HOUSE DOCKET, NO. 2741 FILED ON: 1/21/2011

HOUSE . . . . . No. 2069

The Commonwealth of Massachusetts

PRESENTED BY:

Peter J. Koutoujian

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 adoption of the accompanying bill:

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

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Peter J. Koutoujian	*10th Middlesex*

HOUSE DOCKET, NO. 2741 FILED ON: 1/21/2011

HOUSE . . . . . No. 2069

By Mr. Koutoujian of Waltham, a petition (accompanied by bill, House, No. 2069) of Peter J. Koutoujian relative to life settlements and stranger originated life insurance. Financial Services.

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

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. Sections 212 to 223G, inclusive, shall be known and may be cited as the Massachusetts Life Settlements Act.

Section 213. As used in sections 212 to 223G, inclusive, the following words shall, unless the context clearly requires otherwise, have the following meanings:-

"Act", the Massachusetts Life Settlement Act, sections 212 to 223G, 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

13 purpose of creating an interest in or inducing a person to purchase or sell, assign, devise, bequest
14 or transfer the death benefit or ownership of a life insurance policy or an interest in a life
15 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", an individual: (1) unable to perform at least 2 activities of daily living;
20 (2) requiring substantial supervision to protect the individual from threats to health and safety
21 due to severe cognitive impairment; or (3) having a level of disability similar to that described in
22 clause (1) as determined by federal regulations promulgated pursuant to 26 U.S.C. section
23 7702B.

24 "Financing entity", an underwriter, placement agent, lender, purchaser of securities,
25 purchaser of a policy or certificate from a life settlement provider, credit enhancer or any entity
26 that has a direct ownership in a policy or certificate that is the subject of a life settlement
27 contract, whose principal activity related to the transaction is providing funds to effect the life
28 settlement contract or purchase of 1 or more policies and who has an agreement in writing with 1
29 or more life settlement providers to finance the acquisition of life settlement contracts. A
30 financing entity shall not include a non-accredited investor or purchaser. "Financing
31 transaction", a transaction in which a licensed life settlement provider obtains financing from a
32 financing entity including, but not limited to, secured or unsecured financing, a securitization
33 transaction or a securities offering which either is registered or exempt from registration under
34 federal and state securities law.

35 “Fraudulent life settlement act”, an act described in section 218.

36 “Insured”, the person covered under the policy being considered for sale in a life
37 settlement contract.

38 “Licensee”,

39 “Life insurance producer”, any person licensed as a resident or nonresident insurance
40 producer who has received qualification or authority for life insurance coverage or a life line of
41 coverage pursuant to this life settlement act.

42 “Life settlement broker”, a person who, on behalf of an owner and for a fee, commission
43 or other valuable consideration, offers or attempts to negotiate life settlement contracts between
44 an owner and life settlement providers . A life settlement broker represents only the owner and
45 owes a fiduciary duty to the owner to act according to the owner’s instructions, and in the best
46 interest of the owner, notwithstanding the manner in which the life settlement broker is
47 compensated. A life settlement broker does not include an attorney, certified public accountant
48 or financial planner retained in the type of practice customarily performed in their professional
49 capacity to represent the owner and whose compensation is not paid directly or indirectly by the
50 life settlement provider or any other person, except the owner.

51 “Life settlement contract”, (a) (1) a written agreement entered into between a life
52 settlement provider and an owner, establishing the terms under which compensation or anything
53 of value will be paid, which compensation or thing of value is less than the expected death
54 benefit of the insurance policy or certificate, in return for the owner’s assignment, transfer, sale,
55 devise or bequest of the death benefit or any portion of an insurance policy or certificate of
56 insurance for compensation; provided, however, that the minimum value for a life settlement

57 contract shall be greater than a cash surrender value or accelerated death benefit available at the
58 time of an application for a life settlement contract;

59 (2) the transfer for compensation or value of ownership or beneficial interest in a trust or
60 other entity that owns such policy if the trust or other entity was formed or availed of for the
61 principal purpose of acquiring one or more life insurance contracts, which life insurance contract
62 insures the life of a person residing in the commonwealth; or

63 (3) a premium finance loan made for a policy on or before the date of issuance of the
64 policy where: (i) the loan proceeds are not used solely to pay premiums for the policy and any
65 costs or expenses incurred by the lender or the borrower in connection with the financing; (ii) on
66 the date of the premium finance loan, the owner receives a guarantee of the future life settlement
67 value of the policy; or (iii) the owner agrees on the date of the premium finance loan to sell the
68 policy or a portion of its death benefit on any date following the issuance of the policy.

69 (b) A life settlement contract shall not include:

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

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

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

78 (iv) a loan made by a lender that does not violate chapter 255C; provided such loan is not
79 described in paragraph (3) and is not otherwise within the definition of life settlement contract;

80 (v) an agreement where all parties (A) are closely related to the insured by blood or law;
81 or (B) have a lawful substantial economic interest in the continued life, heath and bodily safety
82 of the person insured, or are trusts established primarily for the benefit of such parties;

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

86 (vii) A bona fide business succession planning arrangement: (A) between 1 or more
87 shareholders in a corporation or between a corporation and 1 or more of its shareholders or 1 or
88 more trusts established by its shareholders; (B) between 1 or more partners in a partnership or
89 between a partnership and 1 or more of its partners or 1 or more trust established by its partners;
90 or (C) between 1 or more members in a limited liability company or between a limited liability
91 company and 1 or more of its members or 1 or more trust established by its members;

92 (viii) an agreement entered into by a service recipient or a trust established by the service
93 recipient and a service provider, or a trust established by the service provider that performs
94 significant services for the service recipient's trade or business; or

95 (ix) any other contract, transaction or arrangement from the definition of life settlement
96 contract that the commissioner determines is not of the type intended to be regulated by this act.

