
SENATE BILL 6631

State of Washington

60th Legislature

2008 Regular Session

By Senators Berkey, Benton, Marr, and Roach

Read first time 01/21/08. Referred to Committee on Financial Institutions & Insurance.

1 AN ACT Relating to adopting the life settlements model act; adding
2 a new chapter to Title 48 RCW; and prescribing penalties.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** SHORT TITLE. This chapter may be cited as
5 the "life settlements act."

6 NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this
7 section apply throughout this chapter unless the context clearly
8 requires otherwise.

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

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

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

16 (4) "Chronically ill" means:

17 (a) Being unable to perform at least two activities of daily
18 living, i.e., eating, toileting, transferring, bathing, dressing, or
19 continence;

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

23 (c) Having a level of disability similar to that described in (a)
24 of this subsection as determined by the United States secretary of
25 health and human services.

26 (5) "Commissioner" means the insurance commissioner.

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

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

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

37 (b) "Financing entity" does not include a nonaccredited investor or
38 purchaser.

1 (7) "Financing transaction" means a transaction in which a licensed
2 provider obtains financing from a financing entity including, without
3 limitation, any secured or unsecured financing, any securitization
4 transaction, or any securities offering which either is registered or
5 exempt from registration under federal and state securities law.

6 (8) "Fraudulent life settlement act" includes:

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

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

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

19 (B) The underwriting of a life settlement contract or insurance
20 policy;

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

23 (D) Premiums paid on an insurance policy;

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

27 (F) The reinstatement or conversion of an insurance policy;

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

30 (H) The issuance of written evidence of life settlement contracts
31 or insurance;

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

35 (J) Enter into any practice or plan which involves stranger-
36 originated life insurance.

37 (ii) Failing to disclose to the insurer where the request for such
38 disclosure has been asked for by the insurer that the prospective

1 insured has undergone a life expectancy evaluation by any person or
2 entity other than the insurer or its authorized representatives in
3 connection with the issuance of the policy.

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

6 (iv) In the solicitation, application, or issuance of a life
7 insurance policy, employing any device, scheme, or artifice in
8 violation of state insurable interest laws.

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

11 (i) Remove, conceal, alter, destroy, or sequester from the
12 commissioner the assets or records of a licensee or other person
13 engaged in the business of life settlements;

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

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

19 (iv) File with the commissioner or the chief insurance regulatory
20 official of another jurisdiction a document containing false
21 information or otherwise concealing information about a material fact
22 from the commissioner;

23 (v) Engage in embezzlement, theft, misappropriation, or conversion
24 of moneys, funds, premiums, credits, or other property of a provider,
25 insurer, insured, owner, insurance, policy owner, or any other person
26 engaged in the business of life settlements or insurance;

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

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

37 (viii) Misrepresent the state of residence of an owner to be a

1 state or jurisdiction that does not have a law substantially similar to
2 this chapter for the purpose of evading or avoiding the provisions of
3 this chapter.

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

6 (10) "Life expectancy" means the arithmetic mean of the number of
7 months the insured under the life insurance policy to be settled can be
8 expected to live as determined by a life expectancy company considering
9 medical records and appropriate experiential data.

10 (11) "Life insurance producer" means any person licensed in this
11 state as a resident or nonresident insurance producer who has received
12 qualification or authority for life insurance coverage or a life line
13 of coverage pursuant to RCW 48.17.170.

14 (12)(a) "Life settlement contract" means a written agreement
15 entered into between a provider and an owner, establishing the terms
16 under which compensation or any thing of value will be paid, which
17 compensation or thing of value is less than the expected death benefit
18 of the insurance policy or certificate, in return for the owner's
19 assignment, transfer, sale, devise, or bequest of the death benefit or
20 any portion of an insurance policy or certificate of insurance for
21 compensation, provided, however, that the minimum value for a life
22 settlement contract shall be greater than a cash surrender value or
23 accelerated death benefit available at the time of an application for
24 a life settlement contract.

25 (b) "Life settlement contract" also includes the transfer for
26 compensation or value of ownership or beneficial interest in a trust or
27 other entity that owns such policy if the trust or other entity was
28 formed or availed of for the principal purpose of acquiring one or more
29 life insurance contracts, which life insurance contract insures the
30 life of a person residing in this state.

31 (c) "Life settlement contract" also includes:

32 (i) A written agreement for a loan or other lending transaction,
33 secured primarily by an individual or group life insurance policy; or

34 (ii) A premium finance loan made for a policy on or before the date
35 of issuance of the policy where:

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

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

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

6 (d) "Life settlement contract" does not include:

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

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

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

18 (iv) A loan made by a lender that does not violate any provision of
19 this title, provided the loan is not described in (a) of this
20 subsection, and is not otherwise within the definition of life
21 settlement contract;

22 (v) An agreement where all the parties (A) are closely related to
23 the insured by blood or law, or (B) have a lawful substantial economic
24 interest in the continued life, health, and bodily safety of the person
25 insured, or are trusts established primarily for the benefit of those
26 parties;

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

31 (vii) A bona fide business succession planning arrangement:

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

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

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

4 (viii) An agreement entered into by a service recipient, or a trust
5 established by the service recipient, and a service provider, or a
6 trust established by the service provider, who performs significant
7 services for the service recipient's trade or business; or

8 (ix) Any other contract, transaction, or arrangement from the
9 definition of life settlement contract that the commissioner determines
10 is not of the type intended to be regulated by this chapter.

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

14 (14)(a) "Owner" means the owner of a life insurance policy or a
15 certificate holder under a group policy, with or without a terminal
16 illness, who enters or seeks to enter into a life settlement contract.
17 For the purposes of this chapter, an owner shall not be limited to an
18 owner of a life insurance policy or a certificate holder under a group
19 policy that insures the life of an individual with a terminal or
20 chronic illness or condition except where specifically addressed.

21 (b) "Owner" does not include:

22 (i) Any provider or other licensee under this chapter;

23 (ii) A qualified institutional buyer as defined in rule 144A of the
24 federal securities act of 1933, as amended;

25 (iii) A financing entity;

26 (iv) A special purpose entity; or

27 (v) A related provider trust.

28 (15) "Patient identifying information" means an insured's address,
29 telephone number, facsimile number, electronic mail address, photograph
30 or likeness, employer, employment status, social security number, or
31 any other information that is likely to lead to the identification of
32 the insured.

33 (16) "Policy" means an individual or group policy, group
34 certificate, contract, or arrangement of life insurance owned by a
35 resident of this state, regardless of whether delivered or issued for
36 delivery in this state.

37 (17) "Premium finance loan" means a loan made primarily for the

1 purposes of making premium payments on a life insurance policy, which
2 loan is secured by an interest in the life insurance policy.

