COMMITTEE AMENDMENT ADOPTED

April 28, 2009

**S. 636**

Introduced by Senator Thomas

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Read the first time March 31, 2009.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 64 TO TITLE 38 SO AS TO ENACT THE “LIFE SETTLEMENTS ACT”; TO PROVIDE FOR THE REGULATION OF A LIFE SETTLEMENT CONTRACT; TO PROVIDE FOR THE PROTECTION OF PERSONS ENTERING INTO THESE AGREEMENTS REGARDING CONTRACTUAL AND PROPERTY RIGHTS OF A LIFE INSURANCE POLICY OWNER AND AUTHORIZE THE DIRECTOR OF INSURANCE TO ENFORCE THE PROVISIONS OF THIS CHAPTER; TO PROVIDE FOR THE LICENSING OF A BROKER OR PRODUCER TO ENTER INTO LIFE SETTLEMENT CONTRACTS; TO PROVIDE FOR THE SUSPENSION, REVOCATION, OR REFUSAL TO RENEW THESE LICENSES; TO PROVIDE FOR CONTRACT REQUIREMENTS, REPORTING AND PRIVACY REQUIREMENTS; TO AUTHORIZE THE DIRECTOR TO EXAMINE THE BUSINESS AND AFFAIRS OF A LICENSEE OR APPLICANT, PROVIDE FOR EXAMINATION REPORTS AND CONFIDENTIALITY OF EXAMINATION INFORMATION, PROHIBIT CONFLICT OF INTEREST BY AN EXAMINER, AND PROVIDE FOR IMMUNITY FROM LIABILITY; TO PROVIDE FOR ADVERTISING REQUIREMENTS OF A BROKER OR LICENSED PROVIDER; TO PROVIDE FOR CERTAIN DISCLOSURES TO AN OWNER; TO PROVIDE DISCLOSURE BY A PROPOSED OWNER OF A LIFE INSURANCE POLICY IF THE OWNER INTENDS TO PAY PREMIUMS WITH THE ASSISTANCE OF FINANCING FROM A LENDER THAT WILL USE THE POLICY AS COLLATERAL TO SUPPORT THE FINANCING; TO REQUIRE A PROVIDER ENTERING INTO A LIFE SETTLEMENT CONTRACT WITH AN OWNER OF THE POLICY WHERE THE INSURED IS TERMINALLY OR CHRONICALLY ILL TO OBTAIN CERTAIN INFORMATION; TO AUTHORIZE THE DIRECTOR TO PROMULGATE REGULATIONS TO IMPLEMENT AND EFFECTUATE THE PROVISIONS OF THIS CHAPTER; TO PROVIDE FOR PROHIBITIVE PRACTICES, FRAUD PREVENTION, AND CONTROL; AND TO PROVIDE PENALTIES FOR VIOLATIONS.

Amend Title To Conform

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Title 38 of the 1976 Code is amended by adding:

“CHAPTER 64

Life Settlements Act

Section 38‑64‑10. This chapter may be cited as the ‘Life Settlements Act’.

Section 38‑64‑20. As used in this chapter:

(1) ‘Advertisement’ means a written, electronic, or printed communication or a 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 directly before an owner in this State, for the purpose of creating an interest in or inducing an owner to purchase, 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.

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

(3) ‘Business of life settlements’ means an activity involved in, but not limited to, offering to enter into soliciting, negotiating, procuring, effectuating, monitoring, or tracking of life settlement contracts.

(4) ‘Chronically ill’ means:

(a) being unable to perform at least two activities of daily living such as eating, toileting, transferring, bathing, dressing, or continence;

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

(c) having a level of disability similar to that described in subitem (a) as determined by the United States Secretary of Health and Human Services.

(5) ‘Director’ means the Director of the Department of Insurance.

(6)(a) ‘Financing entity’ means an underwriter, placement agent, lender, purchaser of securities, purchaser of a policy or certificate from a provider, credit enhancer, or an entity that has a direct ownership in a policy that is the subject of a life settlement contract, but:

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

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

(b) ‘Financing entity’ does not include a nonaccredited investor or purchaser.

(7) ‘Financing transaction’ means a transaction in which a licensed producer obtains financing from a financing entity including, without limitation, any secured or unsecured financing, any securitization transaction, or any securities offering which either is registered or exempt from registration under federal and state securities law.

(8) ‘Fraudulent life settlement act’ includes:

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

(i) presenting, causing to be presented, or preparing with knowledge and belief that it will be presented to or by a provider, premium finance lender, broker, insurer, insurance producer, or another person, false material information, or concealing material information, as part of, in support of, or concerning a fact material to one or more of the following:

(A) an application for the issuance of a life settlement contract or insurance policy;

(B) the underwriting of a life settlement contract or insurance policy;

(C) a claim for payment or benefit pursuant to a life settlement contract or insurance policy;

(D) premiums paid on a insurance policy;

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

(F) the reinstatement or conversion of a insurance policy;

(G) in the solicitation, offer to enter into, or effectuation of a life settlement contract, or insurance policy;

(H) the issuance of written evidence of life settlement contract or insurance policy;

(I) an application for or the existence of or any payments related to a loan secured directly or indirectly by any interest in a life insurance policy; or

(J) entering into stranger‑originated life insurance;

(ii) employing a device, scheme, or artifice to defraud in the business of life settlements;

(b) in the furtherance of a fraud or to prevent the detection of a fraud a person commits or permits its employees or its agents to:

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

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

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

(iv) file with the director a document containing false information or otherwise concealing information about a material fact from the director;

(v) engage in embezzlement, theft, misappropriation, or conversion of monies, funds, premiums, credits, or other property of a provider, insurer, insured, owner, insurance policy owner, or another person engaged in the business of life settlements or insurance;

(vi) knowingly and with intent to defraud, enter into, broker, or otherwise deal in a life settlement contract, the subject of which is a life insurance policy that was obtained by presenting false information concerning a fact material to the policy or by concealing, for the purpose of misleading another, information concerning a fact material to the policy, where the owner or the owner’s agent intended to defraud the policy’s issuer;

(vii) attempt to commit, assist, aid or abet in the commission of, or conspiracy to commit the acts or omissions specified in this subsection; or

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

(9) ‘Insured’ means the person covered under the policy being considered for sale in a life settlement contract.