97 "Life settlement provider", a person, other than an owner, who enters into a life
98 settlement contract with an owner. A life settlement provider shall not include:

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

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

103 (3) the issuer of a life insurance policy or rider which provides accelerated death benefits
104 pursuant to the contract or cash surrender value;

105 (4) a natural person who enters into or effectuates not more than 1 agreement in a
106 calendar year for the transfer of a life insurance policy or certificate issued pursuant to a group
107 life insurance policy, for compensation or anything of value less than the expected death benefit
108 payable under the policy;

109 (5) a financing entity;

110 (6) a purchaser;

111 (7) an authorized or eligible insurer that provides stop loss coverage to a life settlement
112 provider, purchaser, financing entity, special purpose entity or related provider trust;

113 (8) a related provider trust;

114 (9) a special purpose entity;

115 (10) a life settlement broker; or

116 (11) an accredited investor or qualified institutional buyer as defined in regulation D, rule
117 501 or rule 144A of the federal Securities Act of 1933, as amended, who purchases a life
118 settlement policy from a life settlement provider.

119 “Net death benefit”, the amount of the life insurance policy or certificate to be settled less
120 any outstanding debts or liens.

121 “Owner”, the owner of a life insurance policy or a certificate holder under a group policy
122 who enters or seeks to enter into a life settlement contract. For the purposes of this act, an owner
123 shall not be limited to an owner of a life insurance policy or a certificate holder under a group
124 policy that insures the life of an individual with a terminal illness or chronic illness or condition
125 except where specifically addressed. The term “owner” shall not include:

126 (1) a life settlement provider or broker under this act;

127 (2) a qualified institutional buyer as defined in rule 144A of the federal Securities Act of
128 1933, as amended;

129 (3) a financing entity;

130 (4) a special purpose entity; or

131 (5) a related provider trust.

132 “Patient identifying information”, an insured’s address, telephone number, facsimile
133 number, electronic mail address, photograph or likeness, employer, employment status, social
134 security number or any other information that is likely to lead to the identification of the insured.

135 “Person”, a natural person or legal entity, including but not limited to, a partnership,
136 limited liability company, association, trust or corporation.

137 “Policy”, an individual or group policy, group certificate, contract or arrangement of life
138 insurance owned by a resident of the commonwealth, regardless of whether delivered or issued
139 for delivery in the commonwealth.

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

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

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

155 “Settled policy”, a life insurance policy or certificate that has been acquired by a provider
156 pursuant to a life settlement contract.

157 “Special purpose entity”, a corporation, partnership, trust, limited liability company or
158 other legal entity formed solely to provide, either directly or indirectly, access to institutional

159 capital markets: (i) for a financing entity or life settlement provider; or (ii) in connection with a
160 transaction in which the securities in the special purpose entity are acquired by the owner or by a
161 qualified institutional buyer as defined in Rule 144 promulgated under the federal Securities Act
162 of 1933, as amended, or the securities pay a fixed rate of return commensurate with established
163 asset-backed institutional capital markets.

164 "Stranger-originated life insurance", an act, practice or arrangement to initiate the
165 issuance of a life insurance policy for the benefit of a third-party investor who, at the time of
166 policy origination, has no insurable interest in the life of the insured. Such acts, practices or
167 arrangements include, but are not limited to, cases in which life insurance is purchased with
168 resources or guarantees from or through a person, who, at the time of policy inception, could not
169 lawfully initiate the policy himself and where, at the time of inception, there is an arrangement or
170 agreement, whether verbal or written, to directly or indirectly transfer the ownership of the
171 policy or the policy benefits to a third party. Trusts that are created to give the appearance of
172 insurable interest and that are used to initiate policies for investors violate insurable interest laws
173 and the prohibition against wagering on life. Stranger-originated life insurance arrangements do
174 not include lawful life settlement contracts as permitted by this act or those practices set forth in
175 subsection (b) of the definition of life settlement contract , provided that such life settlement
176 contracts or practices are not part of a transaction otherwise prohibited by this act.

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

179 Section 214. (a) No person, wherever located, shall act as a life settlement provider or,
180 except as provided for in subdivisions (C) and (D) of this subsection, a life settlement broker

181 with an owner or multiple owners who is a resident of the commonwealth, without first having
182 obtained a license from the commissioner.

183 (b) (i) A life insurance producer who has been duly licensed as a resident insurance
184 producer with a life line of authority in the commonwealth, or in his home state, for at least 1
185 year and is licensed as nonresident producer shall be deemed to meet the licensing requirements
186 of this section and shall be permitted to operate as a life settlement broker.

187 (ii) Not later than 30 days from the first day of operating as a life settlement broker, the
188 life insurance producer shall notify the commissioner that he is acting as a life settlement broker,
189 on a form prescribed by the commissioner, and shall pay a reasonable fee as determined by the
190 secretary of administration and finance pursuant to section 3B of chapter 7. Notification shall
191 include an acknowledgment by the life insurance producer that he will operate as a life
192 settlement broker in accordance with this act.

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

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

203 (d) The term and fees for a life settlement provider license shall be equal to that of a
204 foreign stock life insurance company and the term and fees of a life settlement broker license
205 shall be equal to that of an insurance producer license. Licenses may be renewed on their
206 anniversary date upon payment of a renewal fee as determined by the secretary of administration
207 and finance. Failure to pay the fees on or before the renewal date shall result in expiration of the
208 license.

209 (e) An applicant for a license under this section shall provide such information as the
210 commissioner may require on forms prepared by the commissioner. The commissioner may
211 require such applicant to fully disclose the identity of its stockholders owning 10 per cent or
212 more of the shares of an applicant whose shares are publicly traded, partners, officers and
213 employees. The commissioner may, in his sole discretion, refuse to issue a license to a qualified
214 applicant if the commissioner determines that an officer, employee, stockholder or partner
215 thereof, who may materially influence the applicant's conduct, does not meet the standards of
216 this act.

