# House of Representatives

General Assembly

**File No. 296**

***February Session, 2008***

Substitute House Bill No. 5512

*House of Representatives, March 31, 2008*

The Committee on Insurance and Real Estate reported through REP. O'CONNOR of the 35th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

## *AN ACT CONCERNING LIFE SETTLEMENTS.*

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 38a-465 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2008*):

As used in sections 38a-465 to 38a-465q, inclusive, <u>as amended by this act,</u> and subdivision (20) of section 38a-816:

**[**(1) "Accredited investor" means an accredited investor, as defined in 17 CFR Section 230.501(a), as amended from time to time.**]**

**[**(2) "Advertising" or "advertisement"**]** <u>(1) "Advertisement"</u> means any written, electronic or printed communication or any communication by means of recorded telephone messages or transmitted on radio, television, the Internet or similar communications media, including, but not limited to, film strips, motion pictures and videos, published, disseminated, circulated or

13 placed before the public, directly or indirectly, for the purpose of
14 creating an interest in or inducing a person to purchase or sell, assign,
15 devise, bequest or transfer the death benefit or ownership of a life
16 insurance policy or an interest in a life insurance policy pursuant to a
17 [viatical] life settlement contract. [or a viatical settlement purchase
18 agreement.]

19 (2) "Broker" means a person who, on behalf of an owner and for a
20 fee, commission or other valuable consideration, offers or attempts to
21 negotiate life settlement contracts between an owner and one or more
22 providers. "Broker" does not include an attorney, certified public
23 accountant or financial planner accredited by a nationally recognized
24 accreditation agency retained to represent the owner, whose
25 compensation is not paid directly or indirectly by a provider or any
26 other person except the owner.

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

30 [(3)] (4) "Chronically ill" means: (A) Being unable to perform at least
31 two activities of daily living, including, but [are] not limited to, eating,
32 toileting, transferring, bathing, dressing or continence; (B) requiring
33 substantial supervision to protect from threats to health and safety due
34 to severe cognitive impairment; or (C) having a level of disability
35 similar to that described in subparagraph (A) of this subdivision as
36 determined by the federal Secretary of Health and Human Services.

37 [(4)] (5) "Commissioner" means the Insurance Commissioner.

38 [(5)] (6) (A) "Financing entity" means an underwriter, placement
39 agent, lender, purchaser of securities, purchaser of a policy or
40 certificate from a [viatical settlement] provider, credit enhancer, or any
41 entity that has a direct ownership in a policy or certificate that is the
42 subject of a [viatical] life settlement contract: [, but:]

43 (i) Whose principal activity related to the transaction is providing

44 funds to effect the [viatical] life settlement contract or purchase of one
45 or more [viaticated] policies; and

46 (ii) Who has an agreement in writing with one or more [licensed
47 viatical settlement] providers to finance the acquisition of [viatical] life
48 settlement contracts.

49 (B) [Financing entity] "Financing entity" does not include a
50 nonaccredited investor or [viatical settlement] a purchaser.

51 [(6)] (7) "Financing transaction" means any transaction in which a
52 provider obtains financing [is obtained for the purchase, acquisition,
53 transfer or other assignment of one or more viatical settlement
54 contracts, viaticated policies or interests in such contracts or policies]
55 from a financing entity, including, but not limited to, any secured or
56 unsecured financing, any securitization transaction or any securities
57 offering which is registered or exempt from registration under federal
58 or state securities law. [, or in which one or more viatical settlement
59 contracts, viaticated policies or interests therein are sold, assigned,
60 transferred, pledged, hypothecated or otherwise disposed of.]

61 (8) "Insured" means the person covered under the policy being
62 considered for sale in a life settlement contract.

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

67 (10) "Life insurance producer" means any person licensed in this
68 state as a resident or nonresident insurance producer who has received
69 qualification or authority for life insurance coverage or a life line
70 coverage pursuant to chapter 702.

71 (11) (A) "Life settlement contract" means:

72 (i) A written agreement entered into between a provider and an
73 owner, establishing the terms under which compensation or anything

74 of value will be paid, which compensation or thing of value is less than
75 the expected death benefit of the insurance policy or certificate, in
76 return for the owner's assignment, transfer, sale, devise or bequest of
77 the death benefit or any portion of an insurance policy or certificate of
78 insurance for compensation, provided the minimum value for a life
79 settlement contract shall be greater than a cash surrender value or
80 accelerated death benefit available at the time of an application for a
81 life settlement contract;

82 (ii) The transfer for compensation or value of ownership or
83 beneficial interest in a trust, or other entity that owns such policy, if the
84 trust or other entity was formed or availed of for the principal purpose
85 of acquiring one or more life insurance contracts, which life insurance
86 contract insures the life of a person residing in this state;

87 (iii) A written agreement for a loan or other lending transaction,
88 secured primarily by an individual or group life insurance policy; or

89 (iv) A premium finance loan made for a policy on or before the date
90 of issuance of the policy where (I) the loan proceeds are not used solely
91 to pay premiums for the policy and any costs or expenses incurred by
92 the lender or the borrower in connection with the financing, (II) the
93 owner receives, on the date of the premium finance loan, a guarantee
94 of the future life settlement value of the policy, or (III) the owner
95 agrees on the date of the premium finance loan to sell the policy, or
96 any portion of its death benefit, on any date following the issuance of
97 the policy.

98 (B) "Life settlement contract" does not include:

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

103 (ii) A premium finance loan, as defined in subparagraph (A)(iv) of
104 this subdivision, or any loan made by a bank or other licensed

105 financial institution, provided neither default on such loan or the
106 transfer of the policy, in connection with such default, is pursuant to
107 an agreement or understanding with any other person for the purpose
108 of evading regulation under this part;

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

110 (iv) A loan made by a lender that does not violate sections 38a-162
111 to 38a-170, inclusive, provided such loan is not described in
112 subparagraph (A) of this subdivision and is not otherwise within the
113 definition of life settlement contract;

114 (v) An agreement where all the parties are closely related to the
115 insured by blood or law or have a lawful substantial economic interest
116 in the continued life, health and bodily safety of the person insured, or
117 are trusts established primarily for the benefit of such parties;

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

122 (vii) A bona fide business succession planning arrangement: (I)
123 Between one or more shareholders in a corporation or between a
124 corporation and one or more of its shareholders or one or more trusts
125 established by its shareholders; (II) between one or more partners in a
126 partnership or between a partnership and one or more of its partners
127 or one or more trusts established by its partners; or (III) between one or
128 more members in a limited liability company or between a limited
129 liability company and one or more of its members or one or more
130 trusts established by its members;

131 (viii) An agreement entered into by a service recipient or a trust
132 established by the service recipient, and a service provider or a trust
133 established by the service provider, that performs significant services
134 for the service recipient's trade or business; or

135 (ix) Any other contract, transaction or arrangement from the

136 definition of life settlement contract that the commissioner determines
137 is not of the type intended to be regulated by this part.

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

140 (13) "Owner" means the owner of a life insurance policy or a
141 certificate holder under a group policy, with or without a terminal
142 illness, who enters or seeks to enter into a life settlement contract. For
143 the purposes of this part, an owner shall not be limited to an owner of
144 a life insurance policy or a certificate holder under a group policy that
145 insures the life of an individual with a terminal or chronic illness or
146 condition, except where specifically addressed. "Owner" does not
147 include: (A) Any provider or other licensee under this part; (B) a
148 qualified institutional buyer, as defined in Rule 144A of the federal
149 Securities Act of 1933, as amended from time to time; (C) a financing
150 entity; (D) a special purpose entity; or (E) a related provider trust.

151 (14) "Patient identifying information" means an insured's address,
152 telephone number, facsimile number, electronic mail address,
153 photograph or likeness, employer, employment status, Social Security
154 number or any other information that is likely to lead to the
155 identification of the insured.

156 **[**(7)**]** (15) "Person" means a natural person or a legal entity,
157 including, but not limited to, an individual, partnership, limited
158 liability company, association, trust or corporation.

159 **[**(8) "Nonaccredited investor" means an investor that does not
160 qualify as an accredited investor.**]**

161 **[**(9)**]** (16) "Policy" means an individual or group policy, group
162 certificate, contract or arrangement of life insurance **[**affecting the
163 rights of**]** owned by a resident of **[**the**]** this state, **[**or bearing a
164 reasonable relation to the state,**]** regardless of whether delivered or
165 issued for delivery in this state.

166 **[**(10) "Qualified institutional buyer" means a qualified institutional

167 buyer, as defined in 17 CFR Section 230.144A, as amended from time to
168 time.]

169 (17) "Premium finance loan" means a loan made primarily for the
170 purposes of making premium payments on a life insurance policy,
171 which loan is secured by an interest in such life insurance policy.

172 (18) "Provider" means a person, other than an owner, who enters
173 into or effectuates a life settlement contract with an owner. "Provider"
174 does not include:

175 (A) Any bank, savings bank, savings and loan association or credit
176 union;

177 (B) A licensed lending institution, creditor or secured party
178 pursuant to a premium finance loan agreement that takes an
179 assignment of a life insurance policy or certificate issued pursuant to a
180 group life insurance policy as collateral for a loan;

181 (C) The insurer of a life insurance policy or rider providing
182 accelerated death benefits or riders pursuant to section 38a-457 or cash
183 surrender value;

184 (D) A natural person who enters into or effectuates no more than
185 one agreement in a calendar year for the transfer of a life insurance
186 policy or certificate issued pursuant to a group life insurance policy,
187 for compensation or any value less than the expected death benefit
188 payable under the policy;

189 (E) A purchaser;

190 (F) An authorized or eligible insurer that provides stop loss
191 coverage to a provider, purchaser, financing entity, special purpose
192 entity or related provider trust;

193 (G) A financing entity;

194 (H) A special purpose entity;

195 (I) A related provider trust;

196 (J) A broker; or

197 (K) An accredited investor or a qualified institutional buyer, as
198 defined in Rule 501 of Regulation D or Rule 144A, respectively, of the
199 federal Securities Act of 1933, as amended from time to time, who
200 purchases a life settlement policy from a provider.

201 (19) "Purchased policy" means a policy or group certificate that has
202 been acquired by a provider pursuant to a life settlement contract.

203 (20) "Purchaser" means a person who pays compensation or
204 anything of value as consideration for a beneficial interest in a trust
205 that is vested with, or for the assignment, transfer or sale of, an
206 ownership or other interest in a life insurance policy or a certificate
207 issued pursuant to a group life insurance policy that is the subject of a
208 life settlement contract.

209 **[**(11)**]** (21) "Related provider trust" means a titling trust or other trust
210 established by a licensed **[**viatical settlement**]** provider or a financing
211 entity for the sole purpose of holding the ownership or beneficial
212 interest in purchased policies in connection with a financing
213 transaction.

214 (22) "Settled policy" means a life insurance policy or certificate that
215 has been acquired by a provider pursuant to a life settlement contract.

216 **[**(12)**]** (23) "Special purpose entity" means a corporation, partnership,
217 trust, limited liability company or other similar entity formed solely to
218 provide, either directly or indirectly, access to institutional capital
219 markets (A) for a financing entity or **[**licensed viatical settlement**]**
220 provider, (B) in connection with a transaction in which the securities in
221 the special purpose entity are acquired by the owner or by a qualified
222 institutional buyer, as defined in Rule 144A of the federal Securities
223 Act of 1933, as amended from time to time, or (C) the securities pay a
224 fixed rate of return commensurate with established asset-backed
225 institutional capital markets.

226 (24) "Stranger-originated life insurance" means a practice or plan to
227 initiate a life insurance policy for the benefit of a third-party investor
228 who, at the time of policy origination, has no insurable interest in the
229 insured. Such practices include, but are not limited to, cases in which
230 life insurance is purchased with resources or guarantees from or
231 through a person or entity, who, at the time of policy inception, could
232 not lawfully initiate the policy himself or itself, and where, at the time
233 of inception, there is an arrangement or agreement, whether verbal or
234 written, to directly or indirectly transfer the ownership of the policy or
235 the policy benefits to a third-party. Trusts created to give the
236 appearance of insurable interest and used to initiate policies for
237 investors violate insurable interest laws and the prohibition against
238 wagering on life. Stranger-originated life insurance arrangements do
239 not include those practices set forth in subparagraph (B) of subdivision
240 (11) of this section.

241 **[**(13)**]** (25) "Terminally ill" means having an illness or sickness that
242 can reasonably be expected to result in death in twenty-four months or
243 less.

244 **[**(14) "Viatical settlement" means a transaction between a viator and
245 a viatical settlement provider in which the viatical settlement provider
246 pays compensation or other value in return for the viator's assignment,
247 transfer, sale, devise or bequest to the viatical settlement provider of
248 the ownership of, or the death benefit payable under, a life insurance
249 policy or a certificate.

250 (15) "Viatical settlement broker" or "broker" means a person who, on
251 behalf of a viator and for a fee, commission or other valuable
252 consideration, offers or attempts to negotiate viatical settlement
253 contracts between a viator and one or more viatical settlement
254 providers. "Viatical settlement broker" does not include an attorney,
255 certified public accountant or a financial planner accredited by a
256 nationally recognized accreditation agency who is retained to
257 represent the viator and whose compensation is not paid directly or
258 indirectly by the viatical settlement provider or viatical settlement

259 purchaser.

260 (16) "Viatical settlement contract" means a written agreement
261 establishing the terms under which compensation or anything of value
262 will be paid, which compensation or value is less than the expected
263 death benefit of a policy in return for the viator's assignment, transfer,
264 sale, devise or bequest of the death benefit or ownership of any portion
265 of the policy. A viatical settlement contract includes, but is not limited
266 to, (A) a contract for a loan or other financing transaction with a viator
267 secured primarily by an individual or group life insurance policy,
268 other than a loan by a life insurance company pursuant to the terms of
269 the life insurance contract, or a loan secured by the cash value of a
270 policy, or (B) an agreement with a viator to transfer ownership or
271 change the beneficiary designation at a later date regardless of the date
272 that compensation is paid to the viator.

273 (17) "Viatical settlement investment agent" means a person who is
274 an appointed or contracted agent of a licensed viatical settlement
275 provider who solicits or arranges the funding for the purchase of a
276 viatical settlement by a viatical settlement purchaser and who is acting
277 on behalf of a viatical settlement provider.

278 (18) "Viatical settlement provider" means a person, other than a
279 viator, who enters into or effectuates a viatical settlement contract.
280 Viatical settlement provider does not include:

281 (A) A bank, savings bank, savings and loan association, credit union
282 or other licensed lending institution that takes an assignment of a life
283 insurance policy as collateral for a loan;

284 (B) The issuer of a life insurance policy providing accelerated
285 benefits pursuant to section 38a-457 and pursuant to the contract;

286 (C) An authorized or eligible insurer that provides stop loss
287 coverage to a viatical settlement provider, viatical settlement
288 purchaser, financing entity, special purpose entity or related provider
289 trust;

290 (D) A natural person who enters into or effectuates no more than
291 one agreement in a calendar year for the transfer of a life insurance
292 policy for any value less than the expected death benefit;

293 (E) A financing entity;

294 (F) A special purpose entity;

295 (G) A related provider trust;

296 (H) A viatical settlement purchaser; or

297 (I) An accredited investor or qualified institutional buyer who
298 purchases a viaticated policy from a viatical settlement provider.

299 (19) "Viatical settlement purchase agreement" means a contract or
300 agreement, entered into by a viatical settlement purchaser, to which
301 the viator is not a party, to purchase a life insurance policy or an
302 interest in a life insurance policy, that is entered into for the purpose of
303 deriving an economic benefit.

304 (20) "Viatical settlement purchaser" means a person who gives a
305 sum of money as consideration for a life insurance policy or an interest
306 in the death benefits of a life insurance policy, or a person who owns
307 or acquires or is entitled to a beneficial interest in a trust that owns a
308 viatical settlement contract or is the beneficiary of a life insurance
309 policy that has been or will be the subject of a viatical settlement
310 contract, for the purpose of deriving an economic benefit. Viatical
311 settlement purchaser does not include:

312 (A) A licensee under this part;

313 (B) An accredited investor or qualified institutional buyer;

314 (C) A financing entity;

315 (D) A special purpose entity; or

316 (E) A related provider trust.

317 (21) "Viaticated policy" means a life insurance policy or certificate
318 that has been acquired by a viatical settlement provider pursuant to a
319 viatical settlement contract.

320 (22) "Viator" means the owner of a life insurance policy or a
321 certificate holder under a group policy who enters or seeks to enter
322 into a viatical settlement contract. For the purposes of this part, a
323 viator shall not be limited to an owner of a life insurance policy or a
324 certificate holder under a group policy insuring the life of an
325 individual with a terminal or chronic illness or condition except where
326 specifically provided. Viator does not include:

327 (A) A licensee under this part;

328 (B) An accredited investor or qualified institutional buyer;

329 (C) A financing entity;

330 (D) A special purpose entity; or

331 (E) A related provider trust.]

332 Sec. 2. Section 38a-465a of the general statutes is repealed and the
333 following is substituted in lieu thereof (*Effective October 1, 2008*):

334 (a) Except as otherwise provided in this part, no person [may] shall
335 act as a [viatical settlement] provider [,] or [viatical settlement] broker
336 [or viatical settlement investment agent] until the person is licensed by
337 the commissioner pursuant to this section. [, except that any person
338 who holds a resident or nonresident insurance producer license
339 pursuant to chapter 702 may act as a viatical settlement broker, and
340 shall be subject to the provisions of subsection (a) of section 38a-11,
341 sections 38a-465 to 38a-465q, inclusive, and subdivision (20) of section
342 38a-816, as if such person is a licensed viatical settlement broker.]

343 (b) Any applicant for a license as a [viatical settlement] provider [,]
344 or [viatical settlement] broker [or viatical settlement investment agent]
345 shall submit written application to the commissioner. Such applicants

346 shall provide such information as the commissioner requires. All initial
347 applications shall be accompanied by a filing fee specified in section
348 38a-11 of the 2008 supplement to the general statutes, as amended by
349 this act.

350 (c) A life insurance producer, who has been duly licensed as a
351 resident insurance producer with a life line of authority in this state or
352 in said producer's home state for not less than one year and is licensed
353 as a nonresident producer pursuant to section 38a-702g, shall be
354 deemed to meet the licensing requirements of this section and shall be
355 permitted to operate as a broker.

356 (d) Not later than thirty days from the first day of operating as a
357 broker, a life insurance producer shall notify the commissioner that
358 said producer is acting as a broker on a form prescribed by the
359 commissioner, and shall pay a filing fee as specified in section 38a-11
360 of the 2008 supplement to the general statutes, as amended by this act.
361 Such notification shall include an acknowledgement by the life
362 insurance producer that said producer shall operate as a broker in
363 accordance with this part.

364 (e) The insurer that issued the policy that is the subject of a life
365 settlement contract shall not be responsible for any act or omission of a
366 broker, provider or purchaser arising out of or in connection with the
367 life settlement transaction, unless the insurer receives compensation
368 for the placement of a life settlement contract from the broker,
369 provider or purchaser in connection with such life settlement contract.

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

376 (g) Any license issued for a provider or broker shall be in force only
377 until the last day of March in each year, but may be renewed by the

378 commissioner without formality other than proper application. The
379 fees for such licenses shall be assessed annually, as provided in section
380 38a-11 of the 2008 supplement to the general statutes, as amended by
381 this act. If such provider or broker fails to timely pay the renewal fee,
382 such license shall be automatically revoked if the license fee is not
383 received by the commissioner not later than the fifth day after the
384 commissioner sends, by first class mail, a written notice of nonrenewal
385 to the principal office of the provider or broker, provided such notice
386 shall only be mailed after said last day of March.