(10) ‘Life expectancy’ means the arithmetic mean of the number of months the insured under the life insurance policy to be settled can be expected to live considering medical records and appropriate experiential data.

(11) ‘Life insurance producer’ means a person licensed in this State as a resident or nonresident insurance producer pursuant to Section 38‑43‑10 who has received qualification or authority for life insurance coverage pursuant to Section 38‑43‑75(1).

(12)(a) ‘Life settlement contract’ means a written agreement entered into between a provider and an owner establishing the terms under which compensation or thing of value may be paid, which compensation or thing of value is less than the expected death benefit of the insurance policy or certificate, in return for the owner’s assignment, transfer, sale, devise or bequest of the death benefit, or a portion of an insurance policy or certificate of insurance for compensation. The minimum value for a life settlement contract must be greater than a cash surrender value or accelerated death benefit available at the time of an application for a life settlement contract.

(b) ‘Life settlement contract’ also includes the transfer of compensation or value of ownership or beneficial interest in a trust or other entity that owns a policy if the trust or entity was formed or availed of for the principal purpose of acquiring one or more life insurance contracts, which life insurance contract is owned by a person residing in this State.

(c) ‘Life settlement contract’ also includes a premium finance loan made for a policy on or before the date of issuance of the policy where:

(i) the loan proceeds are not used only to pay premiums for the policy and any costs or expenses incurred by the lender or the borrower in connection with the financing; or

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

(iii) the owner agrees on the date of the premium finance loan to sell the policy or a portion of its death benefit on a date following the issuance of the policy.

(d) An agreement described in item (12)(a) is a ‘life settlement contract’ even if it is referred to by a different name, including viatical settlement, a senior settlement, or similar term.

(e) ‘Life settlement contract’ does not include:

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

(ii) a premium finance loan, as defined in this chapter, or a loan made by a bank or other licensed financial institution, provided that neither default on a loan nor the transfer of the policy in connection with a default is pursuant to an agreement or understanding with another person for the purpose of evading regulation under this chapter;

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

(iv) a loan made by a lawful lender provided the loan is not described in subitem (c), and is not otherwise within the definition of life settlement contract;

(v) an agreement where all the parties (1) are closely related to the insured by blood or law or (2) have a lawful substantial economic interest in the continued life, health, and bodily safety of the person insured, or are trusts established primarily for the benefit of these parties;

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

(vii) a bona fide business succession planning arrangement between one or more:

(A) shareholders in a corporation or between a corporation and one or more of its shareholders or one or more trust established by its shareholders;

(B) partners in a partnership or between a partnership and one or more of its partners or one or more trust established by its partners; or

(C) members in a limited liability company or between a limited liability company and one or more of its members or one or more trust established by its members;

(viii) an agreement entered into by a service recipient, or a trust established by the service recipient, and a service provider, or a trust established by the service provider, who performs significant services for the service recipient’s trade or business; or

(ix) another contract, transaction, or arrangement from the definition of life settlement contract that the director determines is not of the type intended to be regulated by this chapter.

(13) ‘Net death benefit’ means the amount of the life insurance policy or certificate to be settled less any outstanding debts or liens.

(14)(a) ‘Owner’ means the owner of a life insurance policy or a certificate holder under a group policy, with or without a terminal illness, who enters or seeks to enter into a life settlement contract. For the purposes of this chapter, an owner is not limited to an owner of a life insurance policy or a certificate holder under a group policy that insures the life of an individual with a terminal or chronic illness or condition except where specifically addressed. (b) The term ‘owner’ does not include a:

(i) provider or other licensee under this chapter;

(ii) qualified institutional buyer as defined in Rule 144A of the Federal Securities Act of 1933, as amended;

(iii) financing entity;

(iv) special purpose entity; or

(v) related provider trust.

(15) ‘Patient identifying information’ means an insured’s address, telephone number, facsimile number, electronic mail address, photograph or likeness, employer, employment status, social security number, or other information that is likely to lead to the identification of the insured.

(16) ‘Person’ means a natural person or legal entity including, but not limited to, a partnership, limited liability company, association, trust, or corporation.

(17) ‘Policy’ means an individual or group policy, group certificate, contract, or arrangement of life insurance owned by a resident of this State, regardless of whether delivered or issued for delivery in this State.

(18) ‘Premium Finance Loan’ is a loan made primarily for the purposes of making premium payments on a life insurance policy, which loan is secured by an interest in the life insurance policy.

(19)(a) ‘Provider’ means a person other than an owner, who enters into or effectuates a life settlement contract with an owner.