3 (18) "Person" means any natural person or legal entity, including
4 but not limited to, a partnership, limited liability company,
5 association, trust, or corporation.

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

8 (b) "Provider" does not include:

9 (i) Any bank, savings bank, savings and loan association, or credit
10 union;

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

15 (iii) The insurer of a life insurance policy or rider to the extent
16 of providing accelerated death benefits or riders under an approved
17 policy form or cash surrender value;

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

23 (v) A purchaser;

24 (vi) Any authorized or eligible insurer that provides stop loss
25 coverage to a provider, purchaser, financing entity, special purpose
26 entity, or related provider trust;

27 (vii) A financing entity;

28 (viii) A special purpose entity;

29 (ix) A related provider trust;

30 (x) A broker; or

31 (xi) An accredited investor or qualified institutional buyer as
32 defined, respectively, in regulation D, rule 501 or rule 144A of the
33 federal securities act of 1933, as amended, who purchases a life
34 settlement policy from a provider.

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

37 (21) "Purchaser" means a person who pays compensation or anything
38 of value as consideration for a beneficial interest in a trust which is

1 vested with, or for the assignment, transfer, or sale of, an ownership
2 or other interest in a life insurance policy or a certificate issued
3 pursuant to a group life insurance policy which has been the subject of
4 a life settlement contract.

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

16 (23) "Settled policy" means a life insurance policy or certificate
17 that has been acquired by a provider pursuant to a life settlement
18 contract.

19 (24) "Special purpose entity" means a corporation, partnership,
20 trust, limited liability company, or other legal entity formed solely
21 to provide either directly or indirectly access to institutional
22 capital markets for a financing entity or provider:

23 (a) In connection with a transaction in which the securities in the
24 special purpose entity are acquired by the owner or by a "qualified
25 institutional buyer" as defined in rule 144 promulgated under the
26 federal securities act of 1933, as amended; or

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

29 (25) "Stranger-originated life insurance" is a practice or plan to
30 initiate a life insurance policy for the benefit of a third-party
31 investor who, at the time of policy origination, has no insurable
32 interest in the insured. Stranger-originated life insurance practices
33 include but are not limited to cases in which life insurance is
34 purchased with resources or guarantees from or through a person, or
35 entity, who, at the time of policy inception, could not lawfully
36 initiate the policy himself or itself, and where, at the time of
37 inception, there is an arrangement or agreement, whether verbal or
38 written, to directly or indirectly transfer the ownership of the policy

1 and/or the policy benefits to a third party. Trusts that are created
2 to give the appearance of insurable interest and are used to initiate
3 policies for investors violate insurable interest laws and the
4 prohibition against wagering on life. Stranger-originated life
5 insurance arrangements do not include those practices set forth in
6 subsection (12)(d) of this section.

7 (26) "Terminally ill" means having an illness or sickness that can
8 reasonably be expected to result in death in twenty-four months or
9 less.

10 NEW SECTION. **Sec. 3. LICENSING REQUIREMENTS.** (1) A person,
11 wherever located, shall not act as a provider or broker with an owner
12 or multiple owners who is a resident of this state, without first
13 having obtained a license from the commissioner. If there is more than
14 one owner on a single policy and the owners are residents of different
15 states, the life settlement contract shall be governed by the law of
16 the state in which the owner having the largest percentage ownership
17 resides or, if the owners hold equal ownership, the state of residence
18 of one owner agreed upon in writing by all owners.

19 (2) Application for a provider or broker license shall be made to
20 the commissioner by the applicant on a form prescribed by the
21 commissioner, and the application shall be accompanied by a fee in an
22 amount established by the commissioner. However, the license and
23 renewal fees for a provider license shall be reasonable and the license
24 and renewal fees for a broker license shall not exceed those
25 established for an insurance producer, as those fees are otherwise
26 provided for in this chapter.

27 (3) A life insurance producer who has been duly licensed as a
28 resident insurance producer with a life line of authority in this state
29 or his or her home state for at least one year and is licensed as a
30 nonresident producer in this state meets the licensing requirements of
31 this section and is permitted to operate as a broker.

32 (4) Not later than thirty days from the first day of operating as
33 a broker, the life insurance producer shall notify the commissioner
34 that he or she is acting as a broker on a form prescribed by the
35 commissioner, and shall pay any applicable fee to be determined by the
36 commissioner. Notification shall include an acknowledgement by the

1 life insurance producer that he or she will operate as a broker in
2 accordance with this chapter.

3 (5) The insurer that issued the policy that is the subject of a
4 life settlement contract is not responsible for any act or omission of
5 a broker, provider, or purchaser arising out of or in connection with
6 the life settlement transaction, unless the insurer receives
7 compensation for the placement of a life settlement contract from the
8 provider, purchaser, or broker in connection with the life settlement
9 contract.

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

16 (7) Licenses are valid for the time established by the commissioner
17 and may be renewed into a new period under RCW 48.17.500(4). As
18 specified by subsection (2) of this section, the renewal fee for a
19 provider shall not exceed a reasonable fee. Failure to pay the fee
20 within the terms prescribed shall result in the automatic revocation of
21 the license requiring periodic renewal.

22 (8) The term of a provider license shall be equal to that of a
23 domestic stock life insurance company and the term of a broker license
24 shall be equal to that of an insurance producer license. Licenses
25 requiring periodic renewal may be renewed on their anniversary date
26 upon payment of the periodic renewal fee as specified in subsection (2)
27 of this section. Failure to pay the fees on or before the renewal date
28 shall result in expiration of the license.

29 (9) The applicant shall provide such information as the
30 commissioner may require on forms prepared by the commissioner. The
31 commissioner has the authority, at any time, to require such an
32 applicant to fully disclose the identity of its stockholders, except
33 stockholders owning fewer than ten percent of the shares of an
34 applicant whose shares are publicly traded, partners, officers, and
35 employees, and the commissioner may, in the exercise of the
36 commissioner's sole discretion, refuse to issue such a license in the
37 name of any person if not satisfied that any officer, employee,

1 stockholder, or partner thereof who may materially influence the
2 applicant's conduct meets the standards of this chapter.