387 (h) The term of a provider license shall be equal to that of a domestic
388 stock life insurance company and the term of a broker license shall be
389 equal to that of an insurance producer license. Licenses requiring
390 periodic renewal shall be renewed on their anniversary date upon
391 payment of the renewal fee, as specified in subsection (b) of this
392 section. Failure to pay the fees on or before the renewal date shall
393 result in expiration of the license.

394 **[**(c)**]** (i) Upon the filing of an application and full payment of the
395 license fee, the commissioner shall investigate the applicant and shall
396 issue a license if the commissioner determines that:

397 (1) The applicant, if a provider, has provided a detailed plan of
398 operation;

399 (2) The applicant is competent and trustworthy, and intends to act
400 in good faith pursuant to the license applied for;

401 (3) The applicant has a good business reputation and adequate
402 experience, training or education so as to be qualified in the business
403 for which the license is applied; **[**for;**]**

404 (4) If the applicant is a corporation, partnership, limited liability
405 company or other legal entity, the applicant **[**has provided a certificate
406 of good standing from its state of domicile and, if such applicant is not
407 domiciled in this state, a certificate of good standing from this state
408 dated not more than fifteen days before or after the date of filing of the

application] is formed or organized pursuant to the laws of this state or is a foreign legal entity authorized to do business in this state, or provides a certificate of good standing from its state of domicile; and

(5) [Neither the applicant, nor any partner, key manager, director, officer or majority stockholder of the applicant has been convicted of a felony.] The applicant has provided to the commissioner an antifraud plan that meets the requirements of subsection (i) of section 38a-465j, as amended by this act, and includes:

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

(B) A description of the procedures for reporting fraudulent insurance acts to the commissioner;

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

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

[(d) Any license issued for a viatical settlement provider, a viatical settlement broker or a viatical settlement investment agent shall be in force only until the last day of March in each year, but may be renewed by the commissioner without formality other than proper application. The fees for such licenses shall be assessed annually as provided in section 38a-11. If such broker, provider or investment agent fails to timely pay the renewal fee, such license shall be automatically revoked if the license fee is not received by the commissioner not later than the fifth day after the commissioner sends by first class mail a written notice of nonrenewal to the principal office of the broker, provider or investment agent, provided such notice may only be mailed after said

440 last day of March.]

441 [(e)] (j) The applicant shall provide to the commissioner such
442 information as the commissioner may require, on forms approved by
443 the commissioner. The commissioner may, at any time, require the
444 applicant to fully disclose the identity of [all of] its stockholders, except
445 stockholders owning less than ten per cent of the shares of an applicant
446 whose shares are publicly traded, partners, [key management
447 personnel, directors,] officers [, members] and employees, and the
448 commissioner may deny any application for a license if the
449 commissioner determines that any partner, [key manager, director,]
450 officer, employee or stockholder [or member] thereof who may
451 materially influence the applicant's conduct fails to meet any of the
452 standards set forth in sections 38a-465 to 38a-465q, inclusive, as
453 amended by this act.

454 [(f) A viatical settlement provider, viatical settlement broker or
455 viatical settlement investment agent shall provide to the commissioner
456 new or revised information about officers, stockholders holding ten
457 per cent or more of the company's stock, partners, directors, members
458 or designated employees not later than thirty days after the change in
459 information.]

460 [(g)] (k) A [viatical settlement provider license, a viatical settlement
461 broker] license [or a viatical settlement investment agent license]
462 issued to a corporation, partnership, limited liability company or other
463 legal entity authorizes all of such legal entity's [stockholders, partners,
464 key managers, directors] members, officers and designated employees
465 named in the application for such license, and any supplements to the
466 application, to act [on such entity's behalf as if such individuals are
467 licensed] as a licensee under such license. [Such authorization shall
468 terminate upon the expiration, suspension or revocation of the viatical
469 settlement provider license, a viatical settlement broker license or a
470 viatical settlement investment agent license.]

471 [(h) The commissioner shall maintain a complete listing of all
472 viatical settlement providers, viatical settlement brokers and viatical

473 settlement investment agents licensed in this state which shall be
474 available to the general public for inspection.]

475 (l) The commissioner shall not issue any license to any nonresident
476 applicant unless a written designation of an agent for service of
477 process is filed and maintained with the commissioner or unless the
478 applicant has filed with the commissioner the applicant's written
479 irrevocable consent that any action against the applicant may be
480 commenced against the applicant by service of process on the
481 commissioner.

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

485 (n) A provider shall not use any person to perform the functions of a
486 broker, as defined in this part, unless such person holds a current,
487 valid license as a broker and as provided in this section.

488 (o) A broker shall not use any person to perform the functions of a
489 provider, as defined in this part, unless such person holds a current,
490 valid license as a provider and as provided in this section.

491 (p) A provider or broker shall provide to the commissioner new or
492 revised information about officers, stockholders holding ten per cent
493 or more of the company's stock, partners, directors, members or
494 designated employees not later than thirty days after the change in
495 information.

496 (q) An individual licensed as a broker shall complete, on a biennial
497 basis, fifteen hours of training related to life settlements and life
498 settlement transactions, except that a life insurance producer operating
499 as a broker pursuant to this section shall not be subject to the
500 requirements of this subsection. Any person failing to meet the
501 requirements of this subsection shall be subject to the penalties
502 imposed by the commissioner.

503 Sec. 3. Section 38a-465b of the general statutes is repealed and the

504 following is substituted in lieu thereof (*Effective October 1, 2008*):

505 (a) The commissioner may deny a license application, or suspend,
506 revoke or refuse to renew the license of any [viatical settlement
507 provider, viatical settlement broker or viatical settlement investment
508 agent] licensee if the commissioner determines that:

509 (1) There was a material misrepresentation in the license application
510 or in other information submitted to the commissioner;

511 (2) The licensee [,] or any partner, [key manager,] member, director
512 [,] or officer [or majority stockholder] of the licensee has been
513 convicted of a felony or of any misdemeanor of which criminal fraud is
514 an element, has been found guilty of fraudulent or dishonest practices,
515 is subject to a final administrative action [to suspend or revoke a
516 license granted by the chief insurance regulatory official of another
517 state,] or is otherwise shown to be untrustworthy or incompetent to act
518 as a [viatical settlement provider, viatical settlement broker or viatical
519 settlement investment agent] licensee;

520 (3) The licensee, or any partner, member, officer or key management
521 personnel has [wilfully] violated any of the provisions of this part;

522 (4) The [viatical settlement] provider demonstrates a pattern of
523 unreasonably [low] withholding payments to [viators] policy owners;

524 (5) The licensee has [been found guilty of or has] pleaded guilty or
525 nolo contendere to [,] any felony [,] or [to a] any misdemeanor
526 involving criminal fraud or moral turpitude, regardless of whether a
527 judgment or conviction has been entered by the court;

528 (6) The [viatical settlement] provider has entered into any [viatical]
529 life settlement contract that has not been approved pursuant to
530 sections 38a-465 to 38a-465q, inclusive, as amended by this act;

531 (7) The [viatical settlement] provider has failed to honor contractual
532 obligations set out in a [viatical] life settlement contract; [or a viatical
533 settlement purchase agreement;]

534 (8) The licensee no longer meets the requirements for initial
535 licensure; or

536 (9) The [viatical settlement] provider has assigned, transferred or
537 pledged a [viatical] settled policy to a person other than a [viatical
538 settlement] provider licensed in this state, a [viatical settlement]
539 purchaser, an accredited investor [,] or a qualified institutional buyer,
540 as defined in Rule 501 of Regulation D or Rule 144A, respectively, of
541 the federal Securities Act of 1933, as amended from time to time, a
542 financing entity, special purpose entity or related provider trust.

543 (b) If the commissioner denies a license application, or suspends,
544 revokes or refuses to renew the license of a [viatical settlement
545 provider, viatical settlement broker or viatical settlement investment
546 agent] licensee, the applicant or licensee aggrieved by such denial,
547 suspension, revocation or refusal to renew a license may appeal such
548 action in accordance with chapter 54. Hearings may be held by the
549 commissioner or by any person designated by the commissioner.
550 Whenever an individual other than the commissioner acts as the
551 hearing officer, the individual shall submit to the commissioner a
552 memorandum of findings and recommendations upon which the
553 commissioner may base a decision.

554 [(c) In addition to denying a license application, or suspending,
555 revoking or refusing to renew a license, the commissioner may assess a
556 fine of up to one thousand dollars against a viatical settlement
557 provider or viatical settlement investment agent for each wilful
558 violation by the viatical settlement provider of any provision of this
559 part or regulations adopted pursuant to this part.

560 (d) In addition to denying a license application, or suspending,
561 revoking or refusing to renew a license, the commissioner may assess a
562 fine of up to one thousand dollars against a viatical settlement broker
563 if:

564 (1) Such viatical settlement broker has knowingly received a
565 commission or other payment or benefit from a viatical settlement

566 provider who is unlicensed in this state in connection with a viatical
567 settlement contract entered into with a viator resident in this state;

568 (2) Such viatical settlement broker has defrauded, misled or
569 mistreated viators; or

570 (3) Such viatical settlement broker has wilfully violated any
571 provision of sections 38a-465 to 38a-465q, inclusive, or regulations
572 adopted pursuant to said sections.]

573 Sec. 4. Section 38a-465c of the general statutes is repealed and the
574 following is substituted in lieu thereof (*Effective October 1, 2008*):

575 (a) No person [may] shall use any form of [viatical] life settlement
576 contract or disclosure statement in this state [when dealing with a
577 viator] unless such form has been filed with and approved by the
578 commissioner. The commissioner [may] shall disapprove a [viatical]
579 life settlement contract form or disclosure statement [,] form if the
580 commissioner finds any provision in said form is unreasonable,
581 contrary to the interests of the public, fails to comply with the
582 provisions of sections [38a-465 to 38a-465q, inclusive,] 38a-465f, 38a-
583 465g, 38a-465n and subsection (b) of 38a-465k, as amended by this act,
584 or is otherwise misleading or unfair to [viators or the public] the
585 owner. The commissioner may require the submission of advertising
586 materials.

587 (b) No insurer shall, as a condition of responding to a request for
588 verification of coverage or in connection with the transfer of a policy
589 pursuant to a life settlement contract, require the owner, insured,
590 provider or broker to sign any form, disclosure, consent, waiver or
591 acknowledgment that has not been expressly approved by the
592 commissioner for use in connection with life settlement contracts in
593 this state.

594 Sec. 5. Section 38a-465d of the general statutes is repealed and the
595 following is substituted in lieu thereof (*Effective October 1, 2008*):

596 (a) [Except as provided in subsection (b) of this section, on or before

597 the last day of March of each year] For any policy settled within five
598 years of policy issuance, on or before March first of each year, each
599 [viatical settlement] provider shall file with the commissioner an
600 annual statement containing such information as the commissioner
601 may prescribe. The commissioner shall adopt regulations, in
602 accordance with chapter 54, to prescribe the contents of such annual
603 [statements] statement, which shall include, but not be limited to, the
604 total number, aggregate face amount and life settlement proceeds of
605 policies settled during the immediately preceding calendar year, a
606 breakdown of the information by policy issue year, the names of the
607 insurance companies whose policies have been settled and the brokers
608 that have settled said policies. Such information shall be limited to
609 only those transactions where the insured is a resident of this state and
610 shall not include individual transaction data regarding the business of
611 life settlements or information where there is a reasonable basis to
612 conclude such data or information could be used to identify the owner
613 or the insured.

614 (b) Each provider that wilfully fails to file an annual statement as
615 required in this section or wilfully fails to reply not later than thirty
616 days to a written inquiry by the commissioner in connection therewith,
617 shall, in addition to other penalties provided by this part, be subject
618 upon due notice and opportunity to be heard to a penalty of up to two
619 hundred fifty dollars per day of delay, not to exceed twenty-five
620 thousand dollars in the aggregate, for each such failure.

621 [(b) Notwithstanding the provisions of subsection (a) of this section,
622 no licensee may submit to the commissioner information which
623 identifies any viator except with the express written permission of
624 such viator or the viator's estate or representative.]

625 (c) Except as otherwise required or permitted by law, no person,
626 including, but not limited to, [any viatical settlement] a provider,
627 [viatical settlement investment agent, viatical settlement] broker,
628 insurance company, insurance producer, information bureau, rating
629 agency or company, or any other person with actual knowledge of an

630 insured's identity, [may] shall disclose such identity or information
631 where there is a reasonable basis to conclude such information could
632 be used to identify the insured or the insured's financial or medical
633 information to any other person unless such disclosure: (1) Is necessary
634 to effect a [viatical] life settlement contract between the [viator] owner
635 and a [viatical settlement] provider and the [viator] owner and insured
636 [has] have provided prior written consent to such disclosure; (2) is
637 provided in response to an investigation or examination by the
638 commissioner or any other governmental office or agency or pursuant
639 to the requirements of section 38a-465i, as amended by this act; (3) is
640 necessary to [effect a viatical] effectuate the sale of life settlement
641 [purchase agreement between the viatical settlement purchaser and a
642 viatical settlement provider and the viator and] contracts or interests
643 therein as investments, provided the sale is conducted in accordance
644 with applicable state and federal securities laws, and provided further
645 the owner and the insured have both provided prior written consent to
646 the disclosure; (4) is a term of or condition to the transfer of a policy by
647 one [viatical settlement] provider to another [viatical settlement]
648 provider, in which case the provider receiving such information shall
649 comply with the confidentiality requirements specified in this
650 subsection; (5) [is necessary to permit a financing entity, related
651 provider trust or special purpose entity to finance the purchase of
652 policies by a viatical settlement provider and the viator and insured
653 have provided prior written consent to the disclosure; (6)] is necessary
654 to allow the [viatical settlement] provider or [viatical settlement]
655 broker or their authorized representatives to make contacts for the
656 purpose of determining health status. For the purpose of this section,
657 "authorized representative" does not include any person who has or
658 may have a financial interest in the settlement contract other than a
659 provider, licensed broker, financing entity, related provider trust or
660 special purpose entity. Each provider or broker shall require its
661 authorized representative to agree in writing to comply with the
662 privacy provisions of this part; or [(7)] (6) is required to purchase stop
663 loss coverage.

664 (d) [The commissioner shall not disclose the names of or other data

665 identifying viators unless such disclosure is required by law.]
666 Nonpublic personal information solicited or obtained in connection
667 with a proposed or actual life settlement contract shall be subject to the
668 provisions applicable to financial institutions under the federal
669 Gramm-Leach-Bliley Act of 1999, P.L. 106-102, as amended from time
670 to time, and all other applicable state and federal laws relating to
671 confidentiality of nonpublic personal information.

672 Sec. 6. Section 38a-465e of the general statutes is repealed and the
673 following is substituted in lieu thereof (*Effective October 1, 2008*):

674 (a) When the commissioner deems it reasonably necessary to protect
675 the interests of the public, the commissioner may examine the business
676 and affairs of any licensee or applicant for a license. The commissioner
677 may order any licensee of applicant to produce any records, books,
678 files or other information reasonably necessary to ascertain whether
679 such license or applicant is acting or acted in violation of the law or is
680 otherwise contrary to the interests of the public. The licensee or
681 applicant shall pay all expenses incurred by the commissioner in
682 conducting any examination.

683 (b) [Licensees] Providers shall maintain records of each [viatical
684 settlement] consummated transaction and life settlement contracts and,
685 subject to the provisions of section 38a-465d, as amended by this act,
686 such records shall be available, during reasonable business hours, to
687 the commissioner for inspection for the [five-year] three-year period
688 following the insured's death. [Subject to the provisions of said section,
689 the commissioner shall also have the authority to order any licensee or
690 applicant to produce any records, books, files or other information
691 reasonably necessary to ascertain whether the licensee or applicant is
692 acting or has acted in violation of any provision of sections 38a-465 to
693 38a-465m, inclusive, or of any regulations adopted pursuant to said
694 sections. The licensee or applicant shall pay all expenses incurred by
695 the commissioner in conducting any inspection or examination.]

696 (c) In lieu of an examination under this part of any foreign or alien
697 licensee licensed in this state, the commissioner may accept an

698 examination report on the licensee as prepared by the commissioner
699 for the licensee's state of domicile or port-of-entry state.

700 (d) Names and individual identification data of owners and
701 insureds shall be considered private and confidential information and
702 shall not be disclosed by the commissioner unless required by law.

703 (e) (1) Upon determining that an examination should be conducted,
704 the commissioner shall issue an examination warrant appointing one
705 or more examiners to perform said examination and instructing them
706 as to its scope. In conducting the examination, the examiner shall use
707 methods common to the examination of any life settlement licensee
708 and shall use guidelines and procedures set forth in an examiners'
709 handbook adopted by a national organization.

710 (2) Each licensee or person from whom information is sought, its
711 officers, directors and agents shall provide to the examiners timely,
712 convenient and free access at all reasonable hours at its offices to all
713 books, records, accounts, papers, documents, assets and computer or
714 other recordings relating to the property, assets, business and affairs of
715 the licensee being examined. The officers, directors, employees and
716 agents of the licensee or person shall facilitate the examination and aid
717 in the examination so far as it is in their power to do so. The refusal by
718 a licensee or its officers, directors, employees or agents to submit to an
719 examination or to comply with any reasonable written request of the
720 commissioner shall be grounds for suspension, refusal or nonrenewal
721 of any license or authority held by the licensee to engage in the life
722 settlement business or other business subject to the commissioner's
723 jurisdiction. Any proceedings for suspension, revocation or refusal of
724 any license or authority shall be conducted pursuant to sections 38a-17
725 to 38a-19, inclusive.

726 (3) The commissioner shall have the power to issue subpoenas,
727 administer oaths and examine under oath any person as to any matter
728 pertinent to the examination. Upon the failure or refusal of a person to
729 obey a subpoena, the commissioner may petition a court of competent
730 jurisdiction, and upon proper showing, the court may enter an order

731 compelling the witness to appear and testify or produce documentary
732 evidence.

733 (4) When making an examination under this part, the commissioner
734 may retain attorneys, appraisers, independent actuaries, independent
735 certified public accountants or other professionals and specialists as
736 examiners, the reasonable cost of which shall be borne by the licensee
737 that is the subject of the examination.

738 (5) Nothing contained in this section shall be construed to limit the
739 commissioner's authority to terminate or suspend an examination in
740 order to pursue other legal or regulatory action pursuant to the
741 insurance laws of this state. Findings of fact and conclusions made
742 pursuant to any examination shall be prima facie evidence in any legal
743 or regulatory action.

744 (6) All final or preliminary examination reports, examiner or
745 licensee work papers or other documents, or any other information
746 discovered or developed during the course of an examination shall be
747 kept confidential, pursuant to section 38a-69a.

748 (f) (1) Examination reports shall be comprised of only facts
749 appearing upon the books, from the testimony of the licensee, its
750 officers or agents or other persons examined concerning its affairs, and
751 such conclusions and recommendations as the examiners find
752 reasonably warranted from the facts.