(b) ‘Provider’ does not include:

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

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

(iii) the insurer of a life insurance policy or rider to the extent of providing accelerated death benefits, riders, or cash surrender value;

(iv) a person who enters into or effectuates no more than one agreement in a calendar year for the transfer of a life insurance policy or certificate issued pursuant to a group life insurance policy for compensation or anything of value less than the expected death benefit payable under the policy;

(v) a purchaser;

(vi) any authorized or eligible insurer than provides stop loss coverage to a provider, purchaser, financing entity, special purpose entity, or related provider trust;

(vii) a financing entity;

(viii) a special purpose entity;

(ix) a related provider trust;

(x) a broker; or

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

(20) ‘Purchased policy’ means a policy or group certificate that has been acquired by a provider pursuant to a life settlement contract.

(21) ‘Purchaser’ means a person who pays compensation or anything of value as consideration for a beneficial interest in a trust which is vested with, or for the assignment, transfer, or sale of, an ownership or other interest in a life insurance policy or a certificate issued pursuant to a group life insurance policy which has been the subject of a life settlement contract.

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

(23) ‘Settled policy’ means a life insurance policy or certificate that has been acquired by a provider pursuant to a life settlement contract.

(24) ‘Special purpose entity’ means a corporation, partnership, trust, limited liability company, or other legal entity formed only to provide either directly or indirectly access to institutional capital markets for a financing entity or provider:

(a) in connection with a transaction in which the securities in the special purpose entity are acquired by the owner or by a ‘qualified institutional buyer’ as defined in Rule 144A of the Federal Securities Act of 1993, as amended; or

(b) the securities pay a fixed rate of return commensurate with established asset‑backed institutional capital markets.

(25) ‘Stranger‑originated life insurance’ or ‘STOLI’ means an act, practice, or arrangement to initiate the issuance of a life insurance policy in this State for the benefit of a third party investor who, at the item of policy origination, has no insurable interest, under the laws of this State, in the life of the insured. STOLI practices include, but are not limited to, cases in which life insurance is purchased with resources or guarantees from or through a person, or entity, who, at the time of policy inception, could not lawfully initiate the policy himself, or itself, where, at the time of inception, there is an arrangement or agreement, to directly or indirectly transfer the ownership of the policy or the policy benefits to a third party. Trusts that are created to give the appearance of insurable interest and are used to initiate policies for investors violate insurable interest laws and the prohibition against wagering on life. STOLI arrangements do not include the lawful assignment of a policy, including a lawful life settlement contract, or those practices provided for in life settlement contracts as defined in item (12)(d).

(26) ‘Terminally ill’ means having an illness or sickness that reasonably is expected to result in death in twenty‑four months or less.

Section 38‑64‑30. (A) Except as provided for in subsections (C) and (D) of this section, a person shall not act as a provider or broker with an owner or multiple owners who is a resident of this State, without first having obtained a license from the director. If there is more than one owner on a single policy and the owners are residents of different states, the life settlement contract is governed by the law of the state in which the owner having the largest percentage ownership resides or, if the owners hold equal ownership, the state of residence of one owner agreed upon in writing by all owners.

(B) Application for a provider or broker license must be made to the director by the applicant on a form prescribed by the director, and the application must be accompanied by a fee in an amount established by the director. The license and renewal fees for a provider license must be reasonable and that the license and renewal fees for a broker license may not exceed those established for an insurance producer, as these fees are otherwise provided for in this chapter.

(C) A life insurance producer who has been duly licensed as a resident insurance producer with a life line of authority in this State or his home state for at least one year and is licensed as a nonresident producer in this State is considered to meet the licensing requirements of this section and is permitted to operate as a broker.

(D) Not later than ten days from the first day of operating as a broker, the life insurance producer shall notify the director that he is acting as a broker on a form prescribed by the director, and shall pay any applicable fees to be determined by the director. Notification must include an acknowledgment by the life insurance producer that he operates as a broker in accordance with this chapter.

(E) The insurer that issued the policy that is the subject of a life settlement contract is not responsible of an act or omission of a broker or provider or purchaser arising out of or in connection with the life settlement transaction, unless the insurer receives compensation for the placement of a life settlement contract from the broker or provider or purchaser in connection with the life settlement contract.

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

(G) Licenses may be renewed every two years on the anniversary date upon payment of the periodic renewal fee. As specified by subsection (B), the renewal fee for a provider may not exceed a reasonable fee. Failure to pay the fee within the terms prescribed results in the automatic revocation of the license requiring periodic renewal.

(H) The term of a provider license is equal to that of a domestic stock life insurance company and the term of a broker license is equal to that of an insurance producer license. Licenses requiring periodic renewal may be renewed on their anniversary date upon payment of the periodic renewal fee as specified in subsection (B). Failure to pay the fees on or before the renewal date results in expiration of the license.

(I) The applicant shall provide information as the director requires on forms prescribed by the director. The director has the authority, at any time, to require the applicant to fully disclose the identity of its stockholders (except stockholders owning fewer than ten percent of the shares of an applicant whose shares are publicly traded), partners, officers, and employees. The director, in his discretion, may refuse to issue a license in the name of a person if not satisfied that an officer, employee, stockholder, or partner of any of them who may materially influence the applicant’s conduct meets the standards of this chapter.

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

(K) Upon the filing of an application and the payment of the license fee, the director shall make an investigation of each applicant and may issue a license if the director finds that the applicant:

(1) if a provider, has provided a detailed plan of operation;

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

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

(4) is a legal entity, is formed or organized pursuant to the laws of this State or is a foreign legal entity authorized to transact business in this State, or provides a certificate of good standing from the state of its domicile; and

(5) has provided to the director an antifraud plan that meets the requirements of Section 38‑64‑130 and includes:

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

(b) a description of the procedures for reporting fraudulent insurance acts to the director;

(c) a description of the plan for antifraud education and training of its underwriters and other personnel; and

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

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

(M) Each licensee shall file with the director on or before the first day of March of each year an annual statement containing such information as the director may prescribe by regulation.