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

7 (11) Upon the filing of an application and the payment of the
8 license fee, the commissioner shall make an investigation of each
9 applicant and may issue a license if the commissioner finds that the
10 applicant:

11 (a) If a provider, has provided a detailed plan of operation;

12 (b) Is competent and trustworthy and intends to transact its
13 business in good faith;

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

17 (d) If the applicant is a legal entity, is formed or organized
18 pursuant to the laws of this state, is a foreign legal entity
19 authorized to transact business in this state, or provides a
20 certificate of good standing from the state of its domicile; and

21 (e) Has provided to the commissioner an antifraud plan that meets
22 the requirements of section 14 of this act and includes:

23 (i) A description of the procedures for detecting and investigating
24 possible fraudulent acts and procedures for resolving material
25 inconsistencies between medical records and insurance applications;

26 (ii) A description of the procedures for reporting fraudulent
27 insurance acts to the commissioner;

28 (iii) A description of the plan for antifraud education and
29 training of its underwriters and other personnel; and

30 (iv) A written description or chart outlining the arrangement of
31 the antifraud personnel who are responsible for the investigation and
32 reporting of possible fraudulent insurance acts and investigating
33 unresolved material inconsistencies between medical records and
34 insurance applications.

35 (12) The commissioner shall not issue any license to any
36 nonresident applicant, unless a written designation of an agent for
37 service of process is filed and maintained with the commissioner or
38 unless the applicant has filed with the commissioner the applicant's

1 written irrevocable consent that any action against the applicant may
2 be commenced against the applicant by service of process on the
3 commissioner.

4 (13) Each licensee shall file with the commissioner on or before
5 the first day of March of each year an annual statement containing the
6 information as the commissioner by rule may prescribe.

7 (14) A provider may not use any person to perform the functions of
8 a broker unless the person holds a current, valid license as a broker,
9 and as provided in this section.

10 (15) A broker may not use any person to perform the functions of a
11 provider unless such a person holds a current, valid license as a
12 provider, and as provided in this section.

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

17 (17) An individual licensed as a broker shall complete on a
18 biennial basis fifteen hours of training related to life settlements
19 and life settlement transactions, as required by the commissioner.
20 However, a life insurance producer who is operating as a broker
21 pursuant to this section is not subject to the requirements of this
22 subsection. Any person failing to meet the requirements of this
23 subsection is subject to the penalties imposed by the commissioner.

24 NEW SECTION. **Sec. 4.** LICENSE SUSPENSION, REVOCATION, OR REFUSAL
25 TO RENEW. (1) The commissioner may suspend, revoke, or refuse to renew
26 the license of any licensee if the commissioner finds that:

27 (a) There was any material misrepresentation in the application for
28 the license;

29 (b) The licensee or any officer, partner, member, or director has
30 been guilty of fraudulent or dishonest practices, is subject to a final
31 administrative action or is otherwise shown to be untrustworthy or
32 incompetent to act as a licensee;

33 (c) The provider demonstrates a pattern of unreasonably withholding
34 payments to policy owners;

35 (d) The licensee no longer meets the requirements for initial
36 licensure;

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

7 (f) The provider has entered into any life settlement contract that
8 has not been approved under this chapter;

9 (g) The provider has failed to honor contractual obligations set
10 out in a life settlement contract;

11 (h) The provider has assigned, transferred, or pledged a settled
12 policy to a person other than a provider licensed in this state, a
13 purchaser, an accredited investor or qualified institutional buyer as
14 defined, respectively, in regulation D, rule 501 or rule 144A of the
15 federal securities act of 1933, as amended, a financing entity, a
16 special purpose entity, or a related provider trust; or

17 (i) The licensee or any officer, partner, member, or key management
18 personnel has violated any of the provisions of this chapter.

19 (2) Before the commissioner denies a license application or
20 suspends, revokes, or refuses to renew the license of any licensee
21 under this chapter, the commissioner shall conduct a hearing in
22 accordance with this state's laws governing administrative hearings.

23 NEW SECTION. **Sec. 5.** CONTRACT REQUIREMENTS. (1) A person may not
24 use any form of life settlement contract in this state unless it has
25 been filed with and approved, if required, by the commissioner in a
26 manner that conforms with the filing procedures and any time
27 restrictions or deeming provisions, if any, for life insurance forms,
28 policies, and contracts.

29 (2) An insurer may not, as a condition of responding to a request
30 for verification of coverage or in connection with the transfer of a
31 policy pursuant to a life settlement contract, require that the owner,
32 insured, provider, or broker sign any form, disclosure, consent,
33 waiver, or acknowledgment that has not been expressly approved by the
34 commissioner for use in connection with life settlement contracts in
35 this state.

36 (3) A person shall not use a life settlement contract form or
37 provide to an owner a disclosure statement form in this state unless

1 first filed with and approved by the commissioner. The commissioner
2 shall disapprove a life settlement contract form or disclosure
3 statement form if, in the commissioner's opinion, the contract or
4 provisions contained therein fail to meet the requirements of sections
5 8, 9, 11, and 15(2) of this act or are unreasonable, contrary to the
6 interests of the public, or otherwise misleading or unfair to the
7 owner. At the commissioner's discretion, the commissioner may require
8 the submission of advertising material.

9 NEW SECTION. **Sec. 6.** REPORTING REQUIREMENTS AND PRIVACY. (1) For
10 any policy settled within five years of policy issuance, each provider
11 shall file with the commissioner on or before March 1 of each year an
12 annual statement containing such information as the commissioner may
13 prescribe by rule. In addition to any other requirements, the annual
14 statement shall specify the total number, aggregate face amount, and
15 life settlement proceeds of policies settled during the immediately
16 preceding calendar year, together with a breakdown of the information
17 by policy issue year. The annual statement shall also include the
18 names of the insurance companies whose policies have been settled and
19 the brokers that have settled the policies.

20 (a) This information is limited to only those transactions where
21 the insured is a resident of this state and does not include individual
22 transaction data regarding the business of life settlements or
23 information that there is a reasonable basis to believe could be used
24 to identify the owner or the insured.

25 (b) Every provider that willfully fails to file an annual statement
26 as required in this section, or willfully fails to reply within thirty
27 days to a written inquiry by the commissioner in connection therewith,
28 shall, in addition to other penalties provided by this chapter, be
29 subject, upon due notice and opportunity to be heard, to a penalty of
30 up to two hundred fifty dollars per day of delay, not to exceed
31 twenty-five thousand dollars in the aggregate, for each such failure.

32 (2) Except as otherwise allowed or required by law, a provider,
33 broker, insurance company, insurance producer, information bureau,
34 rating agency or company, or any other person with actual knowledge of
35 an insured's identity, shall not disclose the identity of an insured or
36 information that there is a reasonable basis to believe could be used

1 to identify the insured or the insured's financial or medical
2 information to any other person unless the disclosure:

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

6 (b) Is necessary to effectuate the sale of life settlement
7 contracts, or interests therein, as investments, provided (i) the sale
8 is conducted in accordance with applicable state and federal securities
9 law, and (ii) the owner and the insured have both provided prior
10 written consent to the disclosure;

11 (c) Is provided in response to an investigation or examination by
12 the commissioner or any other governmental officer or agency or
13 pursuant to the requirements of section 13 of this act;

14 (d) Is a term or condition to the transfer of a policy by one
15 provider to another provider, in which case the receiving provider
16 shall be required to comply with the confidentiality requirements of
17 this subsection;

18 (e) Is necessary to allow the provider or broker or their
19 authorized representatives to make contacts for the purpose of
20 determining health status.

