescission hereunder shall toll the right of rescission until thirty
769 days after the written notice of the right of rescission has been given.

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

775 (m) The life settlement broker shall disclose to the owner anything of value paid or given
776 to a life settlement broker, which relate to a life settlement contract.

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

782 (i) the policy was issued upon the owner's exercise of conversion rights arising out of a
783 group or individual policy, provided the total of the time covered under the conversion policy
784 plus the time covered under the prior policy is at least twenty four months. The time covered
785 under a group policy must be calculated without regard to a change in insurance carriers,
786 provided the coverage has been continuous and under the same group sponsorship; or

787 (ii) the owner submits independent evidence to the life settlement provider that one or
788 more of the following conditions have been met within the two year period:

789 (A) the owner or insured is terminally or chronically ill;

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

793 (C) the owner's spouse dies;

794 (D) the owner divorces his or her spouse;

795 (E) the owner retires from full-time employment;

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

798 (G) a final order, judgment or decree is entered by a court of competent jurisdiction,
799 on the application of a creditor of the owner, adjudicating the owner bankrupt or insolvent, or
800 approving a petition seeking reorganization of the owner or appointing a receiver, trustee or
801 liquidator to all or a substantial part of the owner's assets;

802 (iii) Copies of the independent evidence required by subsection (n)(ii) of this section shall
803 be submitted to the insurer when the life settlement provider submits a request to the insurer for
804 verification of coverage. The copies shall be accompanied by a letter of attestation from the life
805 settlement provider that the copies are true and correct copies of the documents received by the
806 life settlement provider. Nothing in this section shall prohibit an insurer from exercising its right
807 to contest the validity of any policy;

808 (iv) If the life settlement provider submits to the insurer a copy of independent evidence
809 provided for in item (ii)(A) when the life settlement provider submits a request to the insurer to
810 effect the transfer of the policy to the life settlement provider, the copy is deemed to establish
811 that the life settlement contract satisfies the requirements of this section.

812 Section 223. Authority to Promulgate Regulations; Conflict of Laws

813 The Commissioner may promulgate regulations implementing this life settlement act and
814 regulating the activities and relationships of life settlement providers, life settlement brokers, life
815 insurance producers, insurers, and others, subject to statutory limitations on administrative rule
816 making.

817 (b) (i) If there is more than one owner on a single policy, and the owners are residents of
818 different states, the life settlement contract shall be governed by the law of the state in which the
819 owner having the largest percentage ownership resides or, if the owners hold equal ownership,

820 the state of residence of one owner agreed upon in writing by all of the owners. The law of the
821 state of the insured shall govern in the event that equal owners fail to agree in writing upon a
822 state of residence for jurisdictional purposes.

823 (ii) A life settlement provider from this state who enters into a life settlement contract
824 with an owner who is a resident of another state that has enacted statutes or adopted regulations
825 governing life settlement contracts, shall be governed in the effectuation of that life settlement
826 contract by the statutes and regulations of the owner's state of residence. If the state in which the
827 owner is a resident has not enacted statutes or regulations governing life settlement contracts, the
828 life settlement provider shall give the owner notice that neither state regulates the transaction
829 upon which he or she is entering. For transactions in those states, however, the life settlement
830 provider is to maintain all records required if the transactions were executed in the state of
831 residence. The forms used in those states need not be approved by the commissioner.

832 (iii) If there is a conflict in the laws that apply to an owner and a purchaser in any
833 individual transaction, the laws of the state that apply to the owner shall take precedence and the
834 provider shall comply with those laws.