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

220 (i) Upon the filing of an application for initial licenseure and the payment of the
221 application fee, the commissioner shall examine each applicant and may issue a license if the
222 commissioner finds that the applicant:

223 (i) if the applicant is a life settlement provider, has provided a detailed plan of operation;

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

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

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

230 (v) if the applicant is a life settlement provider, has provided to the commissioner an anti-
231 fraud plan that meets the requirements in subsection (g) of section 223D.

232 (g) The commissioner shall not issue a license to a nonresident applicant, unless a written
233 designation of an agent for service of process is filed and maintained with the commissioner or
234 unless the applicant has filed with the commissioner the applicant's written irrevocable consent
235 that any action against the applicant may be commenced against the applicant by service of
236 process on the commissioner.

237 (h) A life settlement provider shall not use any person to perform the functions of a life
238 settlement broker unless the person holds a current, valid license as a broker.

239 (i) A life settlement broker shall not use any person to perform the functions of a life
240 settlement provider unless such person holds a current, valid license as a life settlement provider.

241 (j) All licensees under this section shall provide to the commissioner new or revised
242 information about officers, 10 per cent or more stockholders, partners, directors, members or
243 designated employees within 30 days of a change.

244 (k) An individual licensed as a life settlement broker shall complete, on a biennial basis,
245 15 hours of training related to the business of life settlements and life settlement transactions as

246 required by the commissioner; provided, however, that a life insurance producer who is
247 operating as a life settlement broker shall not be subject to the requirements of this subsection.
248 An individual failing to meet the requirements of this subsection shall be subject to the penalties
249 imposed by the commissioner.

250 Section 215. (a) The commissioner may suspend, revoke or refuse to renew the license
251 of a licensee if the commissioner finds that:

252 (i) there was a material misrepresentation in the application for the license;

253 (ii) the licensee or any officer, partner, member or director has been convicted or
254 determined by a regulator to have committed a fraudulent or dishonest practices, is subject to a
255 final administrative action or is otherwise shown to be untrustworthy or incompetent to act as a
256 licensee;

257 (iii) if a life settlement provider, the licensee demonstrates a pattern of unreasonably
258 withholding payments to policy owners;

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

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

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

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

269 (viii) the life settlement provider has assigned, transferred or pledged a settled policy to a
270 person other than a life settlement provider licensed in the commonwealth, a purchaser, an
271 accredited investor or qualified institutional buyer as defined respectively in Regulation D, Rule
272 501 or Rule 144A of the Federal Securities Act of 1933, as amended, financing entity, special
273 purpose entity or related provider trust; or

274 (ix) the licensee or any officer, partner, member or key management personnel has
275 violated any of the provisions of this act.

276 (b) Before the commissioner denies a license application or suspends, revokes or refuses
277 to renew the license of a licensee under this act, the commissioner shall conduct a hearing in
278 accordance with chapter 30A.

279 Section 216. (a) No person shall use any form of life settlement contract unless it has
280 been filed with and approved by the commissioner. or provide to an owner a disclosure statement
281 form unless first filed with and approved by the commissioner. The commissioner shall
282 disapprove a life settlement contract form or disclosure statement form if, in the commissioner's
283 opinion, the contract or provisions contained therein fail to meet the requirements of sections
284 220, 221, 223, and subsection (b) of section 223D or are unreasonable, contrary to the interests
285 of the public or otherwise misleading or unfair to the owner.

286 (b) No insurer may, as a condition of responding to a request for verification of coverage
287 or in connection with the transfer of a policy pursuant to a life settlement contract, require that
288 the owner, insured, life settlement provider or life settlement broker sign any form, disclosure,

289 consent, waiver or acknowledgment that has not been expressly approved by the commissioner
290 for use in connection with a life settlement contract.

291 Section 217. Each life settlement provider shall file with the commissioner annually on
292 or before March 1, an annual statement containing such information as the commissioner may
293 prescribe by regulation. In addition to any other requirements, the annual statement shall: (i)
294 specify the total number, aggregate face amount and life settlement proceeds of policies settled
295 during the immediately preceding calendar year, together with a breakdown of the information
296 by policy issue year for each carrier; (ii) include the names of the insurance companies whose
297 policies have been settled; and (iii) include only those transactions where the owner is a resident
298 of this state and shall not include individual transaction data regarding the business of life
299 settlements or information that there is a reasonable basis to believe could be used to identify the
300 owner or the insured.

301 A life settlement provider that willfully fails to file an annual statement or willfully fails
302 to reply within 30 days to a written inquiry by the commissioner in connection therewith, shall,
303 in addition to other penalties provided in this act, be subject, upon due notice and opportunity to
304 be heard, to a penalty of up to $250 per day of delay, not to exceed $25,000 in the aggregate, for
305 each such failure.

306 Section 218. (a) Except as otherwise allowed or required by law, a life settlement
307 provider, life settlement broker, insurance company, life insurance producer, information bureau,
308 rating agency or company, or any other person with actual knowledge of an insured's identity,
309 shall not disclose the identity of an insured or information that there is a reasonable basis to

310 believe could be used to identify the insured or the insured's financial or medical information to
311 any other person unless the disclosure:

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

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

319 (3) is provided in response to an investigation or examination by the commissioner or any
320 other governmental officer or agency;

321 (4) is a term or condition to the transfer of a policy by 1 life settlement provider to
322 another life settlement provider;

323 (5) is necessary to allow the life settlement provider or life settlement broker, or an
324 authorized representative to make contacts for the purpose of determining health status. For the
325 purposes of this section, the term "authorized representative" shall not include any person who
326 has or may have any financial interest in the life settlement contract other than a licensed life
327 settlement provider, licensed life settlement broker, financing entity, related provider trust or
328 special purpose entity; provided further that a life settlement provider or life settlement broker
329 shall require its authorized representative to agree in writing to adhere to the privacy provisions
330 of this act; or

331 (6) is required to purchase stop loss coverage.