753 (2) Not later than sixty days following completion of the
754 examination, the examiner in charge shall file with the commissioner a
755 verified written report of examination under oath. Upon receipt of the
756 verified report, the commissioner shall transmit the report to the
757 licensee examined, together with a notice that shall afford the licensee
758 examined a reasonable opportunity of not more than thirty days to
759 make a written submission or rebuttal with respect to any matters
760 contained in the examination report and which shall become part of
761 the report, or to request a hearing on any matter in dispute.

762 (3) In the event the commissioner determines that regulatory action
763 is appropriate as a result of an examination, the commissioner may
764 initiate any proceedings or actions provided by law.

765 (g) Except as otherwise provided in this section, all examination
766 reports, working papers, recorded information, documents and copies
767 thereof produced by, obtained by or disclosed to the commissioner or
768 any other person in the course of an examination made under this
769 section, or in the course of analysis or investigation by the
770 commissioner of the financial condition or market conduct of a
771 licensee, shall be confidential by law and privileged and shall not be
772 subject to section 1-210 of the 2008 supplement to the general statutes,
773 subject to subpoena, or subject to discovery or be admissible in
774 evidence in any private civil action. The commissioner is authorized to
775 use the documents, materials or other information in the furtherance of
776 any regulatory or legal action brought as part of the commissioner's
777 official duties. The licensee being examined shall have access to all
778 documents used to make the report.

779 (h) (1) An examiner shall not be appointed by the commissioner if
780 the examiner, directly or indirectly, has a conflict of interest, is
781 affiliated with the management of or owns a pecuniary interest in any
782 person subject to examination under this section. This section shall not
783 be construed to automatically preclude an examiner from being (A) an
784 owner, (B) an insured in a life settlement contract or insurance policy,
785 or (C) a beneficiary in an insurance policy that is proposed for a life
786 settlement contract.

787 (2) Notwithstanding the requirements of this subsection, the
788 commissioner may retain from time to time, on an individual basis,
789 qualified actuaries, certified public accountants or other similar
790 individuals who are independently practicing their professions, even
791 though these persons may from time to time be similarly employed or
792 retained by persons subject to examination under this section.

793 (i) (1) No cause of action shall arise or any liability be imposed
794 against the commissioner, the commissioner's authorized

795 representatives or any examiner appointed by the commissioner for
796 any statements made or conduct performed in good faith while
797 carrying out the provisions of this section.

798 (2) No cause of action shall arise or any liability be imposed against
799 any person for communicating or delivering information or data to the
800 commissioner or the commissioner's authorized representative or
801 examiner pursuant to an examination made under this section, if such
802 communication or delivery was performed in good faith and without
803 fraudulent intent or the intent to deceive. This subdivision shall not
804 abrogate or modify any common law or statutory privilege or
805 immunity heretofore enjoyed by any person identified in subdivision
806 (1) of this subsection.

807 (3) A person identified in subdivision (1) or (2) of this subsection
808 shall be entitled to an award of attorney's fees and costs if such person
809 is the prevailing party in a civil cause of action for libel, slander or any
810 other relevant tort arising out of activities in carrying out the
811 provisions of this section and the party bringing the action was not
812 substantially justified in doing so. For the purpose of this section, a
813 proceeding is "substantially justified" if it had a reasonable basis in law
814 or fact at the time that it was initiated.

815 (j) The commissioner may investigate suspected fraudulent life
816 settlement acts, as specified in section 38a-465j, as amended by this act,
817 and persons engaged in the business of life settlements.

818 Sec. 7. Section 38a-465f of the general statutes is repealed and the
819 following is substituted in lieu thereof (*Effective October 1, 2008*):

820 (a) **[**With each application for a viatical settlement, a viatical
821 settlement**]** The provider **[**or viatical settlement broker**]** shall provide,
822 **[**the viator with at least**]** in writing, in a separate document that is
823 signed by the owner and provider, the following disclosures to the
824 owner not later than **[**at the time the application for the viatical**]** the
825 date the life settlement contract is signed by all parties. **[**Disclosure to a
826 viator shall include distribution of a brochure developed or authorized

827 by the commissioner describing the process of viatical settlements.]
828 The disclosure document shall contain the following language: "All
829 medical, financial or personal information solicited or obtained by a
830 [viatical settlement] provider or [viatical settlement] broker about an
831 insured, including the insured's identity or the identity of family
832 members, a spouse or a significant other may be disclosed as necessary
833 to effect the [viatical] life settlement contract between the [viator]
834 owner and the [viatical settlement] provider. If you are asked to
835 provide this information, you will be asked to consent to the
836 disclosure. The information may be provided to someone who buys
837 the policy or provides funds for the purchase. You may be asked to
838 renew your permission to share information every two years." The
839 [disclosure] written disclosures shall be provided in a separate
840 document that is signed by the [viator] owner and the [viatical
841 settlement] provider [or viatical settlement broker] and shall provide at
842 least the following disclosures:

843 (1) [There] That there are possible alternatives to [viatical] life
844 settlement contracts including, [any] but not limited to, accelerated
845 death benefits [or policy loans] offered [under the viator's] by the
846 issuer of the life insurance policy;

847 (2) [Some] That some or all of the proceeds of [the viatical] a life
848 settlement contract may be taxable, [under federal income tax,] and
849 assistance should be sought from a professional tax advisor;

850 (3) [Receipt] That receipt of the [viatical] life settlement contract
851 proceeds may adversely affect the [viator's] recipient's eligibility for
852 [Medicaid] public assistance or other government benefits or
853 entitlements, and advice should be obtained from the appropriate
854 [governmental] agencies; [or advisors;]

855 [(4) The viatical settlement provider may assign or otherwise
856 transfer its interests in the viaticated policy to a third party;]

857 [(5) The viator] (4) That the owner has the right to rescind a
858 [viatical] life settlement contract for fifteen calendar days after the

859 [receipt of the viatical settlement proceeds by the viator, as provided in
860 subsection (c) of section 38a-465g] date such contract is executed by all
861 parties and the owner has received the disclosures specified herein.
862 Such rescission exercised by the owner shall be effective only if both
863 notice of rescission is given to the provider and the owner repays all
864 proceeds and any premiums, loans and loan interest paid by the
865 provider within the rescission period. If the insured dies during the
866 rescission period, the settlement contract shall be deemed to have been
867 rescinded, subject to repayment by the owner or the owner's estate of
868 all [viatical settlement] proceeds and any premiums, loans and loan
869 interest to the [viatical settlement] provider; [or viatical settlement
870 purchaser;]

871 [(6) Proceeds of the viatical] (5) That proceeds from the life
872 settlement contract may be subject to the claims of [general] creditors;

873 [(7) Funds] (6) That proceeds will be sent to the [viator] owner
874 within [two] three business days after the [viatical settlement] provider
875 has received the insurer or group administrator's acknowledgment
876 that ownership of the [viatical] policy or interest in the certificate has
877 been transferred and the beneficiary has been designated [pursuant to
878 sections 38a-465 to 38a-465q, inclusive] in accordance with the terms of
879 the life settlement contract;

880 [(8) Entering] (7) That entering into [the viatical] a life settlement
881 contract may cause other rights or benefits, including conversion rights
882 and waiver of premium benefits that may exist under the policy or
883 certificate, to be forfeited by the [viator] owner, and [that] assistance
884 should be sought from a financial advisor;

885 [(9) The] (8) That the insured may be contacted by either the [viatical
886 settlement] provider or broker or its authorized representative for the
887 purpose of determining the insured's health status or to verify the
888 insured's address. This contact is limited to once every three months
889 [following the date the viatical settlement proceeds are released to the
890 viator] if the insured has a life expectancy of more than one year, and
891 no more than once per month [following such date] if the insured has a

892 life expectancy of one year or less;

893 (9) The amount and method of calculating the compensation paid or
894 to be paid to the broker or to any other person acting for the owner in
895 connection with the transaction, wherein the term compensation
896 includes anything of value paid or given;

897 (10) The date by which the funds will be available to the owner and
898 the transmitter of the funds;

899 (11) That the commissioner shall require delivery of a buyer's guide
900 or a similar consumer advisory package in the form prescribed by the
901 commissioner to owners during the solicitation process;

902 (12) That the commissioner shall require providers and brokers to
903 print separate, signed fraud warnings on their applications and on
904 their life settlement contracts as follows: "Any person who knowingly
905 presents false information in an application for insurance or life
906 settlement contract is guilty of a crime and may be subject to fines and
907 confinement in prison.";

908 (13) The affiliation, if any, between the provider and the issuer of
909 the insurance policy to be settled;

910 (14) That a broker represents the owner exclusively, and not the
911 insurer, the provider or any other person, and owes a fiduciary duty to
912 the owner, including a duty to act according to the owner's
913 instructions and in the best interest of the owner;

914 (15) The name, address and telephone number of the provider;

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

919 (17) That a change of ownership could limit the insured's ability to
920 purchase future insurance on the insured's life because there is a limit

921 to how much coverage insurers will issue on one life.

922 [(b) A viatical settlement provider shall provide the viator with at
923 least the following disclosures not later than the date the viatical
924 settlement contract is signed by all parties. The disclosures shall be
925 conspicuously displayed in the viatical settlement contract or in a
926 separate document signed by the viator and the viatical settlement
927 provider or viatical settlement broker, and shall provide at least the
928 following disclosures:

929 (1) The affiliation, if any, between the viatical settlement provider
930 and the issuer of the insurance policy to be viaticated;

931 (2) The name, address and telephone number of the viatical
932 settlement provider;

933 (3) If an insurance policy to be viaticated has been issued as a joint
934 policy or involves family riders or any coverage of a life other than the
935 insured under the policy to be viaticated, the viator shall be informed
936 of the possible loss of coverage on the other lives under the policy and
937 shall be advised to consult with the viator's insurance producer or the
938 insurer issuing the policy for advice on the proposed viatical
939 settlement;

940 (4) The dollar amount of the current death benefit payable to the
941 viatical settlement provider under the policy or certificate. If known,
942 the viatical settlement provider shall also disclose the availability of
943 any additional guaranteed insurance benefits, the dollar amount of any
944 accidental death and dismemberment benefits under the policy or
945 certificate and the viatical settlement provider's interest in those
946 benefits;

947 (5) The name, business address, and telephone number of the
948 independent third party escrow agent, and the fact that the viator or
949 owner may inspect or receive copies of the relevant escrow or trust
950 agreements or documents.

951 (c) If the viatical settlement provider transfers ownership or changes

952 the beneficiary of the insurance policy, the viatical settlement provider
953 shall communicate the change in ownership or beneficiary to the
954 insured not later than twenty days after the change.

955 (d) A viatical settlement provider or its viatical settlement
956 investment agent shall provide the viatical settlement purchaser with
957 at least the following disclosures prior to the date the viatical
958 settlement purchase agreement is signed by all parties. The disclosures
959 shall be conspicuously displayed in any viatical settlement purchase
960 agreement or in a separate document signed by the viatical settlement
961 purchaser and viatical settlement provider or viatical settlement
962 investment agent and shall provide at least the following disclosures:

963 (1) The purchaser will receive no returns, including, but not limited
964 to, dividends and interest, until the insured dies;

965 (2) The actual annual rate of return on a viatical settlement contract
966 is dependent upon an accurate projection of the insured's life
967 expectancy, and the actual date of the insured's death. An annual
968 guaranteed rate of return is not determinable;

969 (3) The viaticated life insurance contract should not be considered a
970 liquid purchase because it is impossible to predict the exact timing of
971 the contract's maturity and the funds may not be available until the
972 death of the insured. There is no established secondary market for
973 resale of these contracts by the purchaser;

974 (4) The purchaser may lose all benefits or may receive substantially
975 reduced benefits if the insurer goes out of business during the term of
976 the viatical investment;

977 (5) The purchaser is responsible for payment of the insurance
978 premium or other costs related to the policy if required by the terms of
979 the viatical settlement purchase agreement. Such payments may
980 reduce the purchaser's return. If a party other than the purchaser is
981 responsible for the payment, the name and address of that party shall
982 be disclosed;

983 (6) The purchaser is responsible for payment of the insurance
984 premiums or other costs related to the policy if the insured returns to
985 good health. The amount of such premiums shall be disclosed, if
986 applicable;

987 (7) The name and address of any person providing escrow services
988 and the person's relationship to the broker;

989 (8) The amount of any trust fees or other expenses to be charged to
990 the viatical settlement purchaser;

991 (9) Whether the purchaser is entitled to a refund of all or part of the
992 purchaser's investment under the viatical settlement contract if the
993 policy is later determined to be null and void;

994 (10) That group policies may contain limitations or caps in the
995 conversion rights, additional premiums may be required to be paid if
996 the policy is converted, the party responsible for the payment of the
997 additional premiums shall be named and, if a group policy is
998 terminated and replaced by another group policy, that there may be no
999 right to convert the original coverage;

1000 (11) The risks associated with policy contestability, including, but
1001 not limited to, the risk that the purchaser will have no claim or only a
1002 partial claim to death benefits if the insurer rescinds the policy within
1003 the contestability period;

1004 (12) Whether the purchaser will be the owner of the policy in
1005 addition to being the beneficiary, and if the purchaser is the
1006 beneficiary only and not also the owner, the special risks associated
1007 with that status, including, but not limited to, the risk that the
1008 beneficiary may be changed or the premium may not be paid;

1009 (13) (A) The experience and qualifications of the person who
1010 determines the life expectancy of the insured, such as in-house staff,
1011 independent physicians and specialty firms that weigh medical and
1012 actuarial data; (B) the information the determination of life expectancy
1013 is based on; and (C) the relationship of the person making the

1014 determination to the viatical settlement provider, if any;

1015 (14) Disclosure to an investor shall include distribution of a
1016 brochure, developed or authorized by the commissioner, describing
1017 the process of investment in viatical settlements.

1018 (e) A viatical settlement provider or its viatical settlement
1019 investment agent shall provide the viatical settlement purchaser with
1020 at least the following disclosures not later than at the time of the
1021 assignment, transfer or sale of all or a portion of an insurance policy.
1022 The disclosures shall be contained in a document signed by the viatical
1023 settlement purchaser and viatical settlement provider or viatical
1024 settlement investment agent and shall provide at least the following
1025 disclosures:

1026 (1) All life expectancy certifications obtained by the provider in the
1027 process of determining the price paid to the viator;

1028 (2) Whether premium payments or other costs related to the policy
1029 have been escrowed. If such costs have been escrowed, disclosure is
1030 required regarding the date upon which the escrowed funds will be
1031 depleted and whether the purchaser will be responsible for payment of
1032 premiums after that date, and, if so, the amount of the premiums;

1033 (3) Whether premium payments or other costs related to the policy
1034 have been waived. If such costs have been waived, disclosure is
1035 required regarding whether the investor will be responsible for
1036 payment of the premiums if the insurer that wrote the policy
1037 terminates the waiver after purchase and the amount of those
1038 premiums;

1039 (4) The type of policy offered or sold, such as, whole life, term life,
1040 universal life or a group policy certificate, any additional benefits
1041 contained in the policy, and the current status of the policy;

1042 (5) If the policy is term insurance, the special risks associated with
1043 term insurance, including, but not limited to, the purchaser's
1044 responsibility for additional premiums if the viator continues the term

1045 policy at the end of the current term;

1046 (6) Whether the policy is contestable;

1047 (7) Whether the insurer that wrote the policy has any additional
1048 rights that could negatively affect or extinguish the purchaser's rights
1049 under the viatical settlement contract, what the rights are, and under
1050 what conditions the rights are activated;

1051 (8) The name and address of the person responsible for monitoring
1052 the insured's condition, a description of how often the monitoring of
1053 the insured's condition is done, how the date of death is determined,
1054 and how and when this information will be transmitted to the
1055 purchaser.

1056 (f) The viatical settlement purchase agreement may be voided by the
1057 purchaser at any time before the end of the third day after the
1058 disclosures required by subsections (d) and (e) of this section are
1059 received by the purchaser.**]**

1060 (b) The written disclosures shall be conspicuously displayed in any
1061 life settlement contract furnished to an owner by a provider, including
1062 any affiliations or contractual arrangements between the provider and
1063 the broker.

1064 (c) A broker shall provide the owner and the provider with at least
1065 the following disclosures not later than the date the life settlement
1066 contract is signed by all parties. The disclosures shall be conspicuously
1067 displayed in the life settlement contract or in a separate document
1068 signed by the owner and provide the following information:

1069 (1) The name, business address and telephone number of the broker;

1070 (2) A full, complete and accurate description of all the offers,
1071 counter-offers, acceptances and rejections relating to the proposed life
1072 settlement contract;

1073 (3) A written disclosure of any affiliations or contractual

1074 arrangements between the broker and any person making an offer in
1075 connection with the proposed life settlement contract;

1076 (4) The name of each broker who receives compensation and the
1077 amount of compensation received by said broker, which compensation
1078 includes anything of value paid or given to the broker in connection
1079 with the life settlement contract;

1080 (5) A complete reconciliation of the gross offer or bid by the
1081 provider to the net amount of proceeds or value to be received by the
1082 owner. For the purpose of this section, "gross offer" or "bid" means the
1083 total amount or value offered by the provider for the purchase of one
1084 or more life insurance policies, inclusive of commissions and fees; and

1085 (6) That the failure to provide the disclosures or rights described in
1086 this section shall be deemed an unfair trade practice in violation of
1087 chapter 735a.

1088 Sec. 8. Section 38a-465g of the general statutes is repealed and the
1089 following is substituted in lieu thereof (*Effective October 1, 2008*):

1090 (a) **[**(1)**]** Before entering into a **[**viatical**]** life settlement contract with
1091 any owner of a policy wherein the insured is terminally ill or
1092 chronically ill, a **[**viatical settlement**]** provider shall obtain:

1093 **[**(A)**]** (1) If the **[**viator**]** owner is the **[**individual whose life is**]**
1094 insured, **[**by the viator's life insurance policy or certificate,**]** a written
1095 statement from a licensed attending physician that the **[**viator**]** owner
1096 is of sound mind and under no constraint or undue influence to enter
1097 into **[**the viatical**]** the settlement contract; and

1098 **[**(B)**]** (2) A **[**witnessed**]** document **[**executed by the insured person**]**
1099 in which the **[**person**]** insured consents to the release of the **[**person's**]**
1100 insured's medical records to a **[**viatical settlement**]** provider, **[**viatical
1101 settlement**]** broker **[**and**]** or **[**the**]** insurance **[**company that issued the
1102 life insurance policy covering the life of the insured. The consent for
1103 the release of medical records shall only be obtained for the insurance
1104 company if the life insurance policy covering the insured was issued

1105 within forty-eight months of the date of the viator's application for the
1106 viatical settlement contract] producer, and, if the policy was issued less
1107 than two years from the date of application for a settlement contract, to
1108 the insurance company that issued the policy.

1109 [(2) Not later than twenty days after a viator executes the
1110 documents necessary to transfer any rights under a policy or not later
1111 than twenty days after entering any agreement, option, promise or any
1112 other form of understanding, expressed or implied, to viaticate the
1113 policy, the viatical settlement provider shall give written notice to the
1114 insurer that issued the policy that the policy has or will become a
1115 viaticated policy. The notice shall be accompanied by the documents
1116 required by subdivision (3) of this subsection.

1117 (3) The viatical settlement provider shall deliver a copy of the
1118 medical release required under subparagraph (B) of subdivision (1) of
1119 this subsection, a copy of the viator's application for the viatical
1120 settlement contract, the notice required under subdivision (2) of this
1121 subsection and a request for verification of coverage to the insurer that
1122 issued the policy that is the subject of the viatical transaction. The
1123 commissioner may adopt regulations, in accordance with chapter 54,
1124 to prescribe the form or forms to be used for verification of coverage.]