21 (i) For the purposes of this section, the "authorized
22 representative" does not include any person who has or may have any
23 financial interest in the settlement contract other than a provider,
24 licensed broker, financing entity, related provider trust, or special
25 purpose entity.

26 (ii) A provider or broker shall require its authorized
27 representative to agree in writing to adhere to the privacy provisions
28 of this chapter; or

29 (f) Is required to purchase stop loss coverage.

30 (3) Nonpublic personal information solicited or obtained in
31 connection with a proposed or actual life settlement contract shall be
32 subject to the provisions applicable to financial institutions under
33 the federal Gramm Leach Bliley act, P.L. 106-102 (1999), and all other
34 state and federal laws relating to confidentiality of nonpublic
35 personal information.

36 NEW SECTION. **Sec. 7. EXAMINATION.** (1) The commissioner may, when
37 the commissioner deems it reasonably necessary to protect the interests

1 of the public, examine the business and affairs of any licensee or
2 applicant for a license. The commissioner may order any licensee or
3 applicant to produce any records, books, files, or other information
4 reasonably necessary to ascertain whether such a licensee or applicant
5 is acting or has acted in violation of the law or otherwise contrary to
6 the interests of the public. The expenses incurred in conducting any
7 examination shall be paid by the licensee or applicant.

8 (2) In lieu of an examination under this chapter of any foreign or
9 alien licensee licensed in this state, the commissioner may, at the
10 commissioner's discretion, accept an examination report on the licensee
11 as prepared by the commissioner for the licensee's state of domicile or
12 port-of-entry state.

13 (3) Names of, and individual identification data, for all owners
14 and insureds, shall be considered private and confidential information
15 and shall not be disclosed by the commissioner unless required by law.

16 (4) Records of all consummated transactions and life settlement
17 contracts shall be maintained by the provider for three years after the
18 death of the insured and shall be available to the commissioner for
19 inspection during reasonable business hours.

20 (5)(a) Upon determining that an examination should be conducted,
21 the commissioner shall issue an examination warrant appointing one or
22 more examiners to perform the examination and instructing them as to
23 the scope of the examination. In conducting the examination, the
24 examiner shall use methods common to the examination of any life
25 settlement licensee and should use those guidelines and procedures set
26 forth in an examiners' handbook adopted by a national organization.

27 (b) Every licensee or person from whom information is sought, its
28 officers, directors, and agents shall provide to the examiners timely,
29 convenient, and free access at all reasonable hours at its offices to
30 all books, records, accounts, papers, documents, assets, and computer
31 or other recordings relating to the property, assets, business, and
32 affairs of the licensee being examined. The officers, directors,
33 employees, and agents of the licensee or person shall facilitate the
34 examination and aid in the examination so far as it is in their power
35 to do so. The refusal of a licensee, by its officers, directors,
36 employees, or agents to submit to examination or to comply with any
37 reasonable written request of the commissioner shall be grounds for
38 suspension or refusal of, or nonrenewal of any license or authority

1 held by the licensee to engage in the life settlement business or other
2 business subject to the commissioner's jurisdiction. Any proceedings
3 for suspension, revocation, or refusal to renew any license or
4 authority shall be conducted under RCW 48.17.540.

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

12 (d) When making an examination under this chapter, the commissioner
13 may retain attorneys, appraisers, independent actuaries, independent
14 certified public accountants, or other professionals and specialists as
15 examiners, the reasonable cost of which shall be borne by the licensee
16 that is the subject of the examination.

17 (e) This chapter does not limit the commissioner's authority to
18 terminate or suspend an examination in order to pursue other legal or
19 regulatory action pursuant to the insurance laws of this state.
20 Findings of fact and conclusions made pursuant to any examination shall
21 be prima facie evidence in any legal or regulatory action.

22 (f) This chapter does not limit the commissioner's authority to use
23 and, if appropriate, to make public any final or preliminary
24 examination report, any examiner or licensee work papers or other
25 documents, or any other information discovered or developed during the
26 course of any examination in the furtherance of any legal or regulatory
27 action which the commissioner may, in his or her sole discretion, deem
28 appropriate.

29 (6)(a) Examination reports shall be comprised of only facts
30 appearing upon the books, from the testimony of its officers or agents
31 or other persons examined concerning its affairs, and such conclusions
32 and recommendations as the examiners find reasonably warranted from the
33 facts.

34 (b) No later than sixty days following completion of the
35 examination, the examiner in charge shall file with the commissioner a
36 verified written report of examination under oath. Upon receipt of the
37 verified report, the commissioner shall transmit the report to the
38 licensee examined, together with a notice that shall afford the

1 licensee examined a reasonable opportunity of not more than thirty days
2 (i) to make a written submission or rebuttal with respect to any
3 matters contained in the examination report and which shall become part
4 of the report, or (ii) to request a hearing on any matter in dispute.

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

8 (7)(a) Names and individual identification data for all owners,
9 purchasers, and insureds shall be considered private and confidential
10 information and shall not be disclosed by the commissioner, unless the
11 disclosure is to another regulator or is required by law.

12 (b) Except as otherwise provided in this chapter, all examination
13 reports, working papers, recorded information, documents, and copies
14 thereof produced by, obtained by, or disclosed to the commissioner or
15 any other person in the course of an examination made under this
16 chapter, or in the course of analysis or investigation by the
17 commissioner of the financial condition or market conduct of a licensee
18 shall be confidential by law and privileged, shall not be subject to
19 chapter 42.56 RCW, subpoena, and discovery, or admissible in evidence
20 in any private civil action. The commissioner is authorized to use the
21 documents, materials, or other information in the furtherance of any
22 regulatory or legal action brought as part of the commissioner's
23 official duties. The licensee being examined may have access to all
24 documents used to make the report.

25 (8)(a) An examiner may not be appointed by the commissioner if the
26 examiner, either directly or indirectly, has a conflict of interest or
27 is affiliated with the management of or owns a pecuniary interest in
28 any person subject to examination under this chapter. This section
29 does not automatically preclude an examiner from being:

30 (i) An owner;

31 (ii) An insured in a life settlement contract or insurance policy;

32 or

33 (iii) A beneficiary in an insurance policy that is proposed for a
34 life settlement contract.

35 (b) Notwithstanding the requirements of this subsection, the
36 commissioner may retain from time to time, on an individual basis,
37 qualified actuaries, certified public accountants, or other similar

1 individuals who are independently practicing their professions, even
2 though these persons may from time to time be similarly employed or
3 retained by persons subject to examination under this chapter.