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

336 Section 219. (a) The commissioner may, when the commissioner deems it reasonably
337 necessary to protect the interests of the public, examine the business and affairs of any licensee
338 or applicant for a license. The commissioner may order a licensee or applicant to produce
339 records, books, files or other information reasonably necessary to ascertain whether such licensee
340 or applicant is acting or has acted in violation of the law or otherwise contrary to the interests of
341 the public. The expenses incurred in conducting an examination shall be paid by the licensee or
342 applicant.

343 (b) For a foreign or alien licensee, the commissioner may, at the commissioner's
344 discretion, accept an examination report on the licensee as prepared by the commissioner for the
345 licensee's state of domicile or port-of-entry state.

346 (c) Names and individual identification data for all owners, purchasers and insured shall
347 be considered private and confidential information and shall not be disclosed by the
348 commissioner unless the disclosure is required by law or is disclosed to the National Association
349 of Insurance Commissioners, to the insurance department of any other state or country or to law
350 enforcement officials of the commonwealth or any other state or agency of the federal
351 government at any time, so long as the agency or office receiving the information agrees in
352 writing to hold such material confidential.

353 (d) Records of all completed transactions and life settlement contracts shall be maintained
354 by the life settlement provider for 3 years after the death of the insured and shall be available to
355 the commissioner for inspection during reasonable business hours.

356 (e) (1) In conducting an examination, the examiner shall use methods common to the
357 examination of licensees and should use those guidelines and procedures set forth in the
358 examiners' handbook adopted by the by the National Association of Insurance Commissioners.

359 (2) Every licensee or person from whom information is sought, its officers, directors and
360 agents shall provide to the examiners timely, convenient and free access at its offices to all
361 books, records, accounts, papers, documents, assets and computer or other recordings relating to
362 the property, assets, business and affairs of the licensee being examined. The officers, directors,
363 employees and agents of the licensee or person shall facilitate the examination and aid in the
364 examination so far as it is in their power to do so. The refusal of a licensee, by its officers,
365 directors, employees or agents, to submit to examination or to comply with any reasonable
366 written request of the commissioner shall be grounds for suspension, refusal or nonrenewal of a
367 license or authority held by the licensee to engage in the life settlement business or other
368 business subject to the commissioner's jurisdiction. All proceedings for suspension, revocation or
369 refusal of a license or authority shall be conducted pursuant to chapter 30A.

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

375 (4) When making an examination the commissioner may retain attorneys, appraisers,
376 independent actuaries, independent certified public accountants or other professionals and
377 specialists as examiners, the reasonable cost of which shall be borne by the licensee that is the
378 subject of the examination.

379 (5) Nothing contained in this act shall be construed to limit the commissioner's authority
380 to terminate or suspend an examination in order to pursue other legal or regulatory action
381 pursuant to the insurance laws of the commonwealth. Findings of fact and conclusions made
382 pursuant to an examination shall be prima facie evidence in a legal or regulatory action.

383 (6) Nothing contained in this act shall be construed to limit the commissioner's authority
384 to use and, if the commissioner deems appropriate, to make public any final or preliminary
385 examination report, any examiner or licensee work papers or other documents or any other
386 information discovered or developed during the course of an examination in the furtherance of a
387 legal or regulatory action.

388 (f) (1) Examination reports shall be comprised of only facts appearing upon the books,
389 from the testimony of its officers or agents or other persons examined concerning its affairs and
390 such conclusions and recommendations as the examiners find reasonably warranted from the
391 facts.

392 (2) No later than 60 days following completion of the examination, the examiner in
393 charge shall file with the commissioner a verified written report of examination under oath.
394 Upon receipt of the verified report, the commissioner shall transmit the report to the licensee
395 examined, together with a notice that shall afford the licensee examined a reasonable opportunity
396 of not more than 30 days to make a written submission or rebuttal with respect to any matters

397 contained in the examination report, which shall become part of the report, or to request a
398 hearing on any matter in dispute.

399 (g) Except as otherwise provided, all examination reports, working papers, recorded
400 information, documents and copies thereof produced by, obtained by or disclosed to the
401 commissioner or any other person in the course of an examination, or in the course of analysis or
402 investigation by the commissioner of the financial condition or market conduct of a licensee shall
403 be confidential by law and privileged, shall not be subject to chapter 66 and clause 26 of section
404 7 of chapter 4, shall not be subject to subpoena and shall not be subject to discovery or
405 admissible in evidence in any private civil action. The commissioner is authorized to use the
406 documents, materials or other information in the furtherance of any regulatory or legal action
407 brought as part of the commissioner's official duties. The licensee being examined may have
408 access to all documents used to make the report.

409 (h) (1) An examiner shall not be appointed by the commissioner if the examiner, either
410 directly or indirectly, has a conflict of interest or is affiliated with the management of or owns a
411 pecuniary interest in any person subject to examination; provided, however, that an examiner
412 may be: (i) an owner; (ii) an insured in a life settlement contract or insurance policy; or (iii) a
413 beneficiary in an insurance policy that is proposed for a life settlement contract.

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

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

423 (2) No cause of action shall arise, nor shall any liability be imposed against a person for
424 the act of communicating or delivering information or data to the commissioner, the
425 commissioner's authorized representative or an examiner related to an examination if the act of
426 communication or delivery was performed in good faith and without fraudulent intent or the
427 intent to deceive. This paragraph does not abrogate or modify any common law or statutory
428 privilege or immunity enjoyed by any person identified in paragraph (1).