835 Section 223A. Prohibited Practices.

836 (a) It is unlawful for any person to:

837 (i) enter into a life settlement contract if such person knows or reasonably should have
838 known that the policy was obtained by means of a false, deceptive or misleading application for
839 such policy;

840 (ii) engage in any transaction, practice or course of business if such person knows or
841 reasonably should have known that the intent was to avoid the notice requirements of this life
842 settlement act;

843 (iii) engage in any fraudulent act or practice in connection with any transaction relating to
844 any settlement involving an owner who is a resident of this state;

845 (iv) issue, solicit, or market the purchase of a new policy for the purpose of or with a
846 significant emphasis on settling the policy;

847 (v) if providing premium financing, receive any proceeds, fees, or other consideration
848 from the policy or owner of the policy that are in addition to the amounts required to pay
849 principal, interest, and any reasonable costs or expenses incurred by the lender or borrower in
850 connection with the premium finance agreement, except for the event of a default, unless either
851 the default on the loan or transfer of the policy occurs pursuant to an agreement or understanding
852 with any other person for the purpose of evading regulation under this life settlement act;

853 (vi) with respect to any life settlement contract or insurance policy and a life settlement
854 broker, knowingly solicit an offer from, effectuate a life settlement contract with or make a sale
855 to any life settlement provider, financing entity or related provider trust that is controlling,
856 controlled by, or under common control with such life settlement broker unless such relationship
857 is disclosed to the owner;

858 (vii) with respect to any life settlement contract or insurance policy and a life settlement
859 provider, knowingly enter into a life settlement contract with an owner, if, in connection with
860 such life settlement contract, anything of value will be paid to a life settlement broker that is
861 controlling, controlled by, or under common control with such life settlement provider or the
862 financing entity or related provider trust that is involved in such life settlement contract unless
863 such relationship is disclosed to the owner;

864 (viii) with respect to a life settlement provider, enter into a life settlement contract unless
865 the related advertisements, as may be prescribed by regulation, have been filed with the
866 Commissioner. In no event shall any advertisement expressly reference that the insurance is
867 "free" for any period of time. The inclusion of any reference in the advertisement that would
868 cause an owner to reasonably believe that the insurance is free for any period of time shall be
869 considered a violation of this life settlement act; or

870 (ix) with respect to any life insurance producer, insurance company, life settlement
871 broker, or life settlement provider make any statement or representation to the applicant or
872 policyholder in connection with the sale or financing of a policy to the effect that the policy is
873 free or without cost to the policyholder for any period of time unless provided in the policy.

874 B. A violation of this section shall be deemed a fraudulent life settlement act.

875 Section 223B. Fraud Prevention and Control.

876 (a) Fraudulent Life Settlement Acts, Interference and Participation of Convicted Felons
877 Prohibited. (i) A person shall not commit a fraudulent life settlement act.

878 (ii) A person shall not knowingly and intentionally interfere with the enforcement of the
879 provisions of this life settlement act or investigations of suspected or actual violations of this life
880 settlement act.

881 (iii) A person in the business of life settlements shall not knowingly or intentionally
882 permit any person convicted of a felony involving dishonesty or breach of trust to participate in
883 the business of life settlements.

884 (b) Fraud Warning Required. (i) Life settlement contracts and applications for life
885 settlement contracts, regardless of the form of transmission, shall contain the following statement
886 or a substantially similar statement:

887 "Any person who knowingly presents false information in an application for insurance or
888 life settlement contract is guilty of a crime and may be subject to fines and confinement in
889 prison."

890 (ii) The lack of a statement as required in Paragraph (i) of this subsection does not
891 constitute a defense in any prosecution for a fraudulent life settlement act.

892 (c) Mandatory Reporting of Fraudulent Life Settlement Acts. (i) Any person engaged in
893 the business of life settlements having knowledge or a reasonable belief that a fraudulent life
894 settlement act is being, will be or has been committed shall provide to the Commissioner the
895 information required by, and in a manner prescribed by, the Commissioner.

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

899 (d) Immunity from Liability. (i) No civil liability shall be imposed on and no cause of
900 action shall arise from a person's furnishing information concerning suspected, anticipated or
901 completed fraudulent life settlement acts or suspected or completed fraudulent insurance acts, if
902 the information is provided to or received from:

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

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

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

908 (D) any regulatory body or their employees, agents or representatives, overseeing life
909 insurance, life settlements, securities or investment fraud;

910 (E) the life insurer that issued the life insurance policy covering the life of the insured; or

911 (F) the licensee and any agents, employees or representatives.