4 (9)(a) A cause of action shall not arise nor shall any liability be
5 imposed against the commissioner, the commissioner's authorized
6 representatives, or any examiner appointed by the commissioner for any
7 statements made or conduct performed in good faith while carrying out
8 the provisions of this chapter.

9 (b) A cause of action shall not arise, nor shall any liability be
10 imposed against any person for the act of communicating or delivering
11 information or data to the commissioner or the commissioner's
12 authorized representative or examiner pursuant to an examination made
13 under this chapter, if the act of communication or delivery was
14 performed in good faith and without fraudulent intent or the intent to
15 deceive. This subsection (9)(b) does not abrogate or modify in any way
16 any common law or statutory privilege or immunity existing prior to the
17 effective date of this section enjoyed by any person identified in (a)
18 of this subsection.

19 (c) A person identified in (a) or (b) of this subsection shall be
20 entitled to an award of attorneys' fees and costs if he or she is the
21 prevailing party in a civil cause of action for libel, slander, or any
22 other relevant tort arising out of activities in carrying out the
23 provisions of this chapter and the party bringing the action was not
24 substantially justified in doing so. For purposes of this section a
25 proceeding is "substantially justified" if it had a reasonable basis in
26 law or fact at the time that it was initiated.

27 (10) The commissioner may investigate suspected fraudulent life
28 settlement acts and persons engaged in the business of life
29 settlements.

30 (11) The cost of examinations under this chapter shall be the same
31 as for a person under RCW 48.03.060.

32 NEW SECTION. **Sec. 8.** ADVERTISING. (1) A broker, or provider
33 licensed pursuant to this chapter, may conduct or participate in
34 advertisements within this state. These advertisements shall comply
35 with all advertising and marketing laws or rules adopted by the
36 commissioner that are applicable to life insurers or to brokers, and
37 providers licensed pursuant to this chapter.

1 (2) Advertisements shall be accurate, truthful, and not misleading
2 in fact or by implication.

3 (3) A person or trust shall not:

4 (a) Directly or indirectly, market, advertise, solicit, or
5 otherwise promote the purchase of a policy for the sole purpose of, or
6 with an emphasis on, settling the policy; or

7 (b) Use the words "free," "no cost," or words of similar import in
8 the marketing, advertising, soliciting or otherwise promoting of the
9 purchase of a policy.

10 NEW SECTION. **Sec. 9.** DISCLOSURES TO OWNERS. (1) The provider
11 shall provide in writing, in a separate document that is signed by the
12 owner and provider, the following information to the owner no later
13 than the date the life settlement contract is signed by all parties:

14 (a) The fact that possible alternatives to life settlement
15 contracts exist, including, but not limited to, accelerated benefits
16 offered by the issuer of the life insurance policy;

17 (b) The fact that some or all of the proceeds of a life settlement
18 contract may be taxable and that assistance should be sought from a
19 professional tax advisor;

20 (c) The fact that the proceeds from a life settlement contract
21 could be subject to the claims of creditors;

22 (d) The fact that receipt of proceeds from a life settlement
23 contract may adversely affect the recipients' eligibility for public
24 assistance or other government benefits or entitlements and that advice
25 should be obtained from the appropriate agencies;

26 (e) The fact that the owner has a right to terminate a life
27 settlement contract within fifteen days of the date it is executed by
28 all parties and the owner has received the disclosures required by this
29 section. Rescission, if exercised by the owner, is effective only if
30 both notice of the rescission is given, and the owner repays all
31 proceeds and any premiums, loans, and loan interest paid on account of
32 the provider within the rescission period. If the insured dies during
33 the rescission period, the contract shall be deemed to have been
34 rescinded subject to repayment by the owner or the owner's estate of
35 all proceeds and any premiums, loans, and loan interest to the
36 provider;

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

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

12 (h) The amount and method of calculating the compensation paid or
13 to be paid to the broker, or any other person acting for the owner in
14 connection with the transaction, wherein the term compensation includes
15 anything of value paid or given;

16 (i) The date by which the funds will be available to the owner and
17 the transmitter of the funds;

18 (j) The fact that the commissioner shall require delivery of a
19 buyer's guide or a similar consumer advisory package in the form
20 prescribed by the commissioner to owners during the solicitation
21 process;

22 (k) The disclosure document shall contain the following language:

23 "All medical, financial, or personal information solicited or
24 obtained by a provider or broker about an insured, including the
25 insured's identity or the identity of family members, a spouse or a
26 significant other may be disclosed as necessary to effect the life
27 settlement contract between the owner and provider. If you are asked
28 to provide this information, you will be asked to consent to the
29 disclosure. The information may be provided to someone who buys the
30 policy or provides funds for the purchase. You may be asked to renew
31 your permission to share information every two years.";

32 (l) The fact that the commissioner shall require providers and
33 brokers to print separate signed fraud warnings on their applications
34 and on their life settlement contracts is as follows:

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

1 (m) The fact that the insured may be contacted by either the
2 Provider or broker or its authorized representative for the purpose of
3 determining the insured's health status or to verify the insured's
4 address. This contact is limited to once every three months if the
5 insured has a life expectancy of more than one year, and no more than
6 once per month if the insured has a life expectancy of one year or
7 less;

8 (n) The affiliation, if any, between the provider and the issuer of
9 the insurance policy to be settled;

10 (o) That a broker represents exclusively the owner, and not the
11 insurer or the provider or any other person, and owes a fiduciary duty
12 to the owner, including a duty to act according to the owner's
13 instructions and in the best interest of the owner;

14 (p) The document shall include the name, address, and telephone
15 number of the provider;

16 (q) The name, business address, and telephone number of the
17 independent third-party escrow agent, and the fact that the owner may
18 inspect or receive copies of the relevant escrow or trust agreements or
19 documents; and

20 (r) The fact that a change of ownership could in the future limit
21 the insured's ability to purchase future insurance on the insured's
22 life because there is a limit to how much coverage insurers will issue
23 on one life.

24 (2) The written disclosures shall be conspicuously displayed in any
25 life settlement contract furnished to the owner by a provider including
26 any affiliations or contractual arrangements between the provider and
27 the broker.

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

34 (a) The name, business address, and telephone number of the broker;

35 (b) A full, complete, and accurate description of all the offers,
36 counter-offers, acceptances, and rejections relating to the proposed
37 life settlement contract;

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

4 (d) The name of each broker who receives compensation and the
5 amount of compensation received by that broker, which compensation
6 includes anything of value paid or given to the broker in connection
7 with the life settlement contract;

8 (e) A complete reconciliation of the gross offer or bid by the
9 provider to the net amount of proceeds or value to be received by the
10 owner. For the purpose of this section, gross offer or bid means the
11 total amount or value offered by the provider for the purchase of one
12 or more life insurance policies, inclusive of commissions and fees; and

13 (f) The failure to provide the disclosures or rights described in
14 this section is an unfair trade practice pursuant to section 17 of this
15 act.