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

435 (j) The charge for each such examination shall be determined annually by the secretary
436 of administration and finance under the provision of section 3B of chapter 7 and shall be paid by
437 each licensee within 30 days after notice from the commissioner of such charge. Such charge
438 shall include an amount equal to the cost of fringe benefits as established by the secretary of
439 administration and finance pursuant to section 6B of chapter 29. If in the course of an
440 examination of a domestic or foreign licensee that maintains a branch office outside the

441 commonwealth, it becomes necessary or expedient for the commissioner or any deputies or
442 examiners to travel outside the commonwealth, such licensee shall pay the proper expenses of
443 the commissioner or any deputies or examiners incurred. Whenever the commissioner deems it
444 advisable, the commissioner shall cause a complete audit of the books of the licensee to be made
445 by a disinterested expert accountant, and such licensee shall pay the proper expenses of such
446 audit.

447 Section 220. (a) A licensed life settlement broker or life settlement provider may conduct
448 or participate in advertisements. Such advertisements shall comply with all advertising laws or
449 rules and regulations promulgated by the commissioner that are applicable to insurers, life
450 insurance producers, brokers and providers.

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

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

454 (1) directly or indirectly market, advertise or solicit the purchase of a new policy for the
455 purpose of or with a significant emphasis on settling the policy; or

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

458 (3) with respect to a life settlement provider, enter into a life settlement contract unless
459 the related advertisements, as may be prescribed by regulation, have been filed with the
460 commissioner;

461 (d) At the commissioner's discretion, the commissioner may require the submission of
462 advertising material.

463 (e) The commissioner shall require delivery of a buyer's guide or a similar consumer
464 advisory package in the form prescribed by the commissioner to owners during the solicitation
465 process.

466 Section 221. (a) The life settlement provider shall provide to the owner in writing, in a
467 separate document signed by the owner, the following information no later than the date of
468 application for a life settlement contract:

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

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

473 (iii) that the proceeds from a life settlement contract may be subject to the claims of
474 creditors;

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

478 (v) that the owner has a right to terminate a life settlement contract within 15 days of the
479 date it is executed by all parties; that the owner has received the disclosures required by this
480 section; and that the following statement regarding rescission is included: "Rescission, if
481 exercised by the owner, is effective only if both notice of the rescission is given, and the owner

482 repays all proceeds and any premiums, loans, and loan interest paid on account of the life
483 settlement provider within the rescission period. If the insured dies during the rescission period,
484 the life settlement contract shall be deemed to have been rescinded subject to repayment by the
485 owner or the owner's estate of all proceeds and any premiums, loans, and loan interest to the life
486 settlement provider";

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

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

495 (viii) the amount and method of calculating the compensation paid, or to be paid, to the
496 life settlement broker or any other person acting for the owner in connection with the transaction;

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

499 (x) the fact that the commissioner shall require delivery of a buyer's guide or a similar
500 consumer advisory package in the form prescribed by the commissioner to owners during the
501 solicitation process;

502 (xi) the following statement: “All medical, financial or personal information solicited or
503 obtained by a life settlement provider or life settlement broker about an insured, including the
504 insured’s identity or the identity of family members, a spouse or a significant other, may be
505 disclosed as necessary to effect the life settlement contract between the owner and life settlement
506 provider. If you are asked to provide this information, you will be asked to consent to the
507 disclosure. The information may be provided to someone who buys the policy or provides funds
508 for the purchase. You may be asked to renew your permission to share information every 2
509 years.”;

510 (xii) the fact that the commissioner shall require life settlement providers and life
511 settlement brokers to print separate signed fraud warnings on their applications and on their life
512 settlement contracts is as follows: “Any person who knowingly presents false information in a
513 life settlement application or contract may be found guilty of a crime and may be subject to fines
514 and confinement in prison.”

515 (xiii) that the insured may be contacted by either the life settlement provider or life
516 settlement broker or its authorized representative for the purpose of determining the insured’s
517 health status or to verify the insured's address; provided, that this contact is limited to once every
518 3 months if the insured has a life expectancy of more than 1 year and no more than once per
519 month if the insured has a life expectancy of 1 year or less;

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

522 (xv) that a life settlement broker represents exclusively the owner and not the insurer, the
523 life settlement provider or any other person, and owes a fiduciary duty to the owner, including a
524 duty to act according to the owner's instructions and in the best interest of the owner;

525 (xvi) the name, address and telephone number of the provider;

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

529 (xviii) that a change of ownership may, in the future, limit the insured's ability to
530 purchase future insurance on the insured's life because there is a limit to how much coverage
531 insurers will issue on 1 life;

532 The written disclosures shall be conspicuously displayed in any life settlement contract
533 furnished to the owner by a life settlement provider including any affiliations or contractual
534 arrangements between the life settlement provider and the life settlement broker.

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

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

540 (ii) a complete and accurate description of all the offers, counter-offers, acceptances and
541 rejections relating to the proposed life settlement contract;

542 (iii) any affiliations or contractual arrangements between the life settlement broker and
543 any person making an offer in connection with the proposed life settlement contracts;

544 (iv) the name of each life settlement broker involved in the life settlement agreement who
545 receives compensation and the amount of compensation received by that broker, which
546 compensation includes anything of value paid or given to the life settlement broker in connection
547 with the life settlement contract;

548 (v) a complete reconciliation of the gross offer or bid by the life settlement provider to
549 the net amount of proceeds or value to be received by the owner. For the purpose of this section,
550 gross offer or bid shall mean the total amount or value offered by the life settlement provider for
551 the purchase of 1 or more life insurance policies, inclusive of commissions and fees; and

552 (vi) that a failure to provide the disclosures or rights described in this section shall be
553 deemed an unfair trade practice pursuant to chapter 176D.

554 (c) A life settlement broker shall disclose to the owner anything of value paid or given to
555 a life settlement broker relating to a life settlement contract.

556 Section 222. (a) Insurance carriers may inquire in the application for insurance whether
557 the proposed owner intends to pay premiums with the assistance of financing from a lender that
558 will use the policy as collateral to support the financing.