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

917 (iii) A person identified in Paragraph (i) shall be entitled to an award of attorney's fees
918 and costs if he or she is the prevailing party in a civil cause of action for libel, slander or any
919 other relevant tort arising out of activities in carrying out the provisions of this life settlement act

920 and the party bringing the action was not substantially justified in doing so. For purposes of this
921 paragraph a proceeding is "substantially justified" if it had a reasonable basis in law or fact at the
922 time that it was initiated.

923 (iv) This section does not abrogate or modify common law or statutory privileges or
924 immunities enjoyed by a person described in Paragraph (i).

925 (e) Confidentiality. (i) The documents and evidence provided pursuant to Subsection (d)
926 of this section or obtained by the Commissioner in an investigation of suspected or actual
927 fraudulent life settlement acts shall be privileged and confidential and shall not be a public
928 record and shall not be subject to discovery or subpoena in a civil or criminal action.

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

932 (A) in administrative or judicial proceedings to enforce laws administered by the
933 Commissioner;

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

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

938 (iii) Release of documents and evidence under Paragraph (ii) of this subsection does not
939 abrogate or modify the privilege granted in Paragraph (i).

940 (f) Other Law Enforcement or Regulatory Authority. This life settlement act shall not:

941 (i) Preempt the authority or relieve the duty of other law enforcement or regulatory
942 agencies to investigate, examine, and prosecute suspected violations of law.

943 (ii) Preempt, supersede, or limit any provision of any state securities law or any rule,
944 order, or notice issued thereunder.

945 (iii) Prevent or prohibit a person from disclosing voluntarily information concerning life
946 settlement fraud to a law enforcement or regulatory agency other than the commissioner.

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

950 (g) Life Settlement Antifraud Initiatives. (i) Life settlement providers and life settlement
951 brokers shall have in place antifraud initiatives reasonably calculated to detect, prosecute and

952 prevent fraudulent life settlement acts. At the discretion of the Commissioner, the Commissioner
953 may order, or a licensee may request and the Commissioner may grant, such modifications of the
954 following required initiatives as necessary to ensure an effective antifraud program. The
955 modifications may be more or less restrictive than the required initiatives so long as the
956 modifications may reasonably be expected to accomplish the purpose of this section. Antifraud
957 initiatives shall include:

958 (A) Fraud investigators, who may be life settlement provider or life settlement broker
959 employees or independent contractors; and

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

962 (I) a description of the procedures for detecting and investigating possible fraudulent life
963 settlement acts and procedures for resolving material inconsistencies between medical records
964 and insurance applications;

965 (II) a description of the procedures for reporting possible fraudulent life settlement acts to
966 the Commissioner;

967 (III) a description of the plan for antifraud education and training of underwriters and
968 other personnel; and

969 (IV) a description or chart outlining the organizational arrangement of the antifraud
970 personnel who are responsible for the investigation and reporting of possible fraudulent life
971 settlement acts and investigating unresolved material inconsistencies between medical records
972 and insurance applications.

973 (ii) Antifraud plans submitted to the Commissioner shall be privileged and confidential
974 and shall not be a public record and shall not be subject to discovery or subpoena in a civil or
975 criminal action.

976 Section 223C. Injunctions; Civil Remedies; Cease and Desist. (a) In addition to the
977 penalties and other enforcement provisions of this life settlement act, if any person violates this
978 life settlement act or any rule implementing this life settlement act, the Commissioner may seek
979 an injunction in a court of competent jurisdiction in the county where the person resides or has a
980 principal place of business and may apply for temporary and permanent orders that the
981 Commissioner determines necessary to restrain the person from further committing the violation.

982 (b) Any person damaged by the acts of another person in violation of this life settlement
983 act or any rule or regulation implementing this life settlement act, may bring a civil action for
984 damages against the person committing the violation in a court of competent jurisdiction.

985 (c) The Commissioner may issue a cease and desist order upon a person who violates any
986 provision of this part, any rule or order adopted by the Commissioner, or any written agreement
987 entered into with the Commissioner, in accordance with Ch. 30A.