1125 [(4)] (b) The insurer shall respond to a request for verification of
1126 coverage submitted by a provider, broker or life insurance producer on
1127 [an approved] a form [by a viatical settlement provider] approved by
1128 the commissioner not later than thirty calendar days after the date the
1129 request was received. [and] The insurer shall complete and issue the
1130 verification of coverage or indicate in which respects it is unable to
1131 respond. In its response, the insurer shall indicate whether, based on
1132 the medical evidence and documents provided, the insurer intends [,
1133 at the time of the response,] to pursue an investigation regarding the
1134 validity of the policy.

1135 [(5)] (c) Prior to or at the time of execution of the [viatical]
1136 settlement contract, the [viatical settlement] provider shall obtain a
1137 witnessed document in which the [viator] owner consents to the

1138 [viatical] settlement contract, represents that the [viator] owner has a
1139 full and complete understanding of the [viatical] settlement contract,
1140 that the [viator] owner has a full and complete understanding of the
1141 benefits of the [life insurance] policy, acknowledges that the [viator]
1142 owner is entering into the [viatical] settlement contract freely and
1143 voluntarily and, for persons with a terminal or chronic illness or
1144 condition, acknowledges that the insured has a terminal or chronic
1145 illness or condition and that the terminal or chronic illness or condition
1146 was diagnosed after the life insurance policy was issued.

1147 [(6)] (d) If a [viatical settlement] broker or life insurance producer
1148 performs any of the activities required of the [viatical settlement]
1149 provider under this section, the provider shall be deemed to have
1150 fulfilled the requirements of this section.

1151 (e) If a broker performs the verification of coverage activities
1152 required of the provider, the provider shall be deemed to have fulfilled
1153 the requirements of subsection (a) of section 38a-465f, as amended by
1154 this act.

1155 (f) The insurer shall not unreasonably delay effecting change of
1156 ownership or beneficiary with any life settlement contract lawfully
1157 entered into in this state or with a resident of this state.

1158 (g) Not later than twenty days after an owner executes the life
1159 settlement contract, the provider shall give written notice to the insurer
1160 that issued the policy that the policy has become subject to a life
1161 settlement contract. The notice shall be accompanied by the documents
1162 set forth in subsection (c) of section 38a-465h, as amended by this act.

1163 [(b)] (h) All medical information solicited or obtained by any person
1164 licensed pursuant to this part shall be subject to applicable provisions
1165 of law relating to the confidentiality of medical information.

1166 [(c)] (i) Each [viatical] life settlement contract entered into in this
1167 state [or entered into with residents of this state] shall provide that the
1168 [viator] owner may rescind the [viatical settlement] contract [within]

1169 not later than fifteen days from the [viator's receipt of the viatical
1170 settlement proceeds] date it is executed by all parties thereto. Such
1171 rescission exercised by the owner shall be effective only if both notice
1172 of rescission is [delivered by the viator] given to the [viatical
1173 settlement] provider and [a full return of funds to the viatical
1174 settlement provider is made before the expiration of the applicable
1175 rescission period] the owner repays all proceeds and any premiums,
1176 loans and loan interest paid by the provider within the rescission
1177 period. A failure to provide written notice of the right of rescission
1178 shall toll the period of such right until thirty days after the written
1179 notice of the right of rescission has been given. If the insured dies
1180 during the rescission period, the [viatical settlement] contract shall be
1181 deemed to have been rescinded, subject to repayment [to the viatical
1182 settlement provider or viatical settlement purchaser] by the owner or
1183 the owner's estate of all [viatical settlement] proceeds [,] and any
1184 premiums, loans and loan interest [that has been paid by] to the
1185 [viatical settlement] provider. [or viatical settlement purchaser.]

1186 [(d) The viatical settlement purchaser shall have the right to rescind
1187 a viatical settlement contract until the end of the third day after the
1188 disclosures required by subsections (d) and (e) of section 38a-465f are
1189 received by the purchaser.

1190 (e) The viatical settlement provider shall instruct the viator to send
1191 the executed documents required to effect the change in ownership,
1192 assignment or change in beneficiary directly to the independent
1193 escrow agent.]

1194 (j) Not later than [two] three business days after the date the [escrow
1195 agent receives the document, or not later than two business days after
1196 the date the viatical settlement] provider receives the documents [if the
1197 viator erroneously provides the documents directly to the provider]
1198 from the owner to effect the transfer of the insurance policy, the
1199 provider shall pay or transfer the proceeds of the [viatical] settlement
1200 into an escrow or trust account [maintained] managed by a trustee or
1201 escrow agent in a state or federally-chartered financial institution

1202 whose deposits are insured by the Federal Deposit Insurance
1203 Corporation. [Upon payment of the settlement proceeds into the
1204 escrow account, the] Not later than three business days after receiving
1205 acknowledgment of the transfer of the insurance policy from the issuer
1206 of the policy, said trustee or escrow agent shall [deliver the original
1207 change in ownership, assignment or change in beneficiary forms to the
1208 viatical settlement provider or related provider trust. Upon the escrow
1209 agent's receipt of the acknowledgment of the properly completed
1210 transfer of ownership, assignment or designation of beneficiary from
1211 the insurance company, the escrow agent shall] pay the settlement
1212 proceeds to the [viator] owner.

1213 [(f)] (k) Failure to tender [consideration to the viator for] the
1214 [viatical] life settlement contract proceeds to the owner within the time
1215 set forth in section 38a-465f, as amended by this act, shall render the
1216 viatical settlement contract voidable by the [viator] owner for lack of
1217 consideration until the time such consideration is tendered to, and
1218 accepted by, the [viator] owner.

1219 [(g) No viatical settlement broker shall receive from a viatical
1220 settlement provider a fee, commission or other valuable consideration
1221 for services rendered to or in connection with viators resident in this
1222 state unless such viatical settlement provider is licensed in this state.

1223 (h) Viatical settlement proceeds received by a viator from a licensed
1224 viatical settlement provider pursuant to a viatical settlement contract
1225 shall not be subject to state taxation under title 12.

1226 (i) Following the consummation of a viatical settlement, no person
1227 may initiate contact with the insured under the viaticated policy for
1228 purposes of determining the insured's health status (1) more than one
1229 time during each consecutive three-month period following the date
1230 the viatical settlement proceeds are released to the viator if the insured
1231 has an estimated life expectancy of more than one year from such date,
1232 or (2) more than one time during each month following such date if the
1233 insured has an estimated life expectancy of one year or less. The
1234 viatical settlement provider shall notify the viator of said limitations

1235 on contacts with the insured prior to the consummation of the viatical
1236 settlement in accordance with section 38a-465f. The limitations set
1237 forth in this subsection shall not apply to any contacts with an insured
1238 under a viaticated policy for reasons other than determining the
1239 insured's health status. Viatical settlement providers and viatical
1240 settlement brokers shall be responsible for the actions of their
1241 authorized representatives.

1242 (j) An insured shall have the right, where permitted under the life
1243 insurance policy or certificate, to assign, transfer, sell or bequest the net
1244 death benefit payable under or ownership of a life insurance policy or
1245 certificate for any remaining portion of such coverage. An insured
1246 shall also have the right, where permitted under the life insurance
1247 policy or certificate, to assign, transfer, sell or bequest the net death
1248 benefit payable under or ownership of a life insurance policy or
1249 certificate at any time such coverage is on disability waiver of
1250 premium.

1251 (k) Unless otherwise agreed to in writing by the viator and the
1252 viatical settlement provider, the amount payable to a viatical
1253 settlement provider upon the insured's death shall be the amount (1)
1254 which would have been payable to the viatical settlement provider if
1255 the insured had died on the first day following the date of the viatical
1256 settlement contract, less (2) (A) any double or additional indemnity
1257 amount, if any, payable under the viaticated policy if the insured's
1258 death is accidental, and (B) all other amounts required to be deducted
1259 from the death benefit. Any other additional amounts shall remain
1260 payable to the beneficiary last named by the viator prior to entering
1261 into the viatical settlement contract, or to such other beneficiary, other
1262 than the viatical settlement provider, as the viator may designate after
1263 entering into the viatical settlement contract, or in the absence of a
1264 designation, to the estate of the viator.]

1265 (l) Any fee paid by a provider, party, individual or an owner to a
1266 broker in exchange for services provided to the owner pertaining to a
1267 life settlement contract shall be computed as a percentage of the offer

1268 obtained and not as a percentage of the face value of the policy.
1269 Nothing in this section shall be construed to prohibit a broker from
1270 reducing such broker's fee below such percentage.

1271 (m) Each broker shall disclose to the owner anything of value paid
1272 or given to such broker in connection with a life settlement contract
1273 concerning the owner.

1274 (n) No person at anytime prior to, or at the time of, the application
1275 for or issuance of a policy, or during a two-year period commencing
1276 with the date of issuance of the policy, shall enter into a life settlement
1277 contract regardless of the date the compensation is to be provided and
1278 regardless of the date the assignment, transfer, sale, devise, bequest or
1279 surrender of the policy is to occur. This prohibition shall not apply if
1280 the owner certifies to the provider that:

1281 (1) The policy was issued upon the owner's exercise of conversion
1282 rights arising out of a group or individual policy, provided the total of
1283 the time covered under the conversion policy plus the time covered
1284 under the prior policy is not less than twenty-four months. The time
1285 covered under a group policy must be calculated without regard to a
1286 change in insurance carriers, provided the coverage has been
1287 continuous and under the same group sponsorship; or

1288 (2) The owner submits independent evidence to the provider that
1289 one or more of the following conditions have been met within said
1290 two-year period: (A) The owner or insured is terminally ill or
1291 chronically ill; (B) the owner or insured disposes of the owner or
1292 insured's ownership interests in a closely held corporation, pursuant to
1293 the terms of a buyout or other similar agreement in effect at the time
1294 the insurance policy was initially issued; (C) the owner's spouse dies;
1295 (D) the owner divorces his or her spouse; (E) the owner retires from
1296 full-time employment; (F) the owner becomes physically or mentally
1297 disabled and a physician determines that the disability prevents the
1298 owner from maintaining full-time employment; or (G) a final order,
1299 judgment or decree is entered by a court of competent jurisdiction on
1300 the application of a creditor of the owner, adjudicating the owner

1301 bankrupt or insolvent, or approving a petition seeking reorganization
1302 of the owner or appointing a receiver, trustee or liquidator to all or a
1303 substantial part of the owner's assets.

1304 (o) Copies of the independent evidence required by subdivision (2)
1305 of subsection (n) of this section shall be submitted to the insurer when
1306 the provider submits a request to the insurer for verification of
1307 coverage. The copies shall be accompanied by a letter of attestation
1308 from the provider that the copies are true and correct copies of the
1309 documents received by the provider. Nothing in this section shall
1310 prohibit an insurer from exercising its right to contest the validity of
1311 any policy.

1312 (p) If, at the time the provider submits a request to the insurer to
1313 effect the transfer of the policy to the provider, the provider submits a
1314 copy of independent evidence of subparagraph (A) of subdivision (2)
1315 of subsection (n) of this section, such copy shall be deemed to establish
1316 that the settlement contract satisfies the requirements of this section.

1317 Sec. 9. Section 38a-465h of the general statutes is repealed and the
1318 following is substituted in lieu thereof (*Effective October 1, 2008*):

1319 **[**(a) No person who invests in a viaticated policy, including, but not
1320 limited to, a participant in a financing transaction, may influence the
1321 treatment of the insured's illness.

1322 (b) (1) No life insurance policy or certificate issued or delivered in
1323 this state which permits assignment may in any way restrict the owner
1324 of the policy or holder of the certificate from making an assignment of
1325 rights under said contract or certificate as a gift without consideration.

1326 (2) Any provision in any life insurance policy or certificate which
1327 places restrictions on assignments described in subdivision (1) of this
1328 subsection may be waived with written consent from the administrator
1329 or insurer of such policy or certificate.

1330 (c) The assignee of an individual life insurance policy or of rights
1331 under a certificate shall have all rights at law or in equity held by the

1332 assignor under such policy or certificate, including, but not limited to,
1333 the right to: (1) Convert the coverage evidenced by the certificate to an
1334 individual policy; (2) receive timely notice of such right to convert; (3)
1335 take such other action as may be necessary under the policy or
1336 certificate in order to preserve the value of the assigned coverage; (4)
1337 receive information concerning the coverage under the policy or
1338 certificate; (5) receive notice of a lapse or discontinuation of coverage;
1339 (6) exercise any option relating to the assigned coverage during an
1340 open enrollment period; and (7) all such other rights and privileges
1341 vested in the assignor under the terms of the policy or certificate.

1342 (d) If a certificate is assigned pursuant to a viatical settlement
1343 contract and the administrator of the group life insurance policy to
1344 which the certificate relates fails to give notice to the viatical settlement
1345 provider that the insured is no longer a covered person under the
1346 group life insurance policy or of the right to convert the certificate to
1347 an individual life insurance policy, the period of time during which the
1348 viatical settlement provider may apply for conversion under the terms
1349 of the group life insurance policy shall begin from the date such notice
1350 is received by the viatical settlement provider.

1351 (e) If a certificate acquired pursuant to a viatical settlement contract
1352 is converted to an individual life insurance policy, where permitted
1353 under the life insurance policy or certificate and when the face amount
1354 does not exceed the original group coverage, for the purposes of
1355 measuring the period of incontestability or determining application of
1356 the suicide exclusion, the date of issue of the policy shall be the first
1357 day coverage was provided under the group life insurance policy to
1358 which the certificate related and not the date of issue of the individual
1359 life insurance policy issued following conversion, provided the
1360 information relevant to the determination of eligibility of conversion
1361 can be contested.**]**

1362 <u>(a) Without limiting the ability of an insurer to assess the</u>
1363 <u>insurability of a policy applicant and in addition to other questions an</u>
1364 <u>insurance company may lawfully pose to a life insurance applicant, an</u>

1365 insurance company may inquire in the application for life insurance
1366 whether the proposed owner intends to pay premiums with the
1367 assistance of financing from a lender that will use the policy as
1368 collateral to support the financing.

1369 (b) If, as described in subdivision (11) of section 38a-465, as
1370 amended by this act, the loan provides funds that can be used for a
1371 purpose other than paying for the premiums, costs and expenses
1372 associated with obtaining and maintaining the life insurance policy
1373 and loan, the application shall be rejected as a violation of section 38a-
1374 465i, as amended by this act.

1375 (c) If the financing does not violate section 38a-465i, as amended by
1376 this act, in this manner, the insurance company:

1377 (1) May make disclosures including, but not limited to, the
1378 following, to the applicant and the insured, in the application or an
1379 amendment to the application completed not later than the delivery of
1380 the policy: "If you have entered into a loan arrangement where the
1381 policy is used as collateral and the policy does change ownership at
1382 some point in the future in satisfaction of the loan, the following may
1383 be true: (A) A change of ownership could lead to a stranger owning an
1384 interest in the insured's life; (B) a change of ownership could limit your
1385 ability to purchase future insurance on the insured's life because there
1386 is a limit to how much coverage insurers will issue on one life; (C)
1387 should there be a change of ownership and you wish to obtain more
1388 insurance coverage on the insured's life in the future, the insured's
1389 higher issue age, a change in health status or other factors may reduce
1390 the ability to obtain coverage or may result in significantly higher
1391 premiums; and (D) you should consult a professional advisor, since a
1392 change in ownership in satisfaction of the loan may result in tax
1393 consequences to the owner, depending on the structure of the loan.";
1394 and

1395 (2) May require the applicant or the insured to certify that:

1396 (A) Such applicant or insured has not entered into any agreement or

1397 arrangement providing for the future sale of such life insurance policy;

1398 (B) The loan arrangement for this policy provides funds sufficient to
1399 for partial or full payment of the premiums, costs and expenses
1400 associated with obtaining and maintaining such life insurance policy,
1401 and that such applicant or insured has not entered into any agreement
1402 by which such applicant or insured will receive consideration in
1403 exchange for procuring such policy; and

1404 (C) The borrower has an insurable interest in the insured.

1405 Sec. 10. Section 38a-465i of the general statutes is repealed and the
1406 following is substituted in lieu thereof (*Effective October 1, 2008*):

1407 **[**(a) Each life insurance company licensed in this state shall
1408 promptly respond to reasonable requests for policy or certificate
1409 information following the receipt of the following documents by the
1410 insurer or its agent:

1411 (1) An instruction executed by the viator requiring the insurer to
1412 release specified information regarding the policy or certificate to a
1413 named viatical settlement provider or viatical settlement broker; and

1414 (2) A written request for such information from the named viatical
1415 settlement provider or viatical settlement broker.

1416 (b) Requests for the following items are deemed to be reasonable: (1)
1417 Ownership of and death benefits payable under the viaticated policy;
1418 (2) premium information on the viaticated policy; (3) liens on and
1419 assignments and additional benefits of the viaticated policy; (4) waiver
1420 of premium of the viaticated policy; and (5) ownership of and
1421 assignment provisions under the viaticated policy. The commissioner
1422 may adopt regulations, in accordance with chapter 54, to identify
1423 additional requests for information which shall also be deemed
1424 reasonable.

1425 (c) An insurer or third party administrator of a group life insurance
1426 policy shall promptly issue an individual conversion policy if the

1427 conversion is being requested for the purpose of entering into a viatical
1428 settlement contract.

1429 (d) Nothing in this section shall be construed to prohibit a policy
1430 owner or certificate holder, pursuant to the provisions of the policy or
1431 certificate, from assigning rights or benefits under the policy or
1432 certificate to a viatical settlement provider or from converting such
1433 coverage to an individual life insurance policy.

1434 (e) No person may enter into a viatical settlement contract within a
1435 two-year period from the date of issuance of an insurance policy or
1436 certificate unless the viator certifies to the viatical settlement provider
1437 that one or more of the following conditions have been met within the
1438 two-year period:

1439 (1) The policy was issued upon the viator's exercise of conversion
1440 rights arising out of a group or individual policy, provided the total of
1441 the time covered under the conversion policy plus the time covered
1442 under the prior policy is at least twenty-four months. The time covered
1443 under a group policy shall be calculated without regard to any change
1444 in insurance carriers, provided the coverage has been continuous and
1445 under the same group sponsorship;

1446 (2) (A) The viator submits independent evidence to the viatical
1447 settlement provider that one or more of the following conditions have
1448 been met within the two-year period:

1449 (i) The viator or insured is terminally or chronically ill; or

1450 (ii) The viator disposes of the viator's entire ownership interests in a
1451 closely held corporation pursuant to the terms of a buyout or other
1452 similar agreement in effect at the time the insurance policy was
1453 initially issued;

1454 (B) Copies of the independent evidence described in subparagraph
1455 (A) of this subdivision and documents required by subsection (a) of
1456 section 38a-465g shall be submitted to the insurer when the viatical
1457 settlement provider submits a request to the insurer for verification of

1458 coverage. The copies shall be accompanied by a letter from the viatical
1459 settlement provider that the copies are true and correct copies of the
1460 documents received by the viatical settlement provider.