559 (b) If the premium financing loan provides funds which can be used for a purpose other
560 than paying for the premiums, costs and expenses associated with obtaining and maintaining the
561 life insurance policy and loan, the application shall be rejected as a violation of this act.

562 (c) The insurance carrier may disclose certain information to the applicant and the
563 insured, either on the application or an amendment to the application to be completed no later
564 than the delivery of the policy, including, but not limited to the following disclosure:

565 "If you have entered into a loan arrangement where the policy is used as collateral and
566 the policy changes ownership at some point in the future in satisfaction of the loan, the following
567 may be true:

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

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

572 (3) should there be a change of ownership and you wish to obtain more insurance
573 coverage on the insured's life in the future, the insured's higher issue age, a change in health
574 status, and other factors may reduce the ability to obtain coverage or may result in significantly
575 higher premiums;

576 (4) you should consult a professional advisor, since a change in ownership in satisfaction
577 of the loan may result in tax consequences to the owner, depending on the structure of the loan. "

578 (d) The insurance carrier may require certifications from the applicant or the insured,
579 including the following certified statement:

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

582 (2) my loan arrangement for this policy provides funds sufficient to pay for some or all of
583 the premiums, costs, and expenses associated with obtaining and maintaining my life insurance
584 policy; however, I have not entered into any agreement by which I am to receive consideration in
585 exchange for procuring this policy; and

586 (3) the borrower has an insurable interest in the insured."

587 Section 223. (a) A life settlement provider entering into a life settlement contract with
588 an owner of a policy, where the insured is terminally or chronically ill, shall first obtain:

589 (i) if the owner is the insured, a written statement from a licensed attending physician that
590 the owner is of sound mind; and

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

595 Within 20 days after an owner executes the life settlement contract, the life settlement
596 provider shall give written notice to the insurer that issued that insurance policy that the policy
597 has become subject to a life settlement contract. The notice shall be accompanied by the
598 documents required by clauses (i) and (ii).

599 (b) The insurer shall respond to a request for verification of coverage submitted by a life
600 settlement provider, life settlement broker or life insurance producer not later than 30 calendar
601 days of the date the request is received. The request for verification of coverage shall be made
602 on a form approved by the commissioner. The insurer shall complete and issue the verification

603 of coverage or indicate in which respects it is unable to respond. In its response, the insurer shall
604 indicate whether, based on the medical evidence and documents provided, the insurer intends to
605 pursue an investigation regarding the validity of the insurance contract.

606 (c) Prior to or at the time of execution of the life settlement contract, the life settlement
607 provider shall obtain a witnessed document in which the owner: (i) consents to the life settlement
608 contract, (ii) represents that the owner has a full and complete understanding of the life
609 settlement contract, (iii) represents that the owner has a full and complete understanding of the
610 benefits of the policy,(iv) acknowledges that the owner is entering into the life settlement
611 contract freely and voluntarily, and,(v) for persons with a terminal or chronic illness or
612 condition, acknowledges that the insured has a terminal or chronic illness and that the terminal or
613 chronic illness or condition was diagnosed after the policy was issued.

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

617 (e) If a life settlement broker or life insurance producer performs any of the activities in
618 subsections (a) or (c), the life settlement provider is deemed to have fulfilled the requirements of
619 this section.

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

623 (g) All medical information solicited or obtained by a licensee shall be subject to any
624 applicable provisions of this act and state law relating to confidentiality of medical information,
625 if not otherwise provided in this life settlement act.

626 (h) All life settlement contracts shall provide that the owner may rescind the life
627 settlement contract on or before 15 days after the date it is executed by all parties. Rescission, if
628 exercised by the owner, shall be effective only if: (i) notice of the rescission is given, and (ii) the
629 owner repays all proceeds and any premiums, loans and loan interest paid on account of the life
630 settlement provider within the rescission period. If the insured dies during the rescission period,
631 the life settlement contract shall be deemed to have been rescinded subject to repayment by the
632 owner or the owner's estate of all proceeds and any premiums, loans and loan interest to the life
633 settlement provider.

634 Failure to give written notice of the right of rescission shall toll the right of rescission
635 until 30 days after the written notice of the right of rescission has been given.

636 (i) Within 3 business days after receipt from the owner of documents to effect the transfer
637 of the policy pursuant to a life settlement contract, the life settlement provider shall pay the
638 proceeds of the life settlement contract to an escrow or trust account managed by a trustee or
639 escrow agent in a state or federally chartered financial institution pending acknowledgement of
640 the transfer by the issuer of the policy. The trustee or escrow agent shall be required to transfer
641 the proceeds due to the owner within 3 business days of acknowledgement of the transfer from
642 the insurer.

643 (j) Failure to tender the life settlement contract proceeds to the owner by the date
644 disclosed to the owner renders the life settlement contract voidable by the owner for lack of
645 consideration until the time the proceeds are tendered to and accepted by the owner.

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

651 (l) No person at any time prior to, or at the time of the application for, or issuance of a
652 policy, or during a 2 year period commencing with the date of issuance of the policy, shall enter
653 into a life settlement contract regardless of the date the compensation is to be provided and
654 regardless of the date the assignment, transfer, sale, devise, bequest or surrender of the policy is
655 to occur.

656 (m) This prohibition shall not apply if:

657 (i) the owner certifies to the provider that the policy was issued upon the owner's
658 exercise of conversion rights arising out of a group or individual policy; provided that the total of
659 the time covered under the conversion policy plus the time covered under the prior policy is at
660 least 24 months; provided, further that the time covered under a group policy shall be calculated
661 without regard to a change in insurance carriers, if the coverage has been continuous and under
662 the same group sponsorship; or

663 (ii) the owner submits independent evidence to the life settlement provider that 1 or more
664 of the following conditions have been met within the 2 year period:

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

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

669 (C) the owner's spouse dies;

670 (D) the owner divorces their spouse;

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

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

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

678 (2) Copies of the independent evidence required by clause (ii) shall be submitted to the
679 insurer when the life settlement provider submits a request to the insurer for verification of
680 coverage. The copies shall be accompanied by a letter of attestation from the life settlement
681 provider that the copies are true and correct copies of the documents received by the life
682 settlement provider. Nothing in this section shall prohibit an insurer from exercising its right to
683 contest the validity of any policy.