16 NEW SECTION. **Sec. 10.** DISCLOSURE TO INSURER. Without limiting
17 the ability of an insurer from assessing the insurability of a policy
18 applicant and determining whether or not to issue the policy, and in
19 addition to other questions an insurance carrier may lawfully pose to
20 a life insurance applicant, insurance carriers may inquire in the
21 application for insurance whether the proposed owner intends to pay
22 premiums with the assistance of financing from a lender that will use
23 the policy as collateral to support the financing.

24 (1) If, as described in section 2 of this act, the loan provides
25 funds which can be used for a purpose other than paying for the
26 premiums, costs, and expenses associated with obtaining and maintaining
27 the life insurance policy and loan, the application shall be rejected
28 as a violation of the prohibited practices in section 13 of this act.

29 (2) If the financing does not violate section 13 of this act in
30 this manner, the insurance carrier:

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

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

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

3 (ii) A change of ownership could in the future limit your ability
4 to purchase future insurance on the insured's life because there is a
5 limit to how much coverage insurers will issue on one life;

6 (iii) Should there be a change of ownership and you wish to obtain
7 more insurance coverage on the insured's life in the future, the
8 insured's higher issue age, a change in health status, and/or other
9 factors may reduce the ability to obtain coverage and/or may result in
10 significantly higher premiums;

11 (iv) You should consult a professional advisor, since a change in
12 ownership in satisfaction of the loan may result in tax consequences to
13 the owner, depending on the structure of the loan"; and

14 (b) May require certifications, such as the following, from the
15 applicant and/or the insured:

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

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

23 (iii) The borrower has an insurable interest in the insured."

24 NEW SECTION. **Sec. 11.** GENERAL RULES. (1) A provider entering
25 into a life settlement contract with any owner of a policy, wherein the
26 insured is terminally or chronically ill, shall first obtain:

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

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

36 (2) The insurer shall respond to a request for verification of
37 coverage submitted by a provider, settlement broker, or life insurance

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

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

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

22 (5) If a settlement broker or life insurance producer performs any
23 of these activities required of the provider, the provider is deemed to
24 have fulfilled the requirements of this section.

25 (6) If a broker performs the verification of coverage activities
26 required of the provider, the provider has fulfilled the requirements
27 of section 9(1) of this act.

28 (7) Within twenty days after an owner executes the life settlement
29 contract, the provider shall give written notice to the insurer that
30 issued that insurance policy that the policy has become subject to a
31 life settlement contract. The notice shall be accompanied by the
32 documents required by section 10(2) of this act.

33 (8) All medical information solicited or obtained by any licensee
34 shall be subject to the applicable provision of state law relating to
35 confidentiality of medical information, if not otherwise provided in
36 this chapter.

37 (9) All life settlement contracts entered into in this state shall
38 provide that the owner may rescind the contract on or before fifteen

1 days after the date it is executed by all parties thereto.
2 Rescission, if exercised by the owner, is effective only if both notice
3 of the rescission is given, and the owner repays all proceeds and any
4 premiums, loans, and loan interest paid on account of the provider
5 within the rescission period. If the insured dies during the
6 rescission period, the contract is considered rescinded subject to
7 repayment by the owner or the owner's estate of all proceeds and any
8 premiums, loans, and loan interest to the provider.

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

17 (11) Failure to tender the life settlement contract proceeds to the
18 owner by the date disclosed to the owner renders the contract voidable
19 by the owner for lack of consideration until the time the proceeds are
20 tendered to and accepted by the owner. A failure to give written
21 notice of the right of rescission under this section tolls the right of
22 rescission until thirty days after the written notice of the right of
23 rescission has been given.

24 (12) Any fee paid by a provider, party, individual, or an owner to
25 a broker in exchange for services provided to the owner pertaining to
26 a life settlement contract shall be computed as a percentage of the
27 offer obtained, not the face value of the policy. This section does
28 not prohibit a broker from reducing the broker's fee below this
29 percentage if the broker so chooses.

30 (13) The broker shall disclose to the owner anything of value paid
31 or given to a broker, which relate to a life settlement contract.

32 (14) A person at any time prior to, or at the time of, the
33 application for, or issuance of, a policy, or during a two-year period
34 commencing with the date of issuance of the policy, shall not enter
35 into a life settlement regardless of the date the compensation is to be
36 provided and regardless of the date the assignment, transfer, sale,
37 devise, bequest, or surrender of the policy is to occur. This

1 prohibition shall not apply if the owner certifies to the provider
2 that:

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

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

13 (i) The owner or insured is terminally or chronically ill;

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

18 (iii) The owner's spouse dies;

19 (iv) The owner divorces his or her spouse;

20 (v) The owner retires from full-time employment;

21 (vi) The owner becomes physically or mentally disabled and a
22 physician determines that the disability prevents the owner from
23 maintaining full-time employment; or

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

29 (c) Copies of the independent evidence required by (b) of this
30 subsection shall be submitted to the insurer when the provider submits
31 a request to the insurer for verification of coverage. The copies
32 shall be accompanied by a letter of attestation from the provider that
33 the copies are true and correct copies of the documents received by the
34 provider. This section does not prohibit an insurer from exercising
35 its right to contest the validity of any policy;

36 (d) If the provider submits to the insurer a copy of independent
37 evidence provided for in (b)(i) of this subsection when the provider

1 submits a request to the insurer to effect the transfer of the policy
2 to the provider, the copy is deemed to establish that the settlement
3 contract satisfies the requirements of this section.

4 NEW SECTION. **Sec. 12.** AUTHORITY TO ADOPT RULES---CONFLICT OF
5 LAWS. (1) The commissioner may adopt rules implementing this chapter
6 and regulating the activities and relationships of providers, brokers,
7 insurers and their agents.

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

16 (b) A provider from this state who enters into a life settlement
17 contract with an owner who is a resident of another state that has
18 enacted statutes or adopted regulations governing life settlement
19 contracts, shall be governed in the effectuation of that life
20 settlement contract by the statutes and regulations of the owner's
21 state of residence. If the state in which the owner is a resident has
22 not enacted statutes or regulations governing life settlement
23 contracts, the provider shall give the owner notice that neither state
24 regulates the transaction upon which he or she is entering. For
25 transactions in those states, however, the provider is to maintain all
26 records required if the transactions were executed in the state of
27 residence. The forms used in those states need not be approved by the
28 commissioner.