(N) A provider shall not use a person to perform the functions of a broker as defined in this chapter unless the person holds a current, valid license as a broker, and as provided in this section.

(O) A broker shall not use a person to perform the functions of a provider as defined in this chapter unless the person holds a current, valid license as a provider, and as provided in this section.

(P) A provider or broker shall provide to the director new or revised information about officers, ten percent or more stockholders, partners, directors, members, or designated employees within thirty days of the change.

(Q) An individual licensed as a broker shall complete on a biennial basis fifteen hours of training related to life settlements and life settlement transactions, as required by the director. A life insurance producer who is operating as a broker pursuant to this section is not subject to the requirements of this subsection. A person failing to meet the requirements of this subsection is subject to the penalties imposed by the director.

Section 38‑64‑40. (A) The director may suspend, revoke, or refuse to renew the license of a licensee if the director finds that:

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

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

(3) the provider demonstrates a pattern of unreasonably withholding payments to policy owners;

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

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

(6) the provider has entered into a life settlement contract using a form that has not been approved pursuant to this chapter;

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

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

(9) the licensee or an officer, partner, member, or key management personnel has violated any of the provisions of this chapter.

(B) Before the director denies a license application or suspends, revokes or refuses to renew the license of any licensee under this chapter, the director shall conduct a hearing in accordance with laws of this State governing administrative hearings.

Section 38‑64‑50. (A) An insurer, as a condition of responding to a request for verification of coverage or in connection with the transfer of a policy pursuant to a life settlement contract, may not require that the owner, insured, provider, or broker sign a form, disclosure, consent, waiver, or acknowledgment that has not been expressly approved by the director for use in connection with life settlement contracts in this State.

(B) A person may not use a life settlement contract form or provide to an owner a disclosure statement form in this State unless first filed with and approved by the director. The director shall disapprove a life settlement contract form or disclosure statement form if, in the director’s opinion, the contract or provisions contained in the form fails to meet the requirements of Sections 38‑64‑80, 38‑64‑90, 38‑64‑110, and 38‑64‑150(B) or are unreasonable, contrary to the interests of the public, or otherwise misleading or unfair to the owner. At the director’s discretion, the director may require the submission of advertising material.

Section 38‑64‑60. (A) Each licensed provider shall file with the director on or before March first of each year an annual statement containing information as the director may prescribe by regulation. In addition to other requirements, the annual statement must specify the total number, aggregate face amount, and life settlement proceeds of policies settled during the immediately preceding calendar year, together with a breakdown of the information by policy issue year. The annual statement also must include the names of the insurance companies whose policies have been settled and the brokers that have settled these policies.

(1) This information is limited to only those transactions where the owner is a resident of this State and must not include individual transaction data regarding the business of life settlements or information that there is a reasonable basis to believe could be used to identify the owner or the insured.

(2) Each provider that wilfully fails to file an annual statement as required in this section, or wilfully fails to reply within thirty days to a written inquiry by the director in connection with the annual statement is subject to other penalties provided by this chapter, upon due notice and opportunity to be heard, to a penalty of up to two hundred fifty dollars each day of delay, not to exceed twenty‑five thousand dollars in the aggregate, for each failure to reply.

(B) Except as otherwise allowed or required by law, a provider, broker, insurance company, insurance producer, information bureau, rating agency, or company, or another person with actual knowledge of an insured’s identity, may not disclose the identity of an insured or information that there is a reasonable basis to believe could be used to identify the insured or the insured’s financial or medical information to another person unless the disclosure is:

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

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

(3) provided in response to an investigation or examination by the director or another governmental officer or agency or pursuant to the requirements of Section 38‑64‑130;

(4) a term or condition to the transfer of a policy by one provider to another provider, in which case the receiving provider is required to comply with the confidentiality requirements of Section 38‑64‑60(B);

(5) necessary to allow the provider or broker or their authorized representatives to make contacts for the purpose of determining health status. For the purposes of this section, the term ‘authorized representative’ does not include a person who has or may have any financial interest in the settlement contract other than a provider, licensed broker, financing entity, related provider trust, or special purpose entity. A provider or broker shall require its authorized representative to agree in writing to adhere to the privacy provisions of this chapter; or

(6) required to purchase stop loss coverage.

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

Section 38‑64‑70. (A) The director, when considered reasonably necessary to protect the interests of the public, may examine the business and affairs of a licensee or an applicant for a license. The director may order a licensee or an applicant to produce records, books, files, or other information reasonably necessary to ascertain whether the licensee or applicant is acting or has acted in violation of the law or otherwise contrary to the interests of the public. The expenses incurred in conducting an examination must be paid by the licensee or applicant.

(B) Instead of an examination under this chapter of any foreign or alien licensee licensed in this State, the director may accept an examination report on the licensee as prepared by the director for the licensee’s state of domicile or port‑of‑entry state.

(C) Names of and individual identification data, or for all owners and insureds must be considered private and confidential information and must not be disclosed by the director unless required by law.

(D) Records of all consummated transactions and life settlement contracts must be maintained by the provider for three years after the death of the insured and must be available to the director for inspection during reasonable business hours.