684 (3) If the life settlement provider submits to the insurer a copy of independent evidence
685 provided for in subclause (A) of clause (ii) when the life settlement provider submits a request to

686 the insurer to effect the transfer of the policy to the life settlement provider, the copy is deemed
687 to establish that the life settlement contract satisfies the requirements of this section.

688 Section 223A. (a) The commissioner may promulgate regulations implementing this
689 act.

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

696 (ii) A life settlement provider from the commonwealth who enters into a life settlement
697 contract with an owner who is a resident of another state that has enacted statutes or adopted
698 regulations governing life settlement contracts, shall be governed in the effectuation of that life
699 settlement contract by the statutes and regulations of the owner's state of residence. If the state
700 in which the owner is a resident has not enacted statutes or regulations governing life settlement
701 contracts, the life settlement provider shall give the owner notice that neither state regulates the
702 transaction upon which he is entering. For transactions in those states, however, the life
703 settlement provider is to maintain all records required if the transactions were executed in the
704 owner's state of residence. The forms used in those states need not be approved by the
705 commissioner.

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

709 Section 223B. A fraudulent life settlement act shall include:

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

713 (i) Presenting, causing to be presented or preparing with knowledge and belief that it will
714 be presented to or by a life settlement provider, premium finance lender, life settlement broker,
715 insurer, insurance producer or any other person, false material information or concealing material
716 information, as part of, in support of or concerning a fact material to 1 or more of the following:

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

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

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

721 (D) premiums paid on an insurance policy;

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

724 (F) the reinstatement or conversion of an insurance policy;

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

727 (H) the issuance of written evidence of life settlement contracts or insurance;

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

730 (J) engaging in stranger-originated life insurance.

731 (ii) Failing to disclose to the insurer, where the request for such disclosure has been asked
732 for by the insurer, that the prospective insured has undergone a life expectancy evaluation by a
733 person or entity other than the insurer or its authorized representatives in connection with the
734 issuance of the policy.

735 (iii) Employing any device, scheme, or artifice to defraud in the business of life
736 settlements.

737 (2) The following acts committed by a person, or that such person permits an employee
738 or agent to commit, in the furtherance of a fraud, or to prevent the detection of fraud:

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

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

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

746 (iv) file with the commissioner or the chief insurance regulatory official of another
747 jurisdiction a document containing false information or otherwise concealing information about a
748 material fact from the commissioner;

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

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

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

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

762 Section 223C. (a) It is unlawful for a person to:

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

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

768 (iii) engage in any fraudulent act or practice in connection with any transaction relating to
769 any settlement involving an owner who is a resident of the commonwealth;

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

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

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

783 (vii) with respect to a life settlement contract or insurance policy and a life settlement
784 provider, knowingly enter into a life settlement contract with an owner if, in connection with the
785 life settlement contract, anything of value will be paid to a life settlement broker that is
786 controlling, controlled by or under common control with the life settlement provider, the
787 financing entity or a related provider trust that is involved in the life settlement contract unless
788 the relationship is disclosed to the owner;

789 (ix) include any reference in an advertisement that would cause an owner to reasonably
790 believe that the insurance is free for any period of time; or

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

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

796 (c) The commissioner may investigate suspected fraudulent life settlement acts and
797 persons engaged in the business of life settlements.

798 Section 223D. (a) (1) A person shall not commit a fraudulent life settlement act.

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

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

804 (b) (1) Life settlement contracts and applications for life settlement contracts, regardless
805 of the form of transmission, shall contain the following statement or a substantially similar
806 statement:

807 "Any person who knowingly presents false information in a life settlement application or
808 contract may be found guilty of a crime and may be subject to fines and confinement in prison."

809 (2) The lack of a statement as required in paragraph (1) shall not constitute a defense in a
810 prosecution for a fraudulent life settlement act.

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

815 (2) A person not engaged in the business of life settlements having knowledge or a
816 reasonable belief that a fraudulent life settlement act is being, will be or has been committed may
817 provide to the commissioner the information required by, and in a manner prescribed by, the
818 commissioner.

819 (d) (1) No civil liability shall be imposed on and no cause of action shall arise from a
820 person furnishing information concerning suspected, anticipated or completed fraudulent life
821 settlement acts or suspected or completed fraudulent insurance acts if the information is provided
822 to:

823 (i) the commissioner or the commissioner's employees, agents or representatives;

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

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

828 (iv) a regulatory body or its employees, agents or representatives, overseeing life
829 insurance, the business of life settlements, securities or investment fraud;

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

831 (vi) the licensee and its agents, employees or representatives.

832 (2) Paragraph (1) shall not apply to statements made with actual malice. In an action
833 brought against a person for filing a report or furnishing other information concerning a
834 fraudulent life settlement act or insurance that was fraudulently obtained, the party bringing the
835 action shall plead specifically any allegation that paragraph (1) does not apply because the
836 person filing the report or furnishing the information did so with actual malice.

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

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

845 (e) (1) The documents and evidence provided pursuant to subsection (d) or obtained by
846 the commissioner in an investigation of suspected or actual fraudulent life settlement acts shall
847 be privileged and confidential, shall not be a public record and shall not be subject to discovery
848 or subpoena in a civil or criminal action.

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

851 (i) in administrative or judicial proceedings to enforce laws administered by the
852 commissioner;

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

855 (iii) at the discretion of the commissioner, to a person in the business of life settlements
856 that is aggrieved by a fraudulent life settlement act.