1461 (f) If the viatical settlement provider submits to the insurer a copy of
1462 the owner or insured's certification described in subdivision (2) of
1463 subsection (e) of this section when the provider submits a request to
1464 the insurer to effect the transfer of the policy or certificate to the
1465 viatical settlement provider, the copy shall be deemed to conclusively
1466 establish that the viatical settlement contract satisfies the requirements
1467 of this section and the insurer shall timely respond to the request.**]**

1468 (a) It shall be a violation of this part for any person to:

1469 (1) Enter into a life settlement contract if such person knows or
1470 reasonably should have known that the life insurance policy was
1471 obtained by means of a false, deceptive or misleading application for
1472 such policy;

1473 (2) Engage in any transaction, practice or course of business if such
1474 person knows or reasonably should have known that the intent was to
1475 avoid the notice requirements of this section;

1476 (3) Engage in any fraudulent act or practice in connection with any
1477 transaction relating to any settlement involving an owner who is a
1478 resident of this state;

1479 (4) Issue, solicit, market or otherwise promote the purchase of an
1480 insurance policy for the purpose of or with the emphasis on settling
1481 the policy;

1482 (5) Enter into a premium finance agreement with any person or
1483 entity, or any person affiliated with such person or entity, pursuant to
1484 which such person shall receive any proceeds, fees or other
1485 consideration, directly or indirectly, from the policy, owner of the
1486 policy or any other person with respect to the premium finance
1487 agreement or any settlement contract or other transaction related to
1488 such policy that are in addition to the amounts required to pay the

1489 principal, interest and service charges related to policy premiums
1490 pursuant to the premium finance agreement or subsequent sale of such
1491 agreement, and provided further that any payments, charges, fees or
1492 other amounts in addition to the amounts required to pay the
1493 principal, interest and service charges related to policy premiums paid
1494 under the premium finance agreement shall be remitted to the original
1495 owner of the policy or to such owner's estate if said original owner is
1496 not living at the time of the determination of the overpayment;

1497 (6) With respect to any settlement contract or insurance policy and a
1498 broker, to knowingly solicit an offer from, effectuate a life settlement
1499 contract with or make a sale to any provider, financing entity or
1500 related provider trust that is controlling, controlled by or under
1501 common control with such broker;

1502 (7) With respect to any life settlement contract or insurance policy
1503 and a provider, to knowingly enter into a life settlement contract with
1504 an owner if, in connection with such life settlement contract, anything
1505 of value will be paid to a broker that is controlling, controlled by or
1506 under common control with such provider, financing entity or related
1507 provider trust that is involved in such settlement contract;

1508 (8) With respect to a provider, to enter into a life settlement contract
1509 unless the life settlement promotional, advertising and marketing
1510 materials, as may be prescribed by regulation, have been filed with the
1511 commissioner. In no event shall any marketing materials expressly
1512 reference that the insurance is free for any period of time. The
1513 inclusion of any reference in the marketing materials that would cause
1514 an owner to reasonably believe the insurance is free for any period of
1515 time shall be considered a violation of this part; or

1516 (9) With respect to any life insurance producer, insurance company,
1517 broker or provider, to make any statement or representation to the
1518 applicant or policyholder in connection with the sale or financing of a
1519 life insurance policy to the effect that the insurance is free or without
1520 cost to the policyholder for any period of time unless so provided in
1521 the policy.

1522 (b) A violation of this section shall be deemed a fraudulent life
1523 settlement act, as specified in section 38a-465j, as amended by this act.

1524 Sec. 11. Section 38a-465j of the general statutes is repealed and the
1525 following is substituted in lieu thereof (*Effective October 1, 2008*):

1526 **[**(a) Nothing in sections 38a-465 to 38a-465m, inclusive, shall be
1527 construed to require a financing entity to obtain a viatical settlement
1528 provider license or viatical settlement broker license pursuant to
1529 section 38a-465a.

1530 (b) Nothing in sections 38a-465 to 38a-465m, inclusive, shall be
1531 construed to restrict any person from receiving a fee, commission or
1532 other valuable consideration for services rendered in connection with
1533 any financing transaction.

1534 (c) Nothing in sections 38a-465 to 38a-465m, inclusive, shall be
1535 construed to require notice to the commissioner of, or restrict an
1536 insurance company from investing or participating in or purchasing
1537 any securities issued in, any financing transaction.**]**

1538 (a) (1) A person shall not commit a fraudulent life settlement act.

1539 (2) "Fraudulent life settlement act" includes, but is not limited to:

1540 (A) Acts or omissions committed by any person who, knowingly
1541 and with intent to defraud, for the purpose of depriving another of
1542 property or for pecuniary gain, commits or permits its employees or its
1543 agents to engage in acts including, but not limited to:

1544 (i) Presenting, causing to be presented or preparing with knowledge
1545 and belief that it will be presented to or by a provider, premium
1546 finance lender, broker, insurer, insurance producer or any other
1547 person, false material information, or concealing material information,
1548 as part of, in support of, or concerning a fact material to one or more of
1549 the following: (I) An application for the issuance of a life settlement
1550 contract or insurance policy; (II) the underwriting of a life settlement
1551 contract or insurance policy; (III) a claim for payment or benefit

1552 pursuant to a life settlement contract or insurance policy; (IV)
1553 premiums paid on an insurance policy; (V) payments and changes in
1554 ownership or beneficiary made in accordance with the terms of a life
1555 settlement contract or insurance policy; (VI) the reinstatement or
1556 conversion of an insurance policy; (VII) in the solicitation, offer to enter
1557 into, or effectuation of a life settlement contract or insurance policy;
1558 (VIII) the issuance of written evidence of a life settlement contract or
1559 insurance policy; (IX) any application for or the existence of or any
1560 payments related to a loan secured directly or indirectly by any
1561 interest in a life insurance policy; or (X) enter into any practice or plan
1562 that involves stranger-originated life insurance;

1563 (ii) Where the request for disclosure has been asked for by the
1564 insurer, failing to disclose to the insurer that the prospective insured
1565 has undergone a life expectancy evaluation by any person or entity
1566 other than the insurer or its authorized representative in connection
1567 with the issuance of the policy;

1568 (iii) Employing any device, scheme or artifice to defraud in the
1569 business of life settlements; or

1570 (iv) In the solicitation, application or issuance of a policy, employing
1571 any device, scheme or artifice in violation of state insurable interest
1572 laws;

1573 (B) In the furtherance of a fraud or to prevent the detection of a
1574 fraud any person commits or permits its employees or its agents to:

1575 (i) Remove, conceal, alter, destroy or sequester from the
1576 commissioner the assets or records of a licensee or other person
1577 engaged in the business of life settlements;

1578 (ii) Misrepresent or conceal the financial condition of a licensee,
1579 financing entity, insurer or other person;

1580 (iii) Transact the business of life settlements in violation of laws
1581 requiring a license, certificate of authority or other legal authority for
1582 the transaction of the business of life settlements;

1583 (iv) File with the commissioner a document containing false
1584 information or otherwise concealing information about a material fact
1585 from the commissioner;

1586 (v) Engage in embezzlement, theft, misappropriation or conversion
1587 of moneys, funds, premiums, credits or other property of a provider,
1588 insurer, insured, owner, insurance, policy owner or any other person
1589 engaged in the business of life settlements or insurance;

1590 (vi) Knowingly and with intent to defraud, enter into, broker or
1591 otherwise deal in a life settlement contract, the subject of which is a life
1592 insurance policy that was obtained by presenting false information
1593 concerning any fact material to the policy or by concealing, for the
1594 purpose of misleading another, information concerning any fact
1595 material to the policy, where the owner or the owner's agent intended
1596 to defraud the policy's issuer;

1597 (vii) Attempt to commit, assist, aid or abet in the commission of, or
1598 conspiracy to commit the acts or omissions specified in this subsection;
1599 or

1600 (viii) Misrepresent the state of residence of an owner to be a state or
1601 jurisdiction that does not have a law substantially similar to this part
1602 for the purpose of evading or avoiding the provisions of this part.

1603 (b) A person shall not knowingly or intentionally interfere with the
1604 enforcement of the provisions of this part or investigations or
1605 suspected or actual violations of this part.

1606 (c) A person in the business of life settlements shall not knowingly
1607 or intentionally permit any person convicted of a felony involving
1608 dishonesty or breach of trust to participate in the business of life
1609 settlements.

1610 (d) (1) Life settlement contracts and applications for life settlement
1611 contracts shall contain the following statement or a substantially
1612 similar statement, regardless of the form of transmission: "Any person
1613 who knowingly presents false information in an application for

1614 insurance or life settlement contract is guilty of a crime and may be
1615 subject to fines and confinement in prison."

1616 (2) The lack of a statement as required in subdivision (1) of this
1617 subsection shall not constitute a defense in any prosecution for a
1618 fraudulent life settlement act.

1619 (e) (1) Any person engaged in the business of life settlements having
1620 knowledge or a reasonable belief that a fraudulent life settlement act is
1621 being, will be or has been committed shall provide to the
1622 commissioner the information required by, and in a manner prescribed
1623 by, the commissioner.

1624 (2) Any other person having knowledge or a reasonable belief that a
1625 fraudulent life settlement act is being, will be or has been committed
1626 shall provide to the commissioner the information required by, and in
1627 a manner prescribed by, the commissioner.

1628 (f) (1) No civil liability shall be imposed on and no cause of action
1629 shall arise from a person's furnishing information concerning
1630 suspected, anticipated or completed fraudulent life settlement acts or
1631 suspected or completed fraudulent insurance acts, if the information is
1632 provided to or received from: (A) The commissioner or the
1633 commissioner's employees, agents or representatives; (B) federal, state
1634 or local law enforcement or regulatory officials or their employees,
1635 agents or representatives; (C) a person involved in the prevention and
1636 detection of fraudulent life settlement acts or that person's agents,
1637 employees or representatives; (D) any regulatory body or their
1638 employees, agents or representatives, overseeing life insurance, life
1639 settlements, securities or investment fraud; (E) the life insurer that
1640 issued the life insurance policy covering the life of the insured; or (F)
1641 the licensee or its agents, employees or representatives.

1642 (2) Subdivision (1) of this subsection shall not apply to statements
1643 made with actual malice. In an action brought against a person for
1644 filing a report or furnishing other information concerning a fraudulent
1645 life settlement act or a fraudulent insurance act, the party bringing the

1646 action shall plead specifically any allegation that subdivision (1) of this
1647 subsection does not apply because the person filing the report or
1648 furnishing the information did so with actual malice.

1649 (3) A person identified in subdivision (1) of this subsection shall be
1650 entitled to an award of attorney's fees and costs if such person is the
1651 prevailing party in a civil cause of action for libel, slander or any other
1652 relevant tort arising out of activities in carrying out the provisions of
1653 this part and the party bringing the action was not substantially
1654 justified in doing so. For the purpose of this section, a proceeding is
1655 "substantially justified" if it had a reasonable basis in law or fact at the
1656 time that it was initiated.

1657 (4) This section does not abrogate or modify common law or
1658 statutory privileges or immunities enjoyed by a person described in
1659 subdivision (1) of this subsection.

1660 (g) (1) The documents and evidence provided pursuant to
1661 subsection (f) of this section or obtained by the commissioner in an
1662 investigation of suspected or actual fraudulent life settlement acts shall
1663 be privileged and confidential and shall not be a public record or
1664 subject to discovery or subpoena in a civil or criminal action.

1665 (2) Subdivision (1) of this subsection does not prohibit release by the
1666 commissioner of documents and evidence obtained in an investigation
1667 of suspected or actual fraudulent life settlement acts: (A) In
1668 administrative or judicial proceedings to enforce laws administered by
1669 the commissioner; (B) to federal, state or local law enforcement or
1670 regulatory agencies, to an organization established for the purpose of
1671 detecting and preventing fraudulent life settlement acts or to the
1672 National Association of Insurance Commissioners; or (C) at the
1673 discretion of the commissioner, to a person in the business of life
1674 settlements that is aggrieved by a fraudulent life settlement act.

1675 (3) Release of documents and evidence under subdivision (2) of this
1676 subsection does not abrogate or modify the privilege granted in
1677 subdivision (1) of this subsection.

1678 (h) Nothing in this part shall be construed to:

1679 (1) Preempt the authority or relieve the duty of other law
1680 enforcement or regulatory agencies to investigate, examine and
1681 prosecute suspected violations of law;

1682 (2) Preempt, supersede, or limit any provision of any state securities
1683 law or any rule, order or notice issued thereunder;

1684 (3) Prevent or prohibit a person from voluntarily disclosing
1685 information concerning life settlement fraud to a law enforcement or
1686 regulatory agency other than the insurance department; or

1687 (4) Limit the powers granted elsewhere by the laws of this state to
1688 the commissioner or an insurance fraud unit to investigate and
1689 examine possible violations of law and to take appropriate action
1690 against wrongdoers.

1691 (i) (1) Providers and brokers shall have in place antifraud initiatives
1692 reasonably calculated to detect, prosecute and prevent fraudulent life
1693 settlement acts. The commissioner may order, or a licensee may
1694 request and the commissioner may grant, such modifications of the
1695 following required initiatives as necessary to ensure an effective
1696 antifraud program. The modifications may be more or less restrictive
1697 than the required initiatives as long as the modifications may
1698 reasonably be expected to accomplish the purpose of this section.
1699 Antifraud initiatives shall include: (A) Fraud investigators, who may
1700 be provider or broker employees or independent contractors; and (B)
1701 an antifraud plan that shall be submitted to the commissioner.

1702 (2) The antifraud plan specified in subparagraph (B) of subdivision
1703 (1) of this subsection shall include, but not be limited to:

1704 (A) A description of the procedures for detecting and investigating
1705 possible fraudulent life settlement acts and procedures for resolving
1706 material inconsistencies between medical records and insurance
1707 applications;

1708 (B) A description of the procedures for reporting possible
1709 fraudulent life settlement acts to the commissioner;

1710 (C) A description of the plan for antifraud education and training of
1711 underwriters and other personnel; and

1712 (D) A description or chart outlining the organizational arrangement
1713 of the antifraud personnel responsible for the investigation and
1714 reporting of possible fraudulent life settlement acts and investigating
1715 unresolved material inconsistencies between medical records and
1716 insurance applications.

1717 (3) Antifraud plans submitted to the commissioner shall be
1718 privileged and confidential and shall not be a public record or subject
1719 to discovery or subpoena in a civil or criminal action.

1720 Sec. 12. Section 38a-465k of the general statutes is repealed and the
1721 following is substituted in lieu thereof (*Effective October 1, 2008*):

1722 **[**No viatical settlement provider may sell, assign, transfer or pledge
1723 a viaticated policy except to a viatical settlement provider licensed
1724 pursuant to section 38a-465a, or a person not required to be licensed
1725 under sections 38a-465 to 38a-465m, inclusive.**]**

1726 (a) In addition to the penalties and other enforcement provisions of
1727 this part, if any person violates this part or any regulation
1728 implementing this part, the commissioner may seek an injunction in a
1729 court of competent jurisdiction and may apply for temporary and
1730 permanent orders that the commissioner determines are necessary to
1731 restrain the person from further committing the violation.

1732 (b) Any person damaged by the acts of a person in violation of this
1733 part or any regulation implementing this part may bring a civil action
1734 for damages in a court of competent jurisdiction against the person
1735 committing the violation.

1736 (c) The commissioner may issue, in accordance with the provisions
1737 of chapter 54, a cease and desist order upon a person that violates any

1738 provision of this part, any regulation or order adopted by the
1739 commissioner or any written agreement entered into with the
1740 commissioner.

1741 (d) When the commissioner finds that an activity in violation of this
1742 part presents an immediate danger to the public that requires an
1743 immediate final order, the commissioner may issue an emergency
1744 cease and desist order reciting with particularity the facts underlying
1745 the findings. The emergency cease and desist order is effective
1746 immediately upon service of a copy of the order on the respondent and
1747 shall remain effective for ninety days from the date of service. If the
1748 commissioner begins nonemergency cease and desist proceedings, the
1749 emergency cease and desist order shall remain effective, absent an
1750 order by a court of competent jurisdiction.

1751 (e) In the event of a wilful violation of this part, the trial court may
1752 award statutory damages in addition to actual damages in an amount
1753 up to three times the actual damage award.

1754 (f) The provisions of this part shall not be waived by agreement.

1755 (g) No choice of law provision shall be utilized to prevent the
1756 application of this part to any settlement in which a party to the
1757 settlement is a resident of this state.

1758 Sec. 13. Section 38a-465*l* of the general statutes is repealed and the
1759 following is substituted in lieu thereof (*Effective October 1, 2008*):

1760 **[**Any viatical settlement provider or viatical settlement broker who
1761 is acting in such capacity in this state as of January 1, 1998, may
1762 continue to operate in such capacity pending approval or disapproval
1763 of such provider's or broker's application for a license pursuant to
1764 section 38a-465a, provided such application is filed with the
1765 commissioner not later than thirty days after January 1, 1998.**]**

1766 (a) It shall be a violation of this part for any person, provider, broker
1767 or any other party related to the business of life settlements to commit
1768 a fraudulent life settlement act.

1769 (b) A person that commits a fraudulent life settlement act is guilty of
1770 committing insurance fraud and shall be subject to additional penalties
1771 under section 53a-215.

1772 (c) The commissioner shall be authorized to levy a civil penalty not
1773 to exceed one hundred thousand dollars and the amount of the claim
1774 for each violation upon any person, including those persons and their
1775 employees licensed pursuant to this part, found to have committed a
1776 fraudulent life settlement act or violated any other provision of this
1777 part.

1778 (d) The license of a person licensed under this part who commits a
1779 fraudulent life settlement act shall be revoked for a period of not less
1780 than one year.

1781 (e) A violation of sections 38a-465a to 38a-465q, inclusive, as
1782 amended by this act, shall be deemed an unfair trade practice in
1783 violation of chapter 735a.

1784 Sec. 14. Section 38a-465m of the general statutes is repealed and the
1785 following is substituted in lieu thereof (*Effective October 1, 2008*):

1786 (a) The commissioner may adopt regulations, in accordance with the
1787 provisions of chapter 54, to implement the provisions of sections 38a-
1788 465 to 38a-465*l*, inclusive, as amended by this act, and sections 38a-
1789 465n to 38a-465q, inclusive, as amended by this act.

1790 (b) Such regulations may establish standards for evaluating
1791 reasonableness of payments under **[**viatical**]** life settlement contracts.
1792 **[**for persons who are terminally or chronically ill.**]** Such regulations
1793 may include, but are not limited to, the regulation of discount rates
1794 used to determine the amount paid in exchange for assignment,
1795 transfer, sale, devise or bequest of a benefit under a life insurance
1796 policy.

1797 (c) Such regulations may establish appropriate licensing
1798 requirements and standards for continued licensure for **[**viatical
1799 settlement**]** providers **[**,**]** and **[**viatical settlement**]** brokers. **[**and viatical

1800 settlement investment agents.]

1801 (d) The commissioner may require a bond or other mechanism for
1802 financial accountability for [viatical settlement] providers and brokers.

1803 (e) Such regulations may adopt rules governing the relationship and
1804 responsibilities of [both insurers and viatical settlement] providers,
1805 [viatical settlement] brokers, insurers and their agents, [and viatical
1806 settlement investment agents during the viatication of a life insurance
1807 policy or certificate] pursuant to the requirements of this part.

1808 (f) If there is more than one owner on a single policy and the owners
1809 are residents of different states, the life settlement contract shall be
1810 governed by the law of the state in which the owner having the largest
1811 percentage ownership resides or, if the owners hold equal ownership,
1812 the state of residence of one owner agreed upon in writing by all of the
1813 owners. In the event that equal owners fail to agree in writing upon a
1814 state of residence for jurisdictional purposes, the law of the state of the
1815 insured shall govern.