(E)(1) Upon determining that an examination must be conducted, the director shall issue an examination warrant appointing one or more examiners to perform the examination and instructing them as to the scope of the examination. In conducting the examination, the examiner shall use methods common to the examination of a life settlement licensee and shall use those guidelines and procedures set forth in an examiners’ handbook adopted by a national organization.

(2) Each licensee or person from whom information is sought, its officers, directors, and agents shall provide to the examiners timely, convenient, and free access at all reasonable hours at its offices to all books, records, accounts, papers, documents, assets, computer, or other recordings relating to the property, assets, business, and affairs of the licensee being examined. The officers, directors, employees, and agents of the licensee or person shall facilitate the examination and aid in the examination so far as it is in their power to do so. The refusal of a licensee, by its officers, directors, employees, or agents, to submit to examination or to comply with any reasonable written request of the director must be grounds for suspension or refusal of, or nonrenewal of, a license or authority held by the licensee to engage in the life settlement business or other business subject to the director’s jurisdiction. Any proceedings for suspension, revocation, or refusal of a license or authority must be conducted pursuant to Article 3, Chapter 23, Title 1 (the Administrative Procedures Act).

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

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

(5) Nothing contained in this chapter may be construed to limit the director’s authority to terminate or suspend an examination in order to pursue other legal or regulatory action pursuant to the insurance laws of this State. Findings of fact and conclusions made pursuant to an examination is prima facie evidence in a legal or regulatory action.

(6) Nothing contained in this chapter may be construed to limit the director’s authority to use and, if appropriate, to make public a final or preliminary examination report, an examiner or licensee work papers or other documents, or other information discovered or developed during the course of an examination in the furtherance of a legal or regulatory action which the director considers appropriate.

(F)(1) Examination reports must be comprised of only facts appearing upon the books, from the testimony of its officers or agents, or other persons examined concerning its affairs, and the conclusions and recommendations as the examiners find reasonably warranted from the facts.

(2) No later than sixty days following completion of the examination, the examiner in charge shall file with the director a verified written report of examination under oath. Upon receipt of the verified report, the director shall transmit the report to the licensee examined, together with a notice that shall afford the licensee examined a reasonable opportunity of not more than thirty days to make a written submission or rebuttal with respect to any matters contained in the examination report and which becomes part of the report or to request a hearing on any matter in dispute.

(3) If the director determines that regulatory action is appropriate as a result of an examination, the director may initiate proceedings or actions provided by law.

(G)(1) Names and individual identification data for all owners, purchasers, and insureds must be considered private and confidential information and must not be disclosed by the director, unless the disclosure is to another regulator or is required by law.

(2) Except as otherwise provided in this chapter, all examination reports, working papers, recorded information, documents, and copies of them produced by, obtained by, or disclosed to the director or another person in the course of an examination made under of this chapter, or in the course of analysis or investigation by the director of the financial condition or market conduct of a licensee is confidential by law and privileged, is not subject to subpoena and is not subject to the provisions of Chapter 4, Title 30 (the Freedom of Information Act), and is not subject to discovery or admissible in evidence in any private civil action. The director is authorized to use the documents, materials, or other information in the furtherance of a regulatory or legal action brought as part of the director’s official duties. The licensee being examined may have access to all director documents used to make the report.

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

(a) an owner;

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

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

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

(I)(1) No cause of action may arise nor must a liability be imposed against the director, the director’s authorized representatives or an examiner appointed by the director for any statements made or conduct performed in good faith while carrying out the provisions of this chapter.

(2) No cause of action may arise, nor must a liability be imposed against a person for the act of communicating or delivering information or data to the director or the director’s authorized representative or examiner pursuant to an examination made under this chapter, if the act of communication or delivery was performed in good faith and without fraudulent intent or the intent to deceive. This item does not abrogate or modify in any way any common law or statutory privilege or immunity enjoyed by a person identified in item 3.

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

(J) The director may investigate suspected fraudulent life settlement acts and persons engaged in the business of life settlements.

(K) The licensee shall pay the charges incurred in the examination, including expenses of the director or his designee and the expenses and compensation of the director’s examiners and assistants. If a licensee feels the fees assessed are unreasonable in relation to the examination performed, the licensee may appeal the assessments to the administrative laws judge division. The director or his designee promptly shall institute a civil action to recover the expenses of examination against a licensee which refuses or fails to pay. Examination fees must be retained by the department and are considered ‘other funds’.

Section 38‑64‑80. (A) A broker or provider licensed pursuant to this chapter may conduct or participate in advertisements within this State. In addition to the requirements of this section, advertisements must comply with all advertising and marketing lawsor rules and regulations promulgated by the director related to advertising as defined in this chapter.

(B) Advertisements must be accurate, truthful, and not misleading in fact or by implication.

(C) A person or trust may not use the words ‘free’, ‘no cost’, or words of similar import in the marketing, advertising, soliciting or otherwise promoting of the purchase of a policy.