29 (c) If there is a conflict in the laws that apply to an owner and
30 a purchaser in any individual transaction, the laws of the state that
31 apply to the owner shall take precedence and the provider shall comply
32 with those laws.

33 NEW SECTION. **Sec. 13.** PROHIBITED PRACTICES. (1) It is unlawful
34 for any person to:

35 (a) Enter into a life settlement contract if such person knows or

1 reasonably should have known that the life insurance policy was
2 obtained by means of a false, deceptive or misleading application for
3 such policy;

4 (b) Engage in any transaction, practice, or course of business if
5 such person knows or reasonably should have known that the intent was
6 to avoid the notice requirements of this chapter;

7 (c) Engage in any fraudulent act or practice in connection with any
8 transaction relating to any settlement involving an owner who is a
9 resident of this state;

10 (d) Issue, solicit, market, or otherwise promote the purchase of an
11 insurance policy for the purpose of or with an emphasis on settling the
12 policy;

13 (e) Enter into a premium finance agreement with any person or
14 agency, or any person affiliated with such person or agency, pursuant
15 to which such person shall receive any proceeds, fees, or other
16 consideration, directly or indirectly, from the policy or owner of the
17 policy or any other person with respect to the premium finance
18 agreement or any settlement contract or other transaction related to
19 such policy that are in addition to the amounts required to pay the
20 principal, interest, and service charges related to policy premiums
21 pursuant to the premium finance agreement or subsequent sale of such
22 agreement. However, any payments, charges, fees, or other amounts in
23 addition to the amounts required to pay the principal, interest, and
24 service charges related to policy premiums paid under the premium
25 finance agreement shall be remitted to the original owner of the policy
26 or to his or her estate if he or she is not living at the time of the
27 determination of the overpayment;

28 (f) With respect to any settlement contract or insurance policy and
29 a broker, knowingly solicit an offer from, effectuate a life settlement
30 contract with, or make a sale to any provider, financing entity, or
31 related provider trust that is controlling, controlled by, or under
32 common control with such broker;

33 (g) With respect to any life settlement contract or insurance
34 policy and a provider, knowingly enter into a life settlement contract
35 with an owner, if, in connection with such life settlement contract,
36 anything of value will be paid to a broker that is controlling,
37 controlled by, or under common control with such provider or the

1 financing entity or related provider trust that is involved in such
2 settlement contract;

3 (h) With respect to a provider, enter into a life settlement
4 contract unless the life settlement promotional, advertising, and
5 marketing materials, as may be prescribed by rule, have been filed with
6 the commissioner. In no event shall any marketing materials expressly
7 reference that the insurance is "free" for any period of time. The
8 inclusion of any reference in the marketing materials that would cause
9 an owner to reasonably believe that the insurance is free for any
10 period of time is a violation of this chapter; or

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

17 (2) A violation of this section constitutes a fraudulent life
18 settlement act.

19 NEW SECTION. **Sec. 14.** FRAUD PREVENTION AND CONTROL. (1)(a) A
20 person shall not commit a fraudulent life settlement act.

21 (b) A person shall not knowingly and intentionally interfere with
22 the enforcement of this chapter or investigations of suspected or
23 actual violations of this chapter.

24 (c) A person in the business of life settlements shall not
25 knowingly or intentionally permit any person convicted of a felony
26 involving dishonesty or breach of trust to participate in the business
27 of life settlements.

28 (2)(a) Life settlement contracts and applications for life
29 settlement contracts, regardless of the form of transmission, shall
30 contain the following statement or a substantially similar statement:

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

34 (b) The lack of a statement as required in (a) of this subsection
35 does not constitute a defense in any prosecution for a fraudulent life
36 settlement act.

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

6 (b) Any other person having knowledge or a reasonable belief that
7 a fraudulent life settlement act is being, will be, or has been
8 committed may provide to the commissioner the information required by,
9 and in a manner prescribed by, the commissioner.

10 (4)(a) Civil liability shall not be imposed on and no cause of
11 action shall arise from a person's furnishing information concerning
12 suspected, anticipated, or completed fraudulent life settlement acts or
13 suspected or completed fraudulent insurance acts, if the information is
14 provided to or received from:

15 (i) The commissioner or the commissioner's employees, agents, or
16 representatives;

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

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

22 (iv) Any regulatory body or their employees, agents, or
23 representatives, overseeing life insurance, life settlements,
24 securities, or investment fraud;

25 (v) The life insurer that issued the life insurance policy covering
26 the life of the insured; or

27 (vi) The licensee and any agents, employees, or representatives.

28 (b) Subsection (4)(a) of this section shall not apply to statements
29 made with actual malice. In an action brought against a person for
30 filing a report or furnishing other information concerning a fraudulent
31 life settlement act or a fraudulent insurance act, the party bringing
32 the action shall plead specifically any allegation that (a) of this
33 subsection does not apply because the person filing the report or
34 furnishing the information did so with actual malice.

35 (c) A person identified in (a) of this subsection shall be entitled
36 to an award of attorneys' fees and costs if he or she is the prevailing
37 party in a civil cause of action for libel, slander, or any other
38 relevant tort arising out of activities in carrying out the provisions

1 of this chapter and the party bringing the action was not substantially
2 justified in doing so. For purposes of this section a proceeding is
3 "substantially justified" if it had a reasonable basis in law or fact
4 at the time that it was initiated.

5 (d) This section does not abrogate or modify common law or
6 statutory privileges or immunities enjoyed by a person described in (a)
7 of this subsection.

8 (5)(a) The documents and evidence provided pursuant to subsection
9 (4) of this section or obtained by the commissioner in an investigation
10 of suspected or actual fraudulent life settlement acts shall be
11 privileged and confidential and shall not be a public record and shall
12 not be subject to discovery or subpoena in a civil or criminal action.

13 (b) Subsection (5)(a) of this section does not prohibit release by
14 the commissioner of documents and evidence obtained in an investigation
15 of suspected or actual fraudulent life settlement acts:

16 (i) In administrative or judicial proceedings to enforce laws
17 administered by the commissioner;

18 (ii) To federal, state, or local law enforcement or regulatory
19 agencies, to an organization established for the purpose of detecting
20 and preventing fraudulent life settlement acts, or to the national
21 association of insurance commissioners; or

22 (iii) At the discretion of the commissioner, to a person in the
23 business of life settlements that is aggrieved by a fraudulent life
24 settlement act.

25 (c) Release of documents and evidence under (c) of this subsection
26 does not abrogate or modify the privilege granted in (a) of this
27 subsection.

