

HOUSE No. 3573

The Commonwealth of Massachusetts

In the Year Two Thousand Twelve

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:

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

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

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

8 “Act”, the Massachusetts Life Settlement Act, sections 212 to 223G, inclusive.

9 “Advertisement”, any written, electronic, or printed communication or any
10 communication by means of recorded telephone messages or transmitted on radio, television, the
11 Internet, or similar communications media, including film strips, motion pictures and videos,
12 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.

31 “Financing transaction”, a transaction in which a licensed life settlement provider obtains
32 financing from a financing entity including, but not limited to, secured or unsecured financing, a
33 securitization transaction or a securities offering which either is registered or exempt from
34 registration under federal and state securities law.

35 “Fraudulent life settlement act”, an act described in section 223B.

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

38 “Licensee”, a person or entity licensed as a life settlement provider by the commission of
39 insurance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 100 (1) a bank, savings bank, savings and loan association or credit union;
- 101 (2) a licensed lending institution or creditor or secured party pursuant to a premium
102 finance loan agreement which takes an assignment of a life insurance policy or certificate issued
103 pursuant to a group life insurance policy as collateral for a loan;
- 104 (3) the issuer of a life insurance policy or rider which provides accelerated death benefits
105 pursuant to the contract or cash surrender value;
- 106 (4) a natural person who enters into or effectuates not more than 1 agreement in a
107 calendar year for the transfer of a life insurance policy or certificate issued pursuant to a group
108 life insurance policy, for compensation or anything of value less than the expected death benefit
109 payable under the policy;
- 110 (5) a financing entity;
- 111 (6) a purchaser;
- 112 (7) an authorized or eligible insurer that provides stop loss coverage to a life settlement
113 provider, purchaser, financing entity, special purpose entity or related provider trust;
- 114 (8) a related provider trust;
- 115 (9) a special purpose entity;
- 116 (10) a life settlement broker; or
- 117 (11) an accredited investor or qualified institutional buyer as defined in regulation D, rule
118 501 or rule 144A of the federal Securities Act of 1933, as amended, who purchases a life
119 settlement policy from a life settlement provider.

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

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

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

128 (2) a qualified institutional buyer as defined in rule 144A of the federal Securities Act of
129 1933, as amended;

130 (3) a financing entity;

131 (4) a special purpose entity; or

132 (5) a related provider trust.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

245 (k) An individual licensed as a life settlement broker shall complete, on a biennial basis,
246 15 hours of training related to the business of life settlements and life settlement transactions as

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

587 (3) the borrower has an insurable interest in the insured.”

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

657 (m) This prohibition shall not apply if:

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

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

- 666 (A) the owner or insured is terminally or chronically ill;
- 667 (B) the owner or insured disposes of his ownership interests in a closely held corporation,
668 pursuant to the terms of a buyout or other similar agreement in effect at the time the insurance
669 policy was initially issued;
- 670 (C) the owner's spouse dies;
- 671 (D) the owner divorces their spouse;
- 672 (E) the owner retires from full-time employment;
- 673 (F) the owner becomes physically or mentally disabled and a physician determines that
674 the disability prevents the owner from maintaining full-time employment; or
- 675 (G) a final order, judgment or decree is entered by a court of competent jurisdiction on
676 the application of a creditor of the owner adjudicating the owner bankrupt or insolvent, or
677 approving a petition seeking reorganization of the owner or appointing a receiver, trustee or
678 liquidator to all or a substantial part of the owner's assets;
- 679 (2) Copies of the independent evidence required by clause (ii) shall be submitted to the
680 insurer when the life settlement provider submits a request to the insurer for verification of
681 coverage. The copies shall be accompanied by a letter of attestation from the life settlement
682 provider that the copies are true and correct copies of the documents received by the life
683 settlement provider. Nothing in this section shall prohibit an insurer from exercising its right to
684 contest the validity of any policy.
- 685 (3) If the life settlement provider submits to the insurer a copy of independent evidence
686 provided for in subclause (A) of clause (ii) when the life settlement provider submits a request to

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

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

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

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

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

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

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

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

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

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

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

723 (D) premiums paid on an insurance policy;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

809 “Any person who knowingly presents false information in a life settlement application or
810 contract may be found guilty of a crime and may be subject to fines and confinement in prison.”

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

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

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

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

825 (i) the commissioner or the commissioner’s employees, agents or representatives;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

861 (f) This act shall not:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

904 (c) The commissioner may issue a cease and desist order, in accordance with chapter
905 30A, upon a person who violates any provision of this act, any regulation, rule or order adopted
906 by the commissioner or any written agreement entered into with the commissioner.

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

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

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

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

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

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

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

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

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

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

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

955 SECTION 4: Nothing in this act shall be construed to limit the incontestability standard
956 as set forth in section 132 of chapter 175 of the Massachusetts General Laws.