1816 (g) A provider in this state that enters into a life settlement contract
1817 with an owner who is a resident of another state that has enacted
1818 statutes or adopted regulations governing life settlement contracts
1819 shall be governed in the effectuation of such life settlement contract by
1820 the statutes and regulations of the owner's state of residence. If the
1821 state in which the owner is a resident has not enacted statutes or
1822 regulations governing life settlement contracts, the provider shall
1823 provide notice to the owner that neither state regulates the transaction
1824 upon which the owner is entering, except that for transactions in such
1825 states, the provider shall maintain all records required if the
1826 transactions were executed in the owner's state of residence. The forms
1827 used in such states need not be approved by the commissioner.

1828 (h) If there is a conflict in the laws that apply to an owner and a
1829 provider in any individual transaction, the laws of the state that apply
1830 to the owner shall take precedence and the provider shall comply with
1831 those laws.

1832 Sec. 15. Section 38a-465n of the general statutes is repealed and the
1833 following is substituted in lieu thereof (*Effective October 1, 2008*):

1834 **[**(a) This section shall apply to the advertising of viatical settlement
1835 contracts, viatical settlement purchase agreements or related products
1836 or services. Where disclosure requirements are established pursuant to
1837 federal law, this section shall be interpreted to minimize or eliminate
1838 conflict with the federal law.**]**

1839 **[**(b)**]** (a) Each person licensed pursuant to this part **[**shall establish
1840 and at all times maintain a system of control over the content, form
1841 and method of dissemination of all advertisements of its contracts,
1842 products and services. Each advertisement, regardless of by whom
1843 written, created, designed or presented, shall be the responsibility of
1844 the viatical settlement licensee, as well as the individual who created
1845 or presented the advertisement. A system of control shall include
1846 regular routine notification, at least once a year, to agents and others
1847 authorized by the licensee who disseminate advertisements of the
1848 requirements and procedures for approval prior to the use of any
1849 advertisements not furnished by the licensee**]** may conduct or
1850 participate in advertisements within this state. Such advertisements
1851 shall be accurate, truthful and not misleading in fact or by implication.

1852 (b) No person or trust shall:

1853 (1) Directly or indirectly market, advertise, solicit or otherwise
1854 promote the purchase of a policy for the sole purpose of or with an
1855 emphasis on settling the policy; or

1856 (2) Use the words "free", "no cost" or words of similar import in the
1857 marketing, advertising, soliciting or otherwise promoting of the
1858 purchase of a policy.

1859 **[**(c) Advertisements shall be truthful and not misleading in fact or
1860 by implication. The form and content of an advertisement of a viatical
1861 settlement contract or viatical settlement purchase agreement, product
1862 or service shall be sufficiently complete and clear so as to avoid

1863 deception. The advertisement shall not have the capacity or tendency
1864 to mislead or deceive. Whether an advertisement has the capacity or
1865 tendency to mislead or deceive shall be determined by the
1866 commissioner from the overall impression that the advertisement may
1867 be reasonably expected to create upon a person of average education
1868 or intelligence within the segment of the public to which it is directed.

1869 (d) Certain viatical settlement advertisements are deemed false and
1870 misleading on their face and are prohibited. False and misleading
1871 viatical settlement advertisements include, but are not limited to,
1872 advertisements that include the following representations:

1873 (1) "Guaranteed", "fully secured", "100 per cent secured", "fully
1874 insured", "secure", "safe", "backed by rated insurance companies",
1875 "backed by federal law", "backed by state law", "state guaranty funds"
1876 or similar representations;

1877 (2) "No risk", "minimal risk", "low risk", "no speculation", "no
1878 fluctuation" or similar representations;

1879 (3) Qualified or approved for individual retirement accounts, Roth
1880 IRAs, 401(k) plans, simplified employee pensions, 403(b) plans, Keogh
1881 plans, TSA or other retirement account rollovers, "tax deferred" or
1882 similar representations;

1883 (4) Utilization of the word "guaranteed" to describe the fixed return,
1884 annual return, principal, earnings, profits, investment or similar
1885 representations;

1886 (5) "No sales charges or fees" or similar representations;

1887 (6) "High yield", "superior return", "excellent return", "high return",
1888 "quick profit" or similar representations;

1889 (7) Purported favorable representations or testimonials about the
1890 benefits of viatical settlement contracts or viatical settlement purchase
1891 agreements as an investment, taken out of context from newspapers,
1892 trade papers, journals, radio and television programs, and all other

1893 forms of print or electronic media.

1894 (e) The information required to be disclosed under this section shall
1895 not be minimized, rendered obscure or presented in an ambiguous
1896 fashion or intermingled with the text of the advertisement so as to be
1897 confusing or misleading. An advertisement shall not:

1898 (1) Omit material information or use words, phrases, statements,
1899 references or illustrations if the omission or use has the capacity,
1900 tendency or effect of misleading or deceiving viators, purchasers or
1901 prospective purchasers as to the nature or extent of any benefit, loss
1902 covered, premium payable, or state or federal tax consequence. The
1903 fact that the viatical settlement contract or viatical settlement purchase
1904 agreement offered is made available for inspection prior to
1905 consummation of the sale, or an offer is made to refund the payment if
1906 the viator is not satisfied or that the viatical settlement contract or
1907 viatical settlement purchase agreement includes a "free look" period
1908 that satisfies or exceeds legal requirements shall not remedy
1909 misleading statements;

1910 (2) Use the name or title of a life insurance company or a life
1911 insurance policy unless the advertisement has been approved by the
1912 insurance company;

1913 (3) Represent that premium payments will not be required to be
1914 paid on the life insurance policy that is the subject of a viatical
1915 settlement contract or viatical settlement purchase agreement in order
1916 to maintain that policy unless that is the fact;

1917 (4) State or imply that interest charged on an accelerated death
1918 benefit or a policy loan is unfair, inequitable or in any manner an
1919 incorrect or improper practice;

1920 (5) Include the words "free", "no cost", "without cost", "no additional
1921 cost", "at no extra cost" or words of similar meaning with respect to
1922 any benefit or service unless true. An advertisement may specify the
1923 charge for a benefit or a service or may state that a charge is included

1924 in the payment or use other appropriate language;

1925 (6) Include testimonials, appraisals or analysis that are not genuine.
1926 Testimonials, appraisals and analysis shall (A) represent the current
1927 opinion of the author; (B) be applicable to the viatical settlement
1928 contract or viatical settlement purchase agreement, product or service
1929 advertised, if any; and (C) be accurately reproduced with sufficient
1930 completeness to avoid misleading or deceiving prospective viators or
1931 purchasers as to the nature or scope of the testimonials, appraisals,
1932 analysis or endorsement. In using testimonials, appraisals or analysis,
1933 the licensee makes as its own all the statements contained therein, and
1934 the statements shall be subject to the provisions of this subdivision.

1935 (i) If the individual making a testimonial, appraisal, analysis or an
1936 endorsement has a financial interest in the viatical settlement provider
1937 or related entity as a stockholder, director, officer, employee or
1938 otherwise, or receives any benefit directly or indirectly other than
1939 required union scale wages, that fact shall be prominently disclosed in
1940 the advertisement.

1941 (ii) An advertisement shall not state or imply that a viatical
1942 settlement contract or viatical settlement purchase agreement, benefit
1943 or service has been approved or endorsed by a group of individuals,
1944 society, association or other organization unless that is the fact and
1945 unless any relationship between an organization and the viatical
1946 settlement licensee is disclosed. If the entity making the endorsement
1947 or testimonial is owned, controlled or managed by the viatical
1948 settlement licensee, or receives any payment or other consideration
1949 from the viatical settlement licensee for making an endorsement or
1950 testimonial, that fact shall be disclosed in the advertisement.

1951 (iii) When an endorsement refers to benefits received under a
1952 viatical settlement contract or viatical settlement purchase agreement
1953 all pertinent information shall be retained for a period of five years
1954 after its use.

1955 (f) An advertisement shall not contain statistical information unless

1956 the information accurately reflects recent and relevant facts. The source
1957 of all statistics used in an advertisement shall be identified.

1958 (g) An advertisement shall not disparage insurers, viatical
1959 settlement providers, viatical settlement brokers, viatical settlement
1960 investment agents, insurance producers, policies, services or methods
1961 of marketing.

1962 (h) The name of the licensee shall be clearly identified in all
1963 advertisements about the licensee or its viatical settlement contract or
1964 viatical settlement purchase agreements, products or services, and if
1965 any specific viatical settlement contract or viatical settlement purchase
1966 agreement is advertised, the viatical settlement contract or viatical
1967 settlement purchase agreement shall be identified either by form
1968 number or some other appropriate description. If an application is part
1969 of the advertisement, the name of the viatical settlement provider shall
1970 be shown on the application.

1971 (i) An advertisement shall not use a trade name, group designation,
1972 name of the parent company of a licensee, name of a particular
1973 division of the licensee, service mark, slogan, symbol or other device or
1974 reference without disclosing the name of the licensee, if the
1975 advertisement would have the capacity or tendency to mislead or
1976 deceive as to the true identity of the licensee, or to create the
1977 impression that a company other than the licensee would have any
1978 responsibility for the financial obligation under a viatical settlement
1979 contract or viatical settlement purchase agreement.

1980 (j) An advertisement shall not use any combination of words,
1981 symbols or physical materials that by their content, phraseology,
1982 shape, color or other characteristics are so similar to a combination of
1983 words, symbols or physical materials used by a government program
1984 or agency or otherwise appear to be of such a nature that they tend to
1985 mislead prospective viators or purchasers into believing that the
1986 solicitation is in some manner connected with a government program
1987 or agency.

1988 (k) An advertisement may state that a licensee is licensed in the state
1989 where the advertisement appears, provided it does not exaggerate that
1990 fact or suggest or imply that competing licensees may not be so
1991 licensed. The advertisement may ask the audience to consult the
1992 licensee's web site or contact the Insurance Department to find out if
1993 the state requires licensing and, if so, whether the viatical settlement
1994 provider, viatical settlement broker or viatical settlement investment
1995 agent is licensed.

1996 (l) An advertisement shall not create the impression that the viatical
1997 settlement provider, its financial condition or status, the payment of its
1998 claims or the merits, desirability, or advisability of its viatical
1999 settlement contracts or viatical settlement purchase agreement forms
2000 are recommended or endorsed by any government entity.

2001 (m) The name of the licensee shall be stated in all of the licensee's
2002 advertisements. An advertisement shall not use a trade name, any
2003 group designation, name of any affiliate or controlling entity of the
2004 licensee, service mark, slogan, symbol or other device in a manner that
2005 would have the capacity or tendency to mislead or deceive as to the
2006 true identity of the licensee or create the false impression that an
2007 affiliate or controlling entity would have any responsibility for the
2008 financial obligation of the licensee.

2009 (n) An advertisement shall not directly or indirectly create the
2010 impression that any division or agency of the state or of the United
2011 States government endorses, approves or favors:

2012 (1) Any licensee or its business practices or methods of operation;

2013 (2) The merits, desirability or advisability of any viatical settlement
2014 contract or viatical settlement purchase agreement;

2015 (3) Any viatical settlement contract or viatical settlement purchase
2016 agreement; or

2017 (4) Any life insurance policy or life insurance company.

2018 (o) If the advertisement emphasizes the speed with which the
2019 viatication will occur, the advertisement shall disclose the average time
2020 frame from completed application to the date of offer and from
2021 acceptance of the offer to receipt of the funds by the viator.

2022 (p) If the advertisement emphasizes the dollar amounts available to
2023 viators, the advertisement shall disclose the average purchase price as
2024 a per cent of face value obtained by viators contracting with the
2025 licensee during the past six months.**]**

2026 Sec. 16. Section 38a-465o of the general statutes is repealed and the
2027 following is substituted in lieu thereof (*Effective October 1, 2008*):

2028 Notwithstanding the manner in which the **[**viatical**]** life settlement
2029 broker is compensated, a **[**viatical**]** life settlement broker is deemed to
2030 represent only the **[**viator**]** owner and owes a fiduciary duty to the
2031 **[**viator**]** owner to act according to the **[**viator's**]** owner's instructions
2032 and in the best interest of the **[**viator**]** owner.

2033 Sec. 17. Section 38a-465p of the general statutes is repealed and the
2034 following is substituted in lieu thereof (*Effective October 1, 2008*):

2035 **[**(a) A viatical settlement investment agent shall not have any
2036 contact directly or indirectly with the viator or have knowledge of the
2037 identity of the viator.

2038 (b) A viatical settlement investment agent is deemed to represent
2039 the viatical settlement provider for whom the viatical settlement
2040 investment agent is an appointed or contracted agent.**]**

2041 (a) Any provider or broker lawfully transacting business in this state
2042 prior to October 1, 2008, may continue to do so pending approval or
2043 disapproval of such provider or broker's application for a license,
2044 provided such application is filed with the commissioner not later than
2045 thirty days after October 1, 2008. During the time that such application
2046 is pending with the commissioner, the applicant may use any form of
2047 life settlement contract that has been filed with the commissioner
2048 pending approval thereof, provided that such form is otherwise in

2049 compliance with the provisions of this part. Any person transacting
2050 business in this state under this provision shall be obligated to comply
2051 with all other requirements of this part.

2052 (b) Any person who has lawfully negotiated life settlement contracts
2053 between any owner residing in this state and one or more providers
2054 for not less than one year immediately prior to October 1, 2008, may
2055 continue to do so pending approval or disapproval of that person's
2056 application for a license, provided such application is filed with the
2057 commissioner not later than thirty days after October 1, 2008. Any
2058 person transacting business in this state under this provision shall be
2059 obligated to comply with all other requirements of this part.

2060 Sec. 18. Section 38a-465q of the general statutes is repealed and the
2061 following is substituted in lieu thereof (*Effective October 1, 2008*):

2062 A related provider trust shall have a written agreement with the
2063 licensed **[**viatical settlement**]** provider under which the licensed
2064 **[**viatical settlement**]** provider is responsible for ensuring compliance
2065 with all statutory and regulatory requirements and under which the
2066 trust agrees to make all records and files related to **[**viatical**]** life
2067 settlement transactions available to the commissioner as if those
2068 records and files were maintained directly by the licensed **[**viatical
2069 settlement**]** provider.

2070 Sec. 19. Subsection (a) of section 38a-11 of the 2008 supplement to
2071 the general statutes is repealed and the following is substituted in lieu
2072 thereof (*Effective October 1, 2008*):

2073 (a) The commissioner shall demand and receive the following fees:
2074 (1) For the annual fee for each license issued to a domestic insurance
2075 company, one hundred dollars; (2) for receiving and filing annual
2076 reports of domestic insurance companies, twenty-five dollars; (3) for
2077 filing all documents prerequisite to the issuance of a license to an
2078 insurance company, one hundred seventy-five dollars, except that the
2079 fee for such filings by any health care center, as defined in section 38a-
2080 175, shall be one thousand one hundred dollars; (4) for filing any

2081 additional paper required by law, fifteen dollars; (5) for each certificate
2082 of valuation, organization, reciprocity or compliance, twenty dollars;
2083 (6) for each certified copy of a license to a company, twenty dollars; (7)
2084 for each certified copy of a report or certificate of condition of a
2085 company to be filed in any other state, twenty dollars; (8) for
2086 amending a certificate of authority, one hundred dollars; (9) for each
2087 license issued to a rating organization, one hundred dollars. In
2088 addition, insurance companies shall pay any fees imposed under
2089 section 12-211; (10) a filing fee of twenty-five dollars for each initial
2090 application for a license made pursuant to section 38a-769; (11) with
2091 respect to insurance agents' appointments: (A) A filing fee of twenty-
2092 five dollars for each request for any agent appointment, except that no
2093 filing fee shall be payable for a request for agent appointment by an
2094 insurance company domiciled in a state or foreign country which does
2095 not require any filing fee for a request for agent appointment for a
2096 Connecticut insurance company; (B) a fee of forty dollars for each
2097 appointment issued to an agent of a domestic insurance company or
2098 for each appointment continued; and (C) a fee of twenty dollars for
2099 each appointment issued to an agent of any other insurance company
2100 or for each appointment continued, except that no fee shall be payable
2101 for an appointment issued to an agent of an insurance company
2102 domiciled in a state or foreign country which does not require any fee
2103 for an appointment issued to an agent of a Connecticut insurance
2104 company; (12) with respect to insurance producers: (A) An
2105 examination fee of seven dollars for each examination taken, except
2106 when a testing service is used, the testing service shall pay a fee of
2107 seven dollars to the commissioner for each examination taken by an
2108 applicant; (B) a fee of forty dollars for each license issued; (C) a fee of
2109 forty dollars per year, or any portion thereof, for each license renewed;
2110 and (D) a fee of forty dollars for any license renewed under the
2111 transitional process established in section 38a-784; (13) with respect to
2112 public adjusters: (A) An examination fee of seven dollars for each
2113 examination taken, except when a testing service is used, the testing
2114 service shall pay a fee of seven dollars to the commissioner for each
2115 examination taken by an applicant; and (B) a fee of one hundred

2116 twenty-five dollars for each license issued or renewed; (14) with
2117 respect to casualty adjusters: (A) An examination fee of ten dollars for
2118 each examination taken, except when a testing service is used, the
2119 testing service shall pay a fee of ten dollars to the commissioner for
2120 each examination taken by an applicant; (B) a fee of forty dollars for
2121 each license issued or renewed; and (C) the expense of any
2122 examination administered outside the state shall be the responsibility
2123 of the entity making the request and such entity shall pay to the
2124 commissioner one hundred dollars for such examination and the
2125 actual traveling expenses of the examination administrator to
2126 administer such examination; (15) with respect to motor vehicle
2127 physical damage appraisers: (A) An examination fee of forty dollars
2128 for each examination taken, except when a testing service is used, the
2129 testing service shall pay a fee of forty dollars to the commissioner for
2130 each examination taken by an applicant; (B) a fee of forty dollars for
2131 each license issued or renewed; and (C) the expense of any
2132 examination administered outside the state shall be the responsibility
2133 of the entity making the request and such entity shall pay to the
2134 commissioner one hundred dollars for such examination and the
2135 actual traveling expenses of the examination administrator to
2136 administer such examination; (16) with respect to certified insurance
2137 consultants: (A) An examination fee of thirteen dollars for each
2138 examination taken, except when a testing service is used, the testing
2139 service shall pay a fee of thirteen dollars to the commissioner for each
2140 examination taken by an applicant; (B) a fee of two hundred dollars for
2141 each license issued; and (C) a fee of one hundred twenty-five dollars
2142 for each license renewed; (17) with respect to surplus lines brokers: (A)
2143 An examination fee of ten dollars for each examination taken, except
2144 when a testing service is used, the testing service shall pay a fee of ten
2145 dollars to the commissioner for each examination taken by an
2146 applicant; and (B) a fee of five hundred dollars for each license issued
2147 or renewed; (18) with respect to fraternal agents, a fee of forty dollars
2148 for each license issued or renewed; (19) a fee of thirteen dollars for
2149 each license certificate requested, whether or not a license has been
2150 issued; (20) with respect to domestic and foreign benefit societies shall

2151 pay: (A) For service of process, twenty-five dollars for each person or
2152 insurer to be served; (B) for filing a certified copy of its charter or
2153 articles of association, five dollars; (C) for filing the annual report, ten
2154 dollars; and (D) for filing any additional paper required by law, three
2155 dollars; (21) with respect to foreign benefit societies: (A) For each
2156 certificate of organization or compliance, four dollars; (B) for each
2157 certified copy of permit, two dollars; and (C) for each copy of a report
2158 or certificate of condition of a society to be filed in any other state, four
2159 dollars; (22) with respect to reinsurance intermediaries: A fee of five
2160 hundred dollars for each license issued or renewed; (23) with respect
2161 to **[**viatical**]** life settlement providers: (A) A filing fee of thirteen dollars
2162 for each initial application for a license made pursuant to section 38a-
2163 465a, as amended by this act; and (B) a fee of twenty dollars for each
2164 license issued or renewed; (24) with respect to **[**viatical**]** life settlement
2165 brokers: (A) A filing fee of thirteen dollars for each initial application
2166 for a license made pursuant to section 38a-465a, as amended by this
2167 act; and (B) a fee of twenty dollars for each license issued or renewed;
2168 (25) **[**with respect to viatical settlement investment agents: (A) A filing
2169 fee of thirteen dollars for each initial application for a license made
2170 pursuant to section 38a-465a; and (B) a fee of twenty dollars for each
2171 license issued or renewed; (26)**]** with respect to preferred provider
2172 networks, a fee of two thousand five hundred dollars for each license
2173 issued or renewed; **[**(27)**]** (26) with respect to rental companies, as
2174 defined in section 38a-799, a fee of forty dollars for each permit issued
2175 or renewed; **[**(28)**]** (27) with respect to medical discount plan
2176 organizations licensed under section 38a-479rr, a fee of five hundred
2177 dollars for each license issued or renewed; **[**(29)**]** (28) with respect to
2178 pharmacy benefits managers, an application fee of fifty dollars for each
2179 registration issued or renewed; and **[**(30)**]** (29) with respect to each
2180 duplicate license issued a fee of twenty-five dollars for each license
2181 issued.