Section 38‑64‑90. (A) The provider or broker shall provide, in writing, in a separate document that is signed by the owner, the following information to the owner no later than the date of application for a life settlement contract that:

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

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

(3) the proceeds from a life settlement contract are subject to the claims of creditors;

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

(5) the owner has a right to rescind a life settlement contract within fifteen days of the date it is executed by all parties and the owner has received the disclosures contained in the life settlement contract. Rescission, if exercised by the owner, is effective only if both notice of the rescission is given, and the owner repays all proceeds and any premiums, loans, and loan interest paid on account of the provider within the rescission period. If the insured dies during the rescission period, the contract is deemed to have been rescinded subject to repayment by the owner or the owner’s estate of all proceeds and any premiums, loans, and loan interest to the provider;

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

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

(8) the date by which the funds must be available to the owner and the transmitter of the funds;

(9) the insured may be contacted by either the provider or broker or its authorized representative for the purpose of determining the insured’s health status or to verify the insured’s address. This contact is limited to once every three months if the insured has a life expectancy of more than one year, and no more than once a month if the insured has a life expectancy of one year or less;

(10) the affiliation, if any, between the provider and the issuer of the insurance policy to be settled;

(11) a broker represents exclusively the owner, and not the insurer or the provider or another person, and owes a fiduciary duty to the owner, including a duty to act according to the owner’s instructions and in the best interest of the owner;

(12) the document must include the name, address, and telephone number of the broker;

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

(14) a change of ownership in the future may limit the insured’s ability to purchase future insurance on the insured’s life because there is a limit to how much coverage insurers will issue on one life.

(B) The written disclosures must be displayed conspicuously in a life settlement contract furnished to the owner by a provider including affiliations or contractual arrangements between the provider and the broker.

(C) The director shall require delivery of a ‘Buyer’s Guide’ or a similar consumer advisory package in the form prescribed by the director to owners during the solicitation process.

(D) The disclosure document must contain the following language: ‘All medical, financial, or personal Information solicited or obtained by a provider or broker about an insured, including the insured’s identity or the identity of family members, a spouse, or a significant other may be disclosed as necessary to effect the life settlement contract between the owner and provider. If you are asked to provide this information, you will be asked to consent to the disclosure. The information may be provided to someone who buys the policy or provides funds for the purchase. You may be asked to renew your permission to share information every two years’.

(E) The director shall require providers and brokers to print separate signed fraud warnings on their applications and on their life settlement contracts as follows:

‘A person who knowingly presents false information in an application for insurance or life settlement contract is guilty of a crime and, upon conviction, is subject to fines and confinement in prison.’

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

(1) the name, business address, and telephone number of the broker;

(2) a full, complete, and accurate description of all the offers, counteroffers, acceptances, and rejections relating to the proposed life settlement contract;

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

(4) a complete reconciliation of the gross offer or bid by the provider to the net amount of proceeds or value to be received by the owner. For the purpose of this section, ‘gross offer’ or ‘bid’ means the total amount or value offered by the provider for the purchase of one or more life insurance policies, inclusive of commissions and fees; and

(5) the failure to provide the disclosures or rights described in Section 38‑64‑90 is considered an Unfair Trade Practice pursuant to Section 38‑64‑170.

Section 38‑64‑100. (A) In addition to other questions an insurance carrier may lawfully pose to a life insurance applicant, insurance carriers may inquire in the application for insurance whether the proposed owner intends to pay premiums with the assistance of financing from a lender that will use the policy as collateral to support the financing.

(1) If the premium finance loan provides funds which can be used for a purpose other than paying for the premiums, costs, and expenses associated with obtaining and maintaining the life insurance policy and loan, the application may be rejected as a violation of the prohibited practices in Section 38‑64‑130.

(2) If the financing does not violate Section 38‑64‑130, the insurer may not reject the life insurance application only because the premiums are financed. The insurance carrier:

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

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

(1) A change of ownership could lead to a stranger owning an interest in the insured’s life.

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

(3) Should there be a change of ownership and you wish to obtain more insurance coverage on the insured’s life in the future, the insured’s higher issue age, a change in health status, or other factors may reduce the ability to obtain coverage or may result in significantly higher premiums, or both.

(4) You should consult a professional advisor, since a change in ownership in satisfaction of the loan may result in tax consequences to the owner, depending on the structure of the loan.’; and

(b) may require certifications, such as the following, from the applicant or the insured, or both:

(i) ‘I have not entered into any agreement or arrangement providing for the future sale of this life insurance policy.’

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

(iii) ‘The borrower has an insurable interest in the insured.’

(B) Life insurers shall provide individual life insurance policyholders with a statement informing them that if they are considering making changes in the status of their policy, they should consult with a licensed insurance or financial advisor. This statement may accompany or be included in notices or mailings otherwise provided to the policyholders.

Section 38‑64‑110. (A) A provider entering into a life settlement contract with an owner of a policy, where the insured is terminally or chronically ill, first shall obtain:

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

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

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

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

(D) The insurer, unreasonably, may not delay effecting change of ownership or beneficiary with any life settlement contract lawfully entered into in this State or with a resident of this State.

(E) If a settlement broker or life insurance producer performs any of these activities required of the provider, the provider is considered to have fulfilled the requirements of this section.

(F) If a broker performs those verification of coverage activities required of the provider, the provider is considered to have fulfilled the requirements of Section 38‑64‑90(A).

(G) Within twenty days after an owner executes the life settlement contract, the provider shall give written notice to the insurer that issued that insurance policy that the policy has become subject to a life settlement contract. The notice must be accompanied by the documents required by Section 38‑64‑100(A)(2).

(H) All medical information solicited or obtained by any licensee is subject to the applicable provision of state law relating to confidentiality of medical information, if not otherwise provided in this chapter.

(I) All life settlement contracts entered into in this State must provide that the owner may rescind the contract on or before fifteen days after the date it is executed by all parties, and the owner has received all required disclosures. Rescission, if exercised by the owner, is effective only if both notice of the rescission is given, and the owner repays all proceeds and any premiums, loans, and loan interest paid on account of the provider within the rescission period. If the insured dies during the rescission period, the contract is deemed to have been rescinded subject to repayment by the owner or the owner’s estate of all proceeds and any premiums, loans, and loan interest to the provider.