988 (d) When the Commissioner finds that such an action presents an immediate danger to the

989 public and requires an immediate final order, he may issue an emergency cease and desist
990 order reciting with particularity the facts underlying such findings. The emergency cease and
991 desist order is effective immediately upon service of a copy of the order on the respondent and
992 remains effective for 90 days. If the commissioner begins non-emergency cease and desist
993 proceedings under paragraph (c), the emergency cease and desist order remains effective, absent
994 an order by an appellate court of competent jurisdiction pursuant to Ch. 30A. In the event of a
995 willful violation of this life settlement act, the trial court may award statutory damages in
996 addition to actual damages in an additional amount up to three times the actual damage award.
997 The provisions of this life settlement act may not be waived by agreement. No choice of law
998 provision may be utilized to prevent the application of this life settlement act to any life
999 settlement contract in which a party to the life settlement contract is a resident of this state.

1000 Section 223D. Penalties

1001 (a) It is a violation of this life settlement act for any person, life settlement provider, life
1002 settlement broker, or any other party related to the business of life settlements, to commit a
1003 fraudulent life settlement act.

1004 (b) for criminal liability purposes, a person that commits a fraudulent life settlement act is
1005 guilty of committing insurance fraud and shall be subject to additional penalties under the
1006 General Laws.

1007 (c) The Commissioner shall be empowered to levy a civil penalty not exceeding ten
1008 thousand dollars for each violation upon any person, including those persons and their employees
1009 licensed pursuant to this life settlement act, who is found to have committed a fraudulent life
1010 settlement act or violated any other provision of this life settlement act.

1011 (d) The license of a person licensed under this life settlement act that commits a
1012 fraudulent life settlement act shall be revoked for a period of at least one year.

1013 Section 223E. Unfair Trade Practices

1014 A violation of this life settlement act shall be considered an unfair trade practice under
1015 chapter 176D, subject to the penalties contained therein.

1016 Section 223F. Effective Date

1017 (a) A person licensed to act as a viatical settlement broker or viatical settlement provider
1018 as of the effective date of this law, shall be deemed qualified for licensure as a life settlement

1019 broker or life settlement provider, respectively, and shall be subject to all the provisions of this
1020 article as if the person were originally licensed as a life settlement broker or life settlement
1021 provider.

1022 (b) A life settlement provider lawfully transacting business in this state prior to the
1023 effective date of this life settlement act may continue to do so pending approval or disapproval of
1024 that person's application for a license as long as the application is filed with the Commissioner
1025 not later than 30 days after publication by the Commissioner of an application form and
1026 instructions for licensure of life settlement providers. If the publication of the application form
1027 and instructions is prior to the effective date of this life settlement act, then the filing of the
1028 application shall not be later than 30 days after the effective date of this life settlement act.
1029 During the time that such an application is pending with the Commissioner, the applicant may
1030 use any form of life settlement contract that has been filed with the Commissioner pending
1031 approval thereof, provided that such form is otherwise in compliance with the provisions of this
1032 life settlement act. Any person transacting business in this state under this provision shall be
1033 obligated to comply with all other requirements of this life settlement act.

1034 (c) A person who has lawfully negotiated life settlement contracts between any owner
1035 residing in this state and one or more life settlement providers for at least one year immediately
1036 prior to the effective date of this life settlement act may continue to do so pending approval or
1037 disapproval of that person's application for a license as long as the application is filed with the
1038 Commissioner not later than 30 days after publication by the Commissioner of an application
1039 form and instructions for licensure of life settlement brokers. If the publication of the application
1040 form and instructions is prior to the effective date of this life settlement act, then the filing of the
1041 application shall not be later than 30 days after the effective date of this life settlement act. Any
1042 person transacting business in this state under this provision shall be obligated to comply with all
1043 other requirements of this life settlement act.

1044 SECTION 2. This act shall apply to all life settlement contracts entered into after January
1045 1, 2011, involving any life insurance policy in effect, or entered into, on or after the operative
1046 date of this act.