2182 Sec. 20. Subsection (a) of section 38a-25 of the general statutes is
2183 repealed and the following is substituted in lieu thereof (*Effective*
2184 *October 1, 2008*):

2185 (a) The Insurance Commissioner is the agent for receipt of service of
2186 legal process on the following:

2187 (1) Foreign and alien insurance companies authorized to do
2188 business in this state in any proceeding arising from or related to any
2189 transaction having a connection with this state.

2190 (2) Fraternal benefit societies authorized to do business in this state.

2191 (3) Insurance-support organizations as defined in section 38a-976,
2192 transacting business outside this state which affects a resident of this
2193 state.

2194 (4) Risk retention groups, as defined in section 38a-250.

2195 (5) Purchasing groups designating the Insurance Commissioner as
2196 agent for receipt of service of process pursuant to section 38a-261.

2197 (6) Eligible surplus lines insurers authorized by the commissioner to
2198 accept surplus lines insurance.

2199 (7) Except as provided by section 38a-273, unauthorized insurers or
2200 other persons assisting unauthorized insurers who directly or
2201 indirectly do any of the acts of insurance business as set forth in
2202 subsection (a) of section 38a-271.

2203 (8) The Connecticut Insurance Guaranty Association and the
2204 Connecticut Life and Health Insurance Guaranty Association.

2205 (9) Insurance companies designating the Insurance Commissioner
2206 as agent for receipt of service of process pursuant to subsection (g) of
2207 section 38a-85.

2208 (10) Nonresident insurance producers and nonresident surplus lines
2209 brokers licensed by the Insurance Commissioner.

2210 (11) **[**Viatical**]** Life settlement providers **[**, viatical**]** and life
2211 settlement brokers **[**, and viatical settlement investment agents**]**
2212 licensed by the commissioner.

2213 (12) Nonresident reinsurance intermediaries designating the
2214 commissioner as agent for receipt of service of process pursuant to
2215 section 38a-760b.

2216 (13) Workers' compensation self-insurance groups, as defined in
2217 section 38a-1001.

2218 (14) Persons alleged to have violated any provision of section 38a-
2219 130.

2220 (15) Captive insurers, as defined in section 38a-91k.

| This act shall take effect as follows and shall amend the following sections: | | |
|---|---|---|
| Section 1 | *October 1, 2008* | 38a-465 |
| Sec. 2 | *October 1, 2008* | 38a-465a |
| Sec. 3 | *October 1, 2008* | 38a-465b |
| Sec. 4 | *October 1, 2008* | 38a-465c |
| Sec. 5 | *October 1, 2008* | 38a-465d |
| Sec. 6 | *October 1, 2008* | 38a-465e |
| Sec. 7 | *October 1, 2008* | 38a-465f |
| Sec. 8 | *October 1, 2008* | 38a-465g |
| Sec. 9 | *October 1, 2008* | 38a-465h |
| Sec. 10 | *October 1, 2008* | 38a-465i |
| Sec. 11 | *October 1, 2008* | 38a-465j |
| Sec. 12 | *October 1, 2008* | 38a-465k |
| Sec. 13 | *October 1, 2008* | 38a-465*l* |
| Sec. 14 | *October 1, 2008* | 38a-465m |
| Sec. 15 | *October 1, 2008* | 38a-465n |
| Sec. 16 | *October 1, 2008* | 38a-465o |
| Sec. 17 | *October 1, 2008* | 38a-465p |
| Sec. 18 | *October 1, 2008* | 38a-465q |
| Sec. 19 | *October 1, 2008* | 38a-11(a) |
| Sec. 20 | *October 1, 2008* | 38a-25(a) |

***Statement of Legislative Commissioners:***
Technical changes were made for accuracy.

***INS*** *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

## OFA Fiscal Note

### State Impact:

| Agency Affected | Fund-Effect | FY 09 $ | FY 10 $ |
|---|---|---|---|
| Insurance Dept. | GF - Revenue Gain | Potential Minimal | Potential Minimal |

Note: GF=General Fund

**Municipal Impact:** None

### Explanation

The bill replaces "viatical" terminology with "life settlement" terminology to more directly apply life settlement contractor restricted activities and could result in a potential minimal revenue gain in the General Fund from related fines and penalties collected by the Department of Insurance (DOI) under current law. DOI requirements related to life settlement contracts in the bill can be fulfilled within the agency's normally existing resources and would not result in a fiscal impact.

### The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to the number of such fines and penalties issued and collected.

**OLR Bill Analysis**
**sHB 5512**

***AN ACT CONCERNING LIFE SETTLEMENTS.***

**SUMMARY:**

This bill replaces current insurance laws for viatical settlements with the National Conference of Insurance Legislators (NCOIL) Life Settlements Model Act. NCOIL adopted the model act to specifically address an emerging type of life settlement activity, stranger-originated life insurance (STOLI) (see below). Thus, the bill defines STOLI and sets requirements and prohibitions for insurers, providers, brokers, and finance companies involved with it and other life settlement transactions.

A "life settlement contract" is a written agreement entered into between the owner of a life insurance policy ("owner") and another (called a "provider"), under which the owner assigns, transfers, sells, devises, or bequests his or her policy's death benefit, or a portion of it, for money or other value. A "viatical settlement contract" is a life settlement contract where the owner's life insurance policy insures a person who has a catastrophic or life-threatening illness or condition.

Current law speaks in terms of "viaticals" but applies to life settlements in most respects. The bill uses "life settlement" terminology, and thus more directly applies to all life settlement contracts and transactions and people, including providers, brokers, insurers, and finance companies, engaged in the life settlement business (e.g., offering, selling, negotiating, procuring such contracts).

The amount a life settlement contract pays an owner is less than the policy's death benefit. Under the bill, it must be more than the cash surrender value or accelerated death benefit available under it when

applying for the life settlement contract. (Cash surrender value is the amount the owner would receive for giving the policy back to the insurer that issued it. Accelerated death benefit is a life insurance policy option that permits a person to collect some of the policy's death benefit while he or she is alive.)

The bill prohibits a person from entering into a life settlement contract involving a life insurance policy before, when, or within two years of purchasing a life insurance policy and specifies several exceptions to this prohibition, including life status changes.

It (1) revises provider and broker licensing requirements and lowers the commissioner's threshold for denying, suspending, revoking, or not renewing a license; (2) revises and, in some cases, expands upon current examination, disclosure, confidentiality, and contract requirements; (3) outlines what constitutes a violation of its provisions; (4) specifies and prohibits "fraudulent life settlement acts," which it subjects to criminal and civil penalties; (3) expands the commissioner's rule-making and regulatory authority; and (4) makes technical and conforming changes.

The bill specifies that a broker represents an owner exclusively and has a fiduciary duty, including an obligation to act in the owner's best interest and according to his or her instructions. It requires brokers to give providers and owners certain disclosures and makes it an unfair trade practice if they do not.

EFFECTIVE DATE: October 1, 2008

## § 1 — DEFINITIONS

### *Stranger-Originated Life Insurance (STOLI)*

The bill defines "STOLI" as a practice or plan to initiate a life insurance policy for the benefit of a third-party investor who, when the policy is issued, has no insurable interest in the insured. (Insurable interest is a life insurance requirement that the person purchasing a life insurance policy to provide a benefit payable when another person dies must have an interest in that person staying alive, not in his or her

death.)

STOLI includes cases in which life insurance is purchased with (1) resources or guarantees from or through a person (or entity) who could not lawfully initiate the policy and (2) a verbal or written arrangement or agreement to directly or indirectly transfer policy ownership or benefits to a third-party. Trusts created to give the appearance of insurable interest and used to initiate policies for investors, which is common with STOLI, violate insurable interest laws.

### *Life Settlement Contract*

The bill defines "life settlement contract" as:

1. a written agreement entered into between an owner and a provider, under which the owner assigns, transfers, sells, devises, or bequests his or her policy's death benefit, or a portion of it, to a purchaser for money or other value that is less than the policy's expected death benefit but greater than a cash surrender value or accelerated death benefit available when applying for the life settlement contract;

2. the transfer, for money or value, of ownership or beneficial interest in a trust, or other entity that owns such policy, if the trust or other entity was formed or used to acquire one or more life insurance contracts that insure a Connecticut resident;

3. a written agreement for a loan or other lending transaction, secured primarily by an individual or group life insurance policy; or

4. a premium finance loan made for a policy by the date the policy is issued where (a) the borrower does not use the loan proceeds solely to pay policy premiums and financing costs, (b) the owner receives, when taking the loan, a guarantee of the policy's future life settlement value, or (c) the owner agrees, when taking the loan, to sell the policy, or any portion of its

death benefit, anytime after the policy is issued.

A life settlement contract does not include loans, assignments, contracts, bequests, contracts, or other agreements not included in the definition above that involve an insurable interest or that the insurance commissioner determines the bill does not intend to regulate.

## §§ 2 & 17 — LICENSING REQUIREMENTS

No one is permitted to act as a life settlement provider or broker without a license from the commissioner. Provider and broker licenses expire on March 31 in each year, but a person may annually renew a license by submitting an application and $20 renewal fee. If a provider or broker does not pay on time, the commissioner must revoke the person's license if he does not receive payment within five days after sending, by first class mail, a written notice of nonrenewal after March 31.

A person who is (1) licensed in Connecticut, or in another state for at least one year, as a licensed life insurance producer, and (2) licensed as a nonresident producer in Connecticut meets the life settlement licensing requirements and may operate as a broker.

Within 30 days from first acting as a broker, a life insurance producer must notify the commissioner that he or she is acting as a broker, on a form the commissioner prescribes, and must pay a $13 filing fee. The producer's notification must include acknowledgement that he or she will act in accordance with this bill.

Any provider or broker lawfully transacting business in Connecticut before October 1, 2008, may continue to do so pending the commissioner's approval or disapproval of his or her application for a life settlement license, if he or she files the application by October 31, 2008. While the application is pending, the applicant may use any form of life settlement contract that has been filed with the commissioner and is pending approval if it is otherwise in compliance with the bill.

Anyone who has lawfully negotiated life settlement contracts between any owner who is a Connecticut resident and one or more providers since at least October 1, 2007, may continue to do so pending approval or disapproval of a license application, if he or she files the application by October 31, 2008.

Any person transacting business in Connecticut while a license is pending must comply with the bill's requirements.

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

A licensed attorney, certified public accountant, or financial planner accredited by a nationally recognized accreditation agency retained to represent the owner, and whose compensation the provider or purchaser does not pay, directly or indirectly, may negotiate life settlement contracts on the owner's behalf without a broker's license.

The commissioner is prohibited from issuing a license to a nonresident applicant unless the applicant has designated the commissioner as the agent for legal service of process. Providers and brokers are prohibited from using staff to perform each other' functions unless the staff is properly licensed.

### *License Denial, Suspension, or Revocation*

The commissioner may deny, suspend, revoke, or not renew a license for a variety or reasons specified in current law, including conviction of a felony. This bill adds, or changes, the following reasons for which the commissioner may take action against a person's license:

1. the person was convicted of a misdemeanor with a criminal fraud element or found guilty of fraudulent or dishonest

practices;

2. any of his or her partners, members, officers, or key management personnel violated the bill's provisions, instead of willfully violated them;

3. if a provider, he or she demonstrates a pattern of unreasonably withholding payments to owners, instead of a pattern of making unreasonable low payments; and

4. he or she pleaded guilty or nolo contendere to a felony or misdemeanor involving criminal fraud or moral turpitude, regardless of whether the court has entered a judgment or conviction, instead of being found guilty of (a) any felony or (b) a misdemeanor involving fraud or moral turpitude.

### *Continuing Education for Brokers*

Brokers, excluding life insurance producers, must complete, biennially, at least 15 hours of continuing education on life settlements and related transactions. Not doing so subjects a person to penalties the commissioner may impose.

## §§ 2 & 11 — ANTI-FRAUD PLAN

A license applicant must provide the commissioner an antifraud plan that meets the bill's requirements and includes a description of:

1. procedures for detecting and investigating possible fraud and resolving material inconsistencies between medical records and insurance applications, and an organizational chart of the personnel responsible for these activities;

2. procedures for reporting insurance fraud to the commissioner; and

3. antifraud education and training for its underwriters and other personnel.

The antifraud plan must be reasonably calculated to detect,

prosecute, and prevent fraudulent life settlement acts. The commissioner may order, or a licensee may request and the commissioner may grant, plan modifications necessary to ensure an effective antifraud program. Fraud investigators must be included in the plan and may be provider or broker employees or independent contractors.

Providers and brokers must print the following separate, signed fraud warning on applications and life settlement contracts: "Any person who knowingly presents false information in an application for insurance or life settlement contract is guilty of a crime and may be subject to fines and confinement in prison."

Antifraud plans submitted to the commissioner are (1) privileged and confidential, (2) not public records, and (3) not subject to discovery or subpoena in a civil or criminal action.

### §§ 1, 4, 10, 15 — ADVERTISING, FORM FILING REQUIREMENTS

The bill expands the definition of advertisement to include a communication meant to induce a person to assign, devise, bequest, or transfer the death benefit or ownership of a life insurance policy through a life settlement contract. Existing law includes inducing a purchase or sale of a contract.

The bill authorizes the commissioner to require life settlement advertisements to be filed with the Insurance Department for review and approval. It also prohibits a provider from using any promotional, advertising, and marketing materials that have not been filed with the commissioner. Thus, they must be filed. The commissioner may decide if they require approval before being used. Current law requires filing and approval of contract and disclosure forms.

The bill prohibits insurers from, as a condition of responding to a request for coverage verification in connection with a life settlement contract, requiring the owner, insured, provider, or broker to sign any form, disclosure, consent, waiver, or acknowledgment that the

commissioner has not approved for use in connection with life settlement contracts in Connecticut.

Licensed providers and brokers may advertise in Connecticut, but the advertisements must be accurate, truthful, and not misleading in fact or by implication.

Under the bill, no person or trust is allowed to (1) directly or indirectly market, advertise, solicit, or otherwise promote the purchase of a policy for the sole purpose of, or with an emphasis on, using the policy for a life settlement contract or (2) use the words "free" or "no cost," or words of similar meaning, in the marketing, advertising, soliciting, or promoting of the policy purchase.

## § 5 — ANNUAL STATEMENT REQUIREMENT, PENALTIES

The bill requires that each provider, for any life insurance policy acquired under a life settlement contract within five years of the policy's original issuance, file with the commissioner by March 1 of each year an annual statement containing information he prescribes by regulation.

The bill expands the annual statement contents that the regulation must require. It requires an annual statement to include (1) the total number, aggregate face amount, and life settlement proceeds of policies settled during the immediately preceding calendar year and (2) a breakdown of the information by policy issue year, the names of the insurance companies whose policies have been settled, and the brokers involved. The information required is limited to those transactions where the insured is a Connecticut resident and must exclude individual transaction data that could be used to identify the owner or the insured.

A provider that willfully fails to (1) file an annual statement or (2) reply within 30 days to the commissioner's related written inquiry, in addition to other penalties provided under the bill, is subject, upon notice and a hearing, to a penalty up to $250 a day of continued violation, up to a maximum of $25,000 for each failure.

## § 5 — CONFIDENTIALITY

Except as otherwise required or permitted by law, the bill prohibits anyone from disclosing to any other person an insured's identity or information that could be used to identify the insured or his or her financial or medical information unless such disclosure is:

1. needed to effect a life settlement contract and the owner and insured have provided prior written consent;

2. provided in response to an investigation or examination by the commissioner or other government agency;

3. needed to effect the sale of life settlement contracts or interests as investments, provided (a) the sale is conducted in accordance with applicable state and federal securities laws and (b) the owner and the insured have both provided prior written consent;

4. a term of, or condition to, the transfer of a policy by one provider to another, in which case the provider receiving such information must comply with the confidentiality requirements;

5. required to purchase stop loss coverage; or

6. necessary to allow providers or brokers, or their authorized representatives, to make contacts to determine health status.

"Authorized representative" does not include any person who has, or may have, a financial interest in the settlement contract other than a provider, licensed broker, financing entity, related provider trust, or special purpose entity (a company formed to provide access to institutionalized capital markets). Each provider or broker must require its authorized representative to agree in writing to comply with the bill's privacy provisions.

Non-public personal information solicited or obtained in connection with a proposed or actual life settlement contract is subject to the provisions applicable to financial institutions under the 1999 federal

Gramm-Leach-Bliley Act (GLB) and all other applicable state and federal laws. (GLB requires financial institutions to comply with confidentiality provisions for consumers' personal information.)

## § 6 — EXAMINATIONS

The bill specifies the examination procedures the commissioner must follow when he examines the business and affairs of a producer or broker licensee or applicant to determine compliance with the bill's provisions. It adopts procedures and confidentiality provisions that are generally the same as those used when examining other insurance transactions.

The bill reduces the time period that providers have to make records related to an insured available to the commissioner from five to three years after the person's death.

It prohibits the commissioner from appointing an examiner that has direct or indirect conflicts of interest, is affiliated with the management of, or owns an interest in, the person (or entity) being examined. This does not prevent an examiner from being an owner, insured, or beneficiary of a life insurance policy or life settlement contract.

The bill authorizes the commissioner to investigate suspected fraudulent life settlement acts (see FRAUDULENT LIFE SETTLEMENT ACTS below) and people engaged in the life settlement business.

## §§ 7 & 8 — DISCLOSURES

The law requires producers and brokers to provide certain written disclosures. The bill revises the disclosures and makes it an unfair trade practice to not provide them (see BACKGROUND).