(J) Within three business days after receipt from the owner of documents to effect the transfer of the insurance policy, the provider shall pay the proceeds of the settlement to an escrow or trust account managed by a trustee or escrow agent in a state or federally chartered financial institution pending acknowledgement of the transfer by the issuer of the policy. The trustee or escrow agent is required to transfer the proceeds due to the owner within three business days of acknowledgement of the transfer from the insurer.

(K) Failure to tender the life settlement contract proceeds to the owner by the date disclosed to the owner renders the contract voidable by the owner for lack of consideration until the time the proceeds are tendered to and accepted by the owner. A failure to give written notice of the right of rescission tolls the right of rescission until thirty days after the written notice of the right of rescission has been given.

(L) A fee paid by a provider, party, individual, or an owner to a broker in exchange for services provided to the owner pertaining to a life settlement contract must be computed as a percentage of the offer obtained, not the face value of the policy. Nothing in this section may be construed as prohibiting a broker from reducing the broker’s fee below this percentage if the broker chooses.

(M) The broker shall disclose to the owner anything of value paid or given to a broker, which relates to a life settlement contract.

(N)(1) A person at any time before, or at the time of, the application for, or issuance of, a policy, or during a two year period commencing with the date of issuance of the policy, shall not enter into a life settlement contract regardless of the date the compensation is to be provided and regardless of the date the assignment, transfer, sale, devise, bequest, or surrender of the policy is to occur. This prohibition does not apply if the owner certifies to the provider that:

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

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

(i) the owner or insured is terminally or chronically ill;

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

(iii) the owner’s spouse dies;

(iv) the owner divorces a spouse;

(v) the owner retires from full‑time employment;

(vi) the owner becomes physically or mentally disabled and a physician determines that the disability prevents the owner from maintaining full‑time employment; or

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

(c) copies of the independent evidence required by subitem(b) must be submitted to the insurer when the provider submits a request to the insurer for verification of coverage. The copies must be accompanied by a letter of attestation from the provider that the copies are true and correct copies of the documents received by the provider. Nothing in this sectionprohibits an insurer from exercising its right to contest the validity of a policy;

(d) if the provider submits to the insurer a copy of independent evidence provided for in subitem (b)(i) when the provider submits a request to the insurer to effect the transfer of the policy to the provider, the copy is considered to establish that the settlement contract satisfies the requirements of this section.

(2) This prohibition provided by this section applies only to policies issued on or after the effective date of this section.

Section 38‑64‑120. (A) The director may promulgate regulations implementing this chapter and regulating the activities and relationships of providers, brokers, insurers and their agents, subject to statutory limitations on administrative rule making.

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

Section 38‑64‑130. (A) It is unlawful for a person:

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

(2) to engage in a transaction, practice, or course of business if the person knows or reasonably should have known that the intent was to avoid the notice requirements of this chapter;

(3) to engage in a fraudulent act or practice in connection with a transaction relating to a settlement involving an owner who is a resident of this State;

(4) if a provider or broker, to directly or indirectly advertise, solicit, or otherwise promote the purchase of a new policy for the sole purpose of or with the primary emphasis on settling the policy;

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

(6) with respect to a settlement contract or insurance policy and a broker, to knowingly solicit an offer from, effectuate a life settlement contract with or make a sale to a provider, financing entity, or related provider trust that is controlling, controlled by, or under common control with the broker unless the relationship has been fully disclosed to the owner;

(7) with respect to a life settlement contract or insurance policy and a provider, to knowingly enter into a life settlement contract with a owner, if, in connection with a life settlement contract, anything of value must be paid to a broker that is controlling, controlled by, or under common control with a provider or the financing entity or related provider trust that is involved in a settlement contract unless the relationship has been fully disclosed to the owner;

(8) with respect to a provider, to enter into a life settlement contract unless the advertising and marketing materials, as may be prescribed by regulation, have been filed with the director. Advertising of a provider may not reference that the insurance is ‘free’ for any period of time. The inclusion of any reference in the advertising materials that causes an owner to reasonably believe that the insurance is free for any period of time is considered a violation of this chapter; or

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

(B) An insurer shall not:

(1) engage in a transaction, act, or practice that restricts, limits, or impairs the lawful transfer of ownership, change of beneficiary, or assignment of a policy; or

(2) make a false or misleading statement for the purpose of dissuading an owner or insured from a lawful life settlement contract.

(C) A violation of this section is deemed a fraudulent life settlement act.

Section 38‑64‑140. (A)(1) A person shall not commit a fraudulent life settlement act.

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

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

(B)(1) Life settlement contracts and applications for life settlement contracts, regardless of the form of transmission, must contain the following statement or a substantially similar statement:

‘A person who knowingly presents false information in an application for insurance or life settlement contract is guilty of a crime and, upon conviction, is subject to fines and confinement in prison.’

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

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

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

(D)(1) A civil liability must not be imposed on and no cause of action shall arise from a person’s furnishing information concerning suspected, anticipated, or completed fraudulent life settlement acts or suspected or completed fraudulent insurance acts, if the information is provided to or received from:

(a) the director or his employees, agents, or representatives;

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

(c) a person involved in the prevention and detection of fraudulent life settlement acts or that person’s agents, employees, or representatives;

(d) a regulatory body or their employees, agents, or representatives, overseeing life insurance, life settlements, securities, or investment fraud;

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

(f) the licensee and agents, employees, or representatives.