857 (3) Release of documents and evidence under paragraph (2) shall not abrogate or modify
858 the privilege granted in paragraph (1).

859 (f) This act shall not:

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

862 (ii) preempt, supersede or limit state securities law or any rule, order or notice issued
863 thereunder;

864 (iii) prevent or prohibit a person from disclosing voluntarily information concerning life
865 settlement fraud to a law enforcement or regulatory agency other than the commissioner; or

866 (iv) limit the powers granted elsewhere by the laws of this state to the commissioner or an
867 insurance fraud unit to investigate and examine possible violations of law and to take appropriate
868 action against wrongdoers.

869 (g) (1) Life settlement providers and life settlement brokers shall have in place antifraud
870 initiatives to detect, prosecute and prevent fraudulent life settlement acts. At the discretion of the
871 commissioner, the commissioner may order, or a licensee may request and the commissioner
872 may grant, such modifications of the following required initiatives as necessary to ensure an
873 effective antifraud program. The modifications may be more or less restrictive than the required
874 initiatives so long as the modifications may reasonably be expected to accomplish the purpose of
875 this section. Antifraud initiatives shall include:

876 (i) fraud investigators, who may be life settlement provider or life settlement broker
877 employees or independent contractors; and

878 (ii) an antifraud plan, which shall be submitted to the commissioner. The antifraud plan
879 shall include, but not be limited to:

880 (A) a description of the procedures for detecting and investigating possible fraudulent life
881 settlement acts and procedures for resolving material inconsistencies between medical records
882 and insurance applications;

883 (B) a description of the procedures for reporting possible fraudulent life settlement acts to
884 the Commissioner;

885 (C) a description of the plan for antifraud education and training of underwriters and
886 other personnel; and

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

891 (2) Antifraud plans submitted to the commissioner shall be privileged and confidential,
892 shall not be a public record and shall not be subject to discovery or subpoena in a civil or
893 criminal action.

894 Section 223E. (a) If a person violates this act or any rule or regulation implementing this
895 act, the commissioner may seek an injunction in a court of competent jurisdiction in the county
896 where the person resides or has a principal place of business and may apply for temporary and
897 permanent orders that the commissioner determines necessary to restrain the person from further
898 committing the violation.

899 (b) A person damaged by the acts of another person in violation of this act or any rule or
900 regulation implementing this act may bring a civil action for damages against the person
901 committing the violation in a court of competent jurisdiction.

902 (c) The commissioner may issue a cease and desist order, in accordance with chapter
903 30A, upon a person who violates any provision of this act, any regulation, rule or order adopted
904 by the commissioner or any written agreement entered into with the commissioner.

905 (d) When the commissioner finds that an action presents an immediate danger to the
906 public and requires immediate action, he may issue an emergency cease and desist order reciting
907 with particularity the facts underlying such findings. The emergency cease and desist order shall
908 be effective immediately upon service of a copy of the order on the respondent and shall remain
909 effective for 90 days. If the commissioner begins non-emergency cease and desist proceedings
910 under subsection (c), the emergency cease and desist order shall remain effective, absent an order
911 by an appellate court of competent jurisdiction pursuant to chapter 30A. In the event of a willful
912 violation of this act, the trial court may award statutory damages in addition to actual damages in
913 an amount up to 3 times the actual damage award.

914 (e) The provisions of this act shall not be waived by agreement. A choice of law
915 provision shall not be utilized to prevent the application of this act to a life settlement contract in
916 which a party to the life settlement contract is a resident of the commonwealth.

917 Section 223F. (a) If a person is found guilty of committing a fraudulent life settlement
918 act, that person shall also be found guilty of committing insurance fraud and shall be subject to
919 additional penalties.

920 (b) The commissioner may levy a civil penalty, not to exceed $10,000 for each violation,
921 upon any person, including those persons and their employees licensed pursuant to this act, who
922 is found to have committed a fraudulent life settlement act or violated any other provision of this
923 act.

924 (c) The license of a person licensed under this act that has committed a fraudulent life
925 settlement act shall be revoked for a period of at least 1 year.

926 Section 223G. A violation of this act shall be considered an unfair trade practice under
927 sections 3 and 4 of chapter 176D, and shall be subject to the penalties set forth in section 7 of
928 said chapter 176D.

929 SECTION 2. (a) A person licensed to act as a viatical settlement broker or viatical
930 settlement provider as of the effective date of this act, shall be deemed qualified for licensure as
931 a life settlement broker or life settlement provider, respectively, and shall be subject to all the
932 provisions of this article as if the person were originally licensed as a life settlement broker or
933 life settlement provider.

934 (b) A viatical settlement provider lawfully transacting business prior to the effective date
935 of this act may continue to do so pending approval or disapproval of the application for a license
936 as long as the application is filed with the commissioner not later than 30 days after publication
937 by the commissioner of an application form and instructions for licensure of life settlement
938 providers. During the time that an application is pending with the commissioner, the applicant
939 may use any form of life settlement contract that has been filed with the commissioner pending
940 approval thereof; provided that such form is otherwise in compliance with the provisions of this
941 life settlement act. Any person transacting business under this provision shall be obligated to
942 comply with all other requirements of this act.

943 (c) A person who has lawfully negotiated life settlement contracts between an owner
944 residing in the commonwealth and 1 or more life settlement providers for at least 1 year
945 immediately prior to the effective date of this act may continue to do so pending approval or
946 disapproval of that person's application for a license as long as the application is filed with the
947 commissioner not later than 30 days after publication by the commissioner of an application

948 form and instructions for licensure of life settlement brokers. Any person transacting business
949 under this provision shall be obligated to comply with all other requirements of this act.

950 SECTION 3. This act shall apply to all life settlement contracts entered into on or after
951 January 1, 2011 involving a life insurance policy in effect, or entered into, on or after the
952 effective date of this act.