28 (6) This chapter does not:

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

32 (b) Preempt, supersede, or limit any provision of any state
33 securities law or any rule, order, or notice issued thereunder;

34 (c) Prevent or prohibit a person from disclosing voluntarily
35 information concerning life settlement fraud to a law enforcement or
36 regulatory agency other than the insurance department; or

37 (d) Limit the powers granted elsewhere by the laws of this state to

1 the commissioner or an insurance fraud unit to investigate and examine
2 possible violations of law and to take appropriate action against
3 wrongdoers.

4 (7)(a) Providers and brokers shall have in place antifraud
5 initiatives reasonably calculated to detect, prosecute, and prevent
6 fraudulent life settlement acts. At the discretion of the
7 commissioner, the commissioner may order, or a licensee may request and
8 the commissioner may grant, such modifications of the following
9 required initiatives as necessary to ensure an effective antifraud
10 program. The modifications may be more or less restrictive than the
11 required initiatives so long as the modifications may reasonably be
12 expected to accomplish the purpose of this section. Antifraud
13 initiatives shall include:

14 (i) Fraud investigators, who may be provider or broker employees or
15 independent contractors; and

16 (ii) An antifraud plan, which shall be submitted to the
17 commissioner. The antifraud plan shall include, but not be limited to:

18 (A) A description of the procedures for detecting and investigating
19 possible fraudulent life settlement acts and procedures for resolving
20 material inconsistencies between medical records and insurance
21 applications;

22 (B) A description of the procedures for reporting possible
23 fraudulent life settlement acts to the commissioner;

24 (C) A description of the plan for antifraud education and training
25 of underwriters and other personnel; and

26 (D) A description or chart outlining the organizational arrangement
27 of the antifraud personnel who are responsible for the investigation
28 and reporting of possible fraudulent life settlement acts and
29 investigating unresolved material inconsistencies between medical
30 records and insurance applications.

31 (b) Antifraud plans submitted to the commissioner shall be
32 privileged and confidential and shall not be a public record and shall
33 not be subject to discovery or subpoena in a civil or criminal action.

34 NEW SECTION. **Sec. 15.** INJUNCTIONS--CIVIL REMEDIES--CEASE AND
35 DESIST. (1) In addition to the penalties and other enforcement
36 provisions of this chapter, if any person violates this chapter or any
37 rule implementing this chapter, the commissioner may seek an injunction

1 in a court of competent jurisdiction in the county where the person
2 resides or has a principal place of business and may apply for
3 temporary and permanent orders that the commissioner determines
4 necessary to restrain the person from further committing the violation.

5 (2) Any person damaged by the acts of another person in violation
6 of this chapter or any rule implementing this chapter, may bring a
7 civil action for damages against the person committing the violation in
8 a court of competent jurisdiction.

9 (3) The commissioner may issue a cease and desist order upon a
10 person who violates any provision of this chapter, any rule or order
11 adopted by the commissioner, or any written agreement entered into with
12 the commissioner, in accordance with chapter 34.05 RCW.

13 (4) When the commissioner finds that such an action presents an
14 immediate danger to the public and requires an immediate final order,
15 he or she may issue an emergency cease and desist order reciting with
16 particularity the facts underlying such findings. The emergency cease
17 and desist order is effective immediately upon service of a copy of the
18 order on the respondent and remains effective for ninety days. If the
19 commissioner begins nonemergency cease and desist proceedings under
20 subsection (1) of this section, the emergency cease and desist order
21 remains effective, absent an order by a court of competent
22 jurisdiction. In the event of a willful violation of this chapter, the
23 trial court may award statutory damages in addition to actual damages
24 in an additional amount up to three times the actual damage award.
25 This chapter may not be waived by agreement. No choice of law
26 provision may be utilized to prevent the application of this chapter to
27 any settlement in which a party to the settlement is a resident of this
28 state.

29 NEW SECTION. **Sec. 16.** PENALTIES. (1) It is a violation of this
30 chapter for any person, provider, broker, or any other party related to
31 the business of life settlements, to commit a fraudulent life
32 settlement act.

33 (2) For criminal liability purposes, a person that commits a
34 fraudulent life settlement act is guilty of committing insurance fraud
35 and shall be subject to additional penalties under law.

36 (3) The commissioner shall be empowered to levy a civil penalty not
37 exceeding one thousand dollars and the amount of the claim for each

1 violation upon any person, including those persons and their employees
2 licensed pursuant to this chapter, who is found to have committed a
3 fraudulent life settlement act or violated any other provision of this
4 chapter.

5 (4) The license of a person licensed under this chapter that
6 commits a fraudulent life settlement act shall be revoked as provided
7 in RCW 48.17.530.

8 NEW SECTION. **Sec. 17.** UNFAIR TRADE PRACTICES. The legislature
9 finds that the practices covered by this chapter are matters vitally
10 affecting the public interest for the purpose of applying the consumer
11 protection act, chapter 19.86 RCW. A violation of this chapter is not
12 reasonable in relation to the development and preservation of business
13 and is an unfair or deceptive act in trade or commerce and an unfair
14 method of competition for the purpose of applying the consumer
15 protection act, chapter 19.86 RCW.

16 NEW SECTION. **Sec. 18.** APPLICATION. (1) A provider lawfully
17 transacting business in this state prior to the effective date of this
18 act may continue to do so pending approval or disapproval of that
19 person's application for a license as long as the application is filed
20 with the commissioner not later than thirty days after publication by
21 the commissioner of an application form and instructions for licensure
22 of providers. If the publication of the application form and
23 instructions is prior to the effective date of this act, then the
24 filing of the application shall not be later than thirty days after the
25 effective date of this act. During the time that such an application
26 is pending with the commissioner, the applicant may use any form of
27 life settlement contract that has been filed with the commissioner
28 pending approval thereof, provided that such a form is otherwise in
29 compliance with the provisions of this chapter. Any person transacting
30 business in this state under this subsection shall be obligated to
31 comply with all other requirements of this chapter.

32 (2) A person who has lawfully negotiated life settlement contracts
33 between any owner residing in this state and one or more providers for
34 at least one year immediately prior to the effective date of this act
35 may continue to do so pending approval or disapproval of that person's
36 application for a license as long as the application is filed with the

1 commissioner not later than thirty days after publication by the
2 commissioner of an application form and instructions for licensure of
3 brokers. If the publication of the application form and instructions
4 is prior to the effective date of this act, then the filing of the
5 application shall not be later than thirty days after the effective
6 date of this act. Any person transacting business in this state under
7 this subsection shall be obligated to comply with all other
8 requirements of this chapter.

9 NEW SECTION. **Sec. 19.** Captions used in this act are not any part
10 of the law.

11 NEW SECTION. **Sec. 20.** Sections 1 through 19 of this act
12 constitute a new chapter in Title 48 RCW.

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