### *Provider Disclosures*

The bill requires a provider to give, before or when a life settlement contract is signed, a separate, written disclosure containing the information the bill specifies and that both the provider and owner sign. The disclosures must be conspicuously displayed in any life

settlement contract a provider gives an owner, including any affiliations or contractual arrangements between the provider and the broker.

The bill requires the disclosure to include, in addition to what current law requires, notice that the owner has 15 days to change his or her mind and rescind the contract. This rescission period starts after the date all parties sign the contract and the owner receives the required disclosures. An owner's rescission is effective only if he or she (1) gives notice of it to the provider and (2) repays all proceeds and any premiums, loans, and loan interest the provider paid during the rescission period. Failure to provide written notice of the right of rescission delays the start of the rescission period to 30 days after the owner receives written notice of the right.

The disclosure must also include:

1. that the provider or broker, or its authorized representative, may occasionally contact the insured to verify his or her health status or address, but not more than once every three months if life expectancy is over one year, and once per month if one year or less;

2. the amount and method of calculating compensation of a broker or other person working on the owner's behalf;

3. the date by which the funds will be available to the owner and the transmitter of them;

4. that the commissioner requires delivery, during the contract solicitation process, of a buyer's guide, or a similar consumer advisory package, in a form he prescribes;

5. that the commissioner requires providers and brokers to print a separate, signed fraud warning on applications and life settlement contracts as follows: "Any person who knowingly presents false information in an application for insurance or life settlement contract is guilty of a crime and may be subject to

fines and confinement in prison;"

6. the affiliation, if any, between the provider and the insurer that issued the policy that is the subject of the settlement contract;

7. that a broker represents the owner exclusively, and not the insurer, the provider, or any other person, and owes a fiduciary duty to the owner, including a duty to act according to his or her instructions and in his or her best interest;

8. the provider's name, address, and telephone number;

9. the independent third-party escrow agent's name, business address, and telephone number, and the fact that the owner may inspect or receive copies of the relevant escrow or trust agreements or documents; and

10. that an ownership change could limit the insured's ability to purchase future insurance on his or her life because there is a limit to how much coverage insurers will issue on one life.

### *Broker Disclosures*

The bill requires a broker to give the owner and provider at least the following disclosures by the date all parties sign the life settlement contract. The disclosures must be conspicuously displayed in the life settlement contract or in a separate document the owner signs and provide the following information:

1. the broker's name, business address, and telephone number;

2. a full, complete, and accurate description of all the offers, counter-offers, acceptances, and rejections relating to the proposed life settlement contract;

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

4. the name of each broker who receives compensation and the amount of compensation, which includes anything of value paid or given to the broker in connection with the life settlement contract;

5. a complete reconciliation of the provider's gross offer or bid, including commissions and fees, to the owner's net proceeds or value received; and

6. that the failure to provide the disclosures or rights described in this section is an unfair trade practice under Connecticut law.

## § 8 — TERMINALLY OR CHRONICALLY ILL INSURED

Current law sets out prerequisites for a provider who wants to enter into a life settlement contract with any owner of a policy that insures a terminally ill or chronically ill person. The bill revises some of the requirements.

Currently, if the owner is the insured, the provider must obtain a written statement from a licensed physician that the owner is of sound mind and under no undue influence to enter into the contract. The bill requires that the statement come from the owner's attending physician and include that the owner is also free from any constraint to enter the contract.

Currently, the insured must consent to a release of his or her medical records to a provider, broker, or, if the policy was issued within 48 months, the insurer that issued it. The bill instead requires the insured to consent to the release to a provider, broker, or life insurance producer, or, if the policy was issued within 24 months, the insurer.

## § 8 — COVERAGE VERIFICATION, INSURERS RESPONSIBILITY

The bill requires the insurer to respond to a request for coverage from a provider, broker, or life insurance producer on a form the commissioner approved, within 30 calendar days. The insurer must complete and issue the coverage verification or indicate why it is

unable to respond. In its response, the insurer must indicate whether, based on the medical evidence and documents provided, the insurer intends to pursue an investigation regarding the policy.

The bill prohibits an insurer from unreasonably delaying ownership or beneficiary changes agreed to in a life settlement contract lawfully entered into in Connecticut or with a Connecticut resident.

## § 8 — TRANSFER OF PROCEEDS

Currently, a provider has two business days after receiving documents from the owner to transfer the settlement proceeds into a trust or escrow account that is managed by a trustee or escrow agent in a state or federally chartered financial institution whose deposits are insured by the Federal Deposit Insurance Corporation. The bill requires the agent to pay the proceeds to the owner within three business days from receiving acknowledgment of the policy transfer from the insurer. Failure to do so makes the contract voidable for lack of consideration until the time payment is made to, and accepted by, the owner.

## § 8 — BROKER COMPENSATION

The bill requires the fee a provider, party, individual, or owner pays to a broker in exchange for services to the owner and related to a life settlement contract to be computed as a percentage of the contract offer received and not as a percentage of the policy's face value. It specifies that it does not prohibit a broker from reducing his or her fee below that percentage.

A broker must disclose to the owner anything of value paid or given to him or her in connection with a life settlement contract involving the owner.

## § 8 — PROHIBITION ON ENTERING SETTLEMENT CONTRACT

Current law prohibits a person from entering into a viatical settlement contract within two years of purchasing a life insurance contract, unless certain conditions are met. The bill applies this prohibition to life settlement contracts and revises it.

The bill prohibits a person from entering into a life settlement contract before, when, or within two years of purchasing a life insurance policy, regardless of when (1) compensation is to be paid or (2) the policy assignment, transfer, sale, devise, bequest, or surrender is to occur.

The prohibition does not apply if the owner certifies to the provider that the policy was converted, at his or her request, to an individual policy under the conversion rights under a group policy, as long as he or she was insured under both policies at least 24 months (calculated without regard to a change in insurance carriers for the group policy, provided the coverage has been continuous and under the same group sponsorship).

It also does not apply if the owner submits independent evidence to the provider that one or more of the following conditions were met during the 24 months:

1. the owner or insured is terminally ill or chronically ill;

2. the owner or insured disposes of his or her interests in a closely held corporation under the terms of a buyout or other similar agreement in effect when the insurance policy was initially issued;

3. the owner's spouse dies;

4. the owner divorces his or her spouse;

5. the owner retires from full-time employment;

6. the owner becomes physically or mentally disabled and a physician determines that the disability prevents the owner from maintaining full-time employment; or

7. a court of competent jurisdiction enters a final order, judgment, or decree, on an application of the owner's creditor finding the owner bankrupt or insolvent or approving a petition for the

owner's reorganization or an appointment of a receiver, trustee, or liquidator to all or a substantial part of the owner's assets.

The provider must submit copies of the independent evidence required to the insurer when requesting coverage verification. The provider must give the insurer a letter attesting that the documents submitted are true and correct copies of those he or she received. The bill does not prohibit an insurer from exercising its right to contest a policy's validity.

If, when a provider requests an insurer to effect the policy transfer, the provider submits a copy of the independent evidence, the bill deems that the settlement contract meets the prohibition and exception requirements.

## § 9 — REQUIREMENTS WHEN INSURER ISSUES LIFE INSURANCE

When a person applies for life insurance, the bill permits the insurer, in addition to other questions it may pose to the applicant, to ask if he or she intends to pay premiums by taking out a premium financing loan, for which the lender will use the policy as collateral.

If the applicant plans to use premium financing and the loan provides funds that can be used for a purpose other than paying for the premiums and financing costs, the insurer must reject the insurance application as being one of the prohibited practices under the bill (see PROHIBITED PRACTICES below).

If the premium financing does not constitute a prohibited practice the insurer may make the following disclosure to the applicant and the insured, in the application or an application amendment completed before the policy is delivered:

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

could lead to a stranger owning an interest in the insured's life; (B) a change of ownership could limit your ability to purchase future insurance on the insured's life because there is a limit to how much coverage insurers will issue on one life; (C) should there be a change of ownership and you wish to obtain more insurance coverage on the insured's life in the future, the insured's higher issue age, a change in health status or other factors may reduce the ability to obtain coverage or may result in significantly higher premiums; and (D) you should consult a professional advisor, since a change in ownership in satisfaction of the loan may result in tax consequences to the owner, depending on the structure of the loan.

The insurer also may require the applicant or the insured to certify that:

1. he or she has not entered into any agreement or arrangement providing for the future sale of the life insurance policy;

2. the loan arrangement for the policy provides sufficient funds to pay some or all of the premiums and financing costs, and he or she has not entered into any agreement for consideration in exchange for obtaining the policy; and

3. the borrower has an insurable interest in the insured.

## § 10 — PROHIBITED PRACTICES

Under the bill, it is a violation for any person to:

1. enter into a life settlement contract if he or she knows, or reasonably should have known, that the life insurance policy was obtained using a false, deceptive, or misleading application;

2. engage in any transaction, practice, or course of business if he or she knows, or reasonably should have known, that the intent was to avoid the bill's notice requirements;

3. engage in any fraudulent act or practice in connection with any settlement transaction involving an owner who is a Connecticut resident;

4. issue, solicit, market, or otherwise promote a life insurance policy purchase for the purpose of, or with the emphasis on, entering a life settlement contract with it;

5. enter into a premium finance agreement with any person or entity, or their affiliate, under which he or she will receive any proceeds, fees, or other consideration, directly or indirectly, from the policy, policy owner, or any other person with respect to the premium finance agreement, or any settlement contract, or other transaction related to the policy that are in addition to the amounts required to pay the policy premium and financing costs, and provided further that any additional payments must be paid to the original policy owner, or his or her estate;

6. if he or she is a broker, to knowingly solicit an offer from, effect a life settlement contract with, or make a sale to any provider, financing entity, or related provider trust that is controlling, controlled by, or under common control with the broker;

7. if he or she is a provider, to knowingly enter into a life settlement contract with an owner if anything of value will be paid to a broker that is controlling, controlled by, or under common control with the provider, financing entity, or provider trust involved in the settlement contract;

8. if he or she is a provider, to enter into a life settlement contract unless the life settlement promotional, advertising, and marketing material have been filed with the commissioner, and marketing material is prohibited from expressly referencing that the insurance is free for any period of time; or

9. with respect to any life insurance producer, insurer, broker, or provider, to make any statement or representation to the

applicant or policyholder in connection with the sale or financing of a life insurance policy that the insurance is free or without cost for any period of time unless the policy specifies this.

Committing any of the prohibited practices constitutes a fraudulent life settlement act (see below).

## § 11 — FRAUDULENT LIFE SETTLEMENT ACTS

The bill prohibits anyone from committing fraudulent life settlement acts, which includes acts or omissions a person commits, knowingly and with intent to defraud, to deprive another of property or for pecuniary gain, or permits employees or agents to engage in, acts including: (1) presenting, causing to be presented, or preparing false material information with knowledge and belief that it will be presented to or by a provider, premium finance lender, broker, insurer, insurance producer, or any other person or (2) concealing material information as part of, in support of, or concerning, a fact material to one or more of the following:

1. an application for, underwriting of, or claim for payment or benefit under a life settlement contract or insurance policy;

2. premiums paid on an insurance policy;

3. payments and ownership or beneficiary changes for a life settlement contract or insurance policy;

4. an insurance policy's reinstatement or conversion;

5. in the solicitation, offer to enter into, or making effective a life settlement contract or insurance policy;

6. issuing written evidence of a life settlement contract or insurance policy;

7. any application for, or the existence of, any payments related to a loan secured directly or indirectly by a life insurance policy; or

8. entering into any practice or plan that involves STOLI.

It is also a fraudulent life settlement act to:

1. not disclose, when an insurer asks for disclosure, that the prospective insured has undergone a life expectancy evaluation by any person or entity, other than the insurer or its authorized representative, in connection with issuing a policy;

2. employing any device, scheme, or artifice to defraud in the life settlement business; or

3. in soliciting, applying for, or issuing a policy, employing any device, scheme, or artifice in violation of Connecticut's insurable interest laws.

When done to commit fraud or prevent its detection, it is a fraudulent life settlement act to, (or permitting others to):

1. remove, conceal, alter, destroy, or sequester from the commissioner the assets or records of a licensee or other person engaged in the life settlement business;

2. misrepresent or conceal a licensee's, financing entity's, insurer's, or other person's financial condition;

3. transact life settlement business in violation of laws requiring a license, certificate of authority, or other legal authority;

4. file with the commissioner a document containing false information or otherwise conceal information about a material fact from him;

5. engage in embezzlement, theft, misappropriation, or conversion of moneys, funds, premiums, credits, or other property of a provider, insurer, insured, owner, policy owner, or any other person engaged in the life settlement or insurance business;

6. knowingly and with intent to defraud, enter into, broker, or

otherwise deal in a life settlement contract, the subject of which is a life insurance policy that was obtained by presenting false information concerning any fact material to the policy or by concealing, for the purpose of misleading another, information concerning any fact material to the policy, where the owner or the owner's agent intended to defraud the policy's issuer;

7. attempt to commit, assist, aid, or abet in the commission of, or conspire to commit, the acts or omissions specified in the bill; or

8. misrepresent an owner's state of residence to evade or avoid the bill's provisions.

The bill prohibits a person from (a) knowingly or intentionally interfering with the bill's enforcement or investigations of suspected or actual violations of it and (b) knowingly or intentionally permitting any person convicted of a felony involving dishonesty or breach of trust to participate in the life settlement business.

Not having the required fraud warning on applications and contracts is not a defense in any prosecution for a fraudulent life settlement act.

### *Reporting Fraud, Qualified Immunity*

Any person, whether or not he or she is engaged in the life settlement business, having knowledge or a reasonable belief that a fraudulent life settlement act is being, will be, or has been committed must provide the commissioner the information he requires and in a manner he prescribes.

The bill grants civil immunity to a person who reports (1) suspected, anticipated, or completed fraudulent life settlement acts or (2) suspected or completed fraudulent insurance acts, if the reported information is provided to or received from:

1. the commissioner or his employees, agents, or representatives;

2. federal, state, or local law enforcement or regulatory officials, or

their employees, agents, or representatives;

3. a person involved in preventing and detecting fraudulent life settlement acts, or that person's agents, employees, or representatives;

4. any regulatory body, or its employees, agents, or representatives, overseeing life insurance, life settlements, securities, or investment fraud;

5. the life insurer that issued the life insurance policy covering the insured; or

6. the licensee or its agents, employees, or representatives.

A person does not receive immunity for making statements with actual malice.

In an action brought against a person for filing a report of, or furnishing other information concerning, a fraudulent life settlement act or a fraudulent insurance act, the party bringing the action must plead specifically any allegation that immunity does not apply because the person reporting the information did so with actual malice.

A person granted immunity is entitled to attorney's fees and costs if (1) he or she prevails in a civil lawsuit for libel, slander, or any other relevant tort arising out of his or her activities and (2) the party bringing the action was not substantially justified in doing so. A proceeding is "substantially justified" if it had a reasonable basis in law or fact when it was initiated.

The bill does not abridge or modify a person's common law or statutory privileges or immunities.

The documents and evidence provided to, or obtained by, the commissioner in an investigation of suspected or actual fraudulent life settlement acts are (1) privileged and confidential, (2) not public records, and (3) not subject to discovery or subpoena in a civil or

criminal action. The commissioner may release the information:

1. in administrative or judicial proceedings to enforce laws he administers;

2. to federal, state, or local law enforcement or regulatory agencies;

3. to an organization established to detect and prevent fraudulent life settlement acts;

4. to the National Association of Insurance Commissioners; or

5. at his discretion, to a person in the life settlement business aggrieved by a fraudulent life settlement act.

The commissioner's release of documents and evidence does not reduce or modify a person's granted immunity.

The bill specifies that it does not:

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

2. preempt, supersede, or limit any provision of any state securities law or any related rule, order, or notice;

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

4. limit the other powers Connecticut law grants the commissioner or an insurance fraud unit to investigate and examine possible law violations and to take appropriate action against wrongdoers.

## § 12 — INJUNCTIONS, CIVIL REMEDIES, CEASE AND DESIST

If any person violates the bill's provisions, in addition to any other

penalties that may apply, the commissioner may seek an injunction in court and apply for temporary and permanent orders he thinks are necessary to stop the person from committing further violations.

Anyone harmed by a person's acts that violate the bill, or related regulations, may bring a civil action for damages against that person.

### *Cease and Desist Orders*

The commissioner may issue a cease and desist order to a person violating the bill, a regulation, order, or written agreement entered into with him.

When the commissioner finds that an activity that violates the bill is an immediate danger to the public, he may issue an emergency cease and desist order that specifies the particular facts underlying his findings. The emergency cease and desist order is effective immediately upon service on the respondent and remains effective for 90 days from the date of service. If the commissioner begins nonemergency cease and desist proceedings, the emergency cease and desist order remains effective, absent a court order.

### *Damages for Willful Violation*

A court, in the event of a willful violation, may award statutory damages, in addition to actual damages, in an amount up to three times the actual damage award.

### *No Waiver*

These provisions cannot be waived by agreement and no choice of law provision can be used to avoid the bill's application to any settlement contract involving a Connecticut resident.

## § 13 — PENALTIES

A person who commits a fraudulent life settlement act is guilty of committing insurance fraud and is subject to additional penalties under law. Committing insurance fraud is a class D felony (punishable by a fine up to $5,000, one to five years in prison, or both).

The bill authorizes the commissioner to impose a civil penalty up to $100,000 plus the claim amount on a person found to have committed a fraudulent life settlement act or who violated any other part of the bill.

The commissioner must revoke, for at least one year, the license of a licensee who commits a fraudulent life settlement.

The bill makes it an unfair trade practice to violate the provisions of viatical settlement law as amended (see BACKGROUND).

## § 14 — MULTIPLE POLICY OWNERS, OUT-OF-STATE RESIDENTS

If there is more than one owner on a single policy and the owners are residents of different states, the life settlement contract must be governed by the law of the state (1) in which the owner having the largest percentage ownership lives or (2) of one owner that all owners agree to in writing if the owners hold equal ownership. If equal owners do not agree in writing on a state of residence for jurisdictional purposes, the law of the state of the person insured under the policy governs.

When a provider in Connecticut enters into a life settlement contract with an out-of-state owner whose state has statutes or regulations governing life settlement contracts, the statutes and regulations of the owner's state of residence must govern the contract. If the state in which the owner lives does not have statutes or regulations governing life settlement contracts, the provider must give notice to the owner that neither Connecticut nor his or her state regulates the transaction, except that, if the transactions were executed in the owner's state of residence, the provider must maintain all records as that state requires. The forms used in such states without life settlement laws or regulations do not need the commissioner's approval.

If there is a conflict in the laws that apply to an owner and a provider in any transaction, the laws of the state that apply to the owner take precedence and the provider must comply with them.

## BACKGROUND

### *Connecticut Unfair Trade Practice Act (CUTPA)*

The law prohibits businesses from engaging in unfair and deceptive acts or practices. CUTPA allows the consumer protection commissioner to issue regulations defining what constitutes an unfair trade practice, investigate complaints, issue cease and desist orders, order restitution in cases involving less than $5,000, enter into consent agreements, ask the attorney general to seek injunctive relief, and accept voluntary statements of compliance. It also allows individuals to sue. Courts may issue restraining orders; award actual and punitive damages, costs, and reasonable attorneys fees; and impose civil penalties of up to $5,000 for willful violations and $25,000 for violation of a restraining order.

## COMMITTEE ACTION

Insurance and Real Estate Committee

Joint Favorable Substitute
Yea 19 Nay 0 (03/11/2008)