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

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

(4) This section does not abrogate or modify common law or statutory privileges or immunities enjoyed by a person described in item (1).

(E)(1) The documents and evidence provided pursuant to subsection (D) or obtained by the director in an investigation of suspected or actual fraudulent life settlement acts is privileged and confidential and must not be a public record and is not subject to discovery or subpoena in a civil or criminal action.

(2) The provisions of item (1) of this subsection do not prohibit release by the director of documents and evidence obtained in an investigation of suspected or actual fraudulent life settlement acts:

(a) in administrative or judicial proceedings to enforce laws administered by the director;

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

(c) at the discretion of the director, to a person in the business of life settlements that is aggrieved by a fraudulent life settlement act.

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

(F) The provisions of this chapter do not:

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

(2) preempt, supersede, or limit any provision of the South Carolina Uniform Securities Act of 2005 or any rule, order, or notice issued thereunder;

(3) prevent or prohibit a person from disclosing voluntarily information concerning life settlement fraud to a law enforcement or regulatory agency other than the insurance department; or

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

(G)(1) Providers and brokers shall have in place antifraud initiatives reasonably calculated to detect, prosecute, and prevent fraudulent life settlement acts. At the director’s discretion he may order, or a licensee may request and the director may grant, modifications of the following required initiatives as necessary to ensure an effective antifraud program. The modifications may be more or less restrictive than the required initiatives so long as the modifications reasonably may be expected to accomplish the purpose of this section.

(2) Antifraud initiatives include:

(a) fraud investigators, who may be provider or broker employees or independent contractors; and

(b) an antifraud plan, which must be submitted to the director. The antifraud plan includes, but is not limited to, a description of:

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

(ii) the procedures for reporting possible fraudulent life settlement acts to the director;

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

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

(3) An antifraud plan submitted to the director is privileged and confidential and must not be a public record and is not subject to discovery or subpoena in a civil or criminal action.

Section 38‑64‑150. (A) In addition to the penalties and other enforcement provisions of this chapter, if a person violates this chapter or a regulation implementing this chapter, the director may seek an injunction in a court of competent jurisdiction in the county where the person resides or has a principal place of business and may apply for temporary and permanent orders that the director determines necessary to restrain the person from further committing the violation.

(B) A person damaged by the acts of another person in violation of this chapter or a regulation implementing this chapter, may bring a civil action for damages against the person committing the violation in a court of competent jurisdiction.

(C) The director may issue a cease and desist order upon a person who violates a provision of this chapter or any rule, adopted by the director, or any written agreement entered into with the director, in accordance with Article 3, Chapter 23, Title 1 (the Administrative Procedures Act).

(D) When the director finds that an action presents an immediate danger to the public and requires an immediate final order, he may issue an emergency cease and desist order reciting with particularity the facts underlying the findings. The emergency cease and desist order is effective immediately upon service of a copy of the order on the respondent and remains effective for ninety days. If the department begins nonemergency cease and desist proceedings under subsection (A), the emergency cease and desist order remains effective, absent an order by an appellate court of competent jurisdiction pursuant to Article 3, Chapter 23, Title 1 (the Administrative Procedures Act). In the event of a wilful violation of this chapter, the trial court may award statutory damages in addition to actual damages in an additional amount up to three times the actual damage award. The provisions of this chapter may not be waived by agreement. No choice of law provision may be utilized to prevent the application of this chapter to any settlement in which a party to the settlement is a resident of this State.

Section 38‑64‑160. (A) It is a violation of this chapter for a person, provider, broker, or other party related to the business of life settlements, to commit a fraudulent life settlement act.

(B) For criminal liability purposes, a person that commits a fraudulent life settlement act is guilty of committing insurance fraud and is subject to additional penalties under Section 38‑55‑540.

(C) The director is empowered to levy a civil penalty not exceeding ten thousand dollars and the amount of the claim for each violation upon a person, including those persons and their employees licensed pursuant to this chapter, who are found to have committed a fraudulent life settlement act or violated another provision of this chapter.

(D) The license of a person licensed under this chapter that commits a fraudulent life settlement act must be revoked for a period of at least three months.

Section 38‑64‑170. A violation of this chapter is considered an unfair trade practice pursuant to state law and subject to the penalties provided by state law.”

SECTION 2. A provider lawfully transacting business in this State before the effective date of this act may continue to do so pending approval or disapproval of that person’s application for a license as long as the application is filed with the director not later than thirty days after publication by the director of an application form and instructions for licensure of providers. If the publication of the application form and instructions is before the effective date of this act, then the filing of the application must not be later than thirty days after the effective date of this act. During the time that an application is pending with the director, the applicant may use any form of life settlement contract that has been filed with the director pending approval of them, provided that the form is otherwise in compliance with the provisions of this act. A person transacting business in this State under this provision is obligated to comply with all other requirements of this chapter.

SECTION 3. A person who has lawfully negotiated life settlement contracts between an owner residing in this State and one or more providers for at least one year immediately before the effective date of this chapter may continue to do so pending approval or disapproval of that person’s application for a license as long as the application is filed with the director not later than thirty days after publication by the director of an application form and instructions for licensure of brokers. If the publication of the application form and instructions is before the effective date of this chapter, then the filing of the application must not be later than thirty days after the effective date of this act. A person transacting business in this State under this provision is obligated to comply with all other requirements of this chapter.

SECTION 4. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 5. This act takes effect uponapproval by the Governor.

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