



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-4088 *Or PI*
TJD:j:....

In: 1/14/10 *soon*

Stays RMNR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

D-note

Ger Cat

1 AN ACT...; relating to: life settlements, granting rule-making authority, and
2 providing a penalty.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

Insert 1-2 →

3 ✓ (g) "Fraudulent life settlement act" includes all of the following:

4 1. Acts or omissions that are committed by any person, or that a person permits
5 its employees or its agents to engage in, for the purpose of pecuniary gain, including
6 any of the following:

****NOTE: I rearranged this subdivision to improve it grammatically. Is that okay?

7 a. Presenting, causing to be presented, or preparing with the knowledge or
8 belief that it will be presented to or by a provider, broker, purchaser, financing entity,
9 insurer, insurance producer, or any other person, false material information, or

1 concealing material information, as part of, in support of, or concerning a fact
2 material to an application for the issuance of a life settlement contract or a policy;
3 the underwriting of a life settlement contract or a policy; a claim for payment or
4 benefit under a life settlement contract or a policy; premiums paid on an insurance
5 policy; payments and changes in ownership or beneficiary made in accordance with
6 the terms of a life settlement contract or a policy; the reinstatement or conversion of
7 a policy; the solicitation, offer, effectuation, or sale of a life settlement contract or a
8 policy; the issuance of written evidence of a life settlement contract or a policy; or a
9 financing transaction.

10 b. Employing any plan, device, scheme, or artifice to defraud in the business
11 of life settlements.

12 c. Failing to disclose to an insurer, if the request for such disclosure has been
13 made by the insurer, that the prospective owner has undergone a life expectancy
14 evaluation by any person or entity other than the insurer or its authorized
15 representatives in connection with the issuance of the policy.

16 2. Any of the following acts that any person does, or permits its employees or
17 agents to do, in the furtherance of a fraud or to prevent the detection of a fraud:

18 a. Removing, concealing, altering, destroying, or sequestering from the
19 commissioner the assets or records of a licensee or other person engaged in the
20 business of life settlements.

21 b. Misrepresenting or concealing the financial condition of a licensee, financing
22 entity, insurer, or other person.

23 c. Transacting the business of life settlements in violation of laws requiring a
24 license, certificate of authority, or other legal authority for the transaction of the
25 business of life settlements.

1 d. Filing with the commissioner or the chief insurance regulatory official of
2 another jurisdiction a document containing false information or otherwise
3 concealing information about a material fact from the commissioner. ^{or official}

4 3. Embezzlement, theft, misappropriation, or conversion of monies, funds,
5 premiums, credits, or other property of a life settlement provider, insurer, insured,
6 owner, or any other person engaged in the business of life settlements or insurance.

7 4. Recklessly entering into, negotiating, brokering, or otherwise dealing in a
8 life settlement contract, the subject of which is a life insurance policy that was
9 obtained by presenting false information concerning any fact material to the policy
10 or by concealing for the purpose of misleading another, information concerning any
11 fact material to the policy, where the person or persons intended to defraud the
12 policy's issuer, the provider, or the owner.

13 5. Attempting to commit ^{ing ing ting} assist, aid, or abet ³ in the commission of, or conspiring
14 to commit the acts or omissions specified in this subsection.

15 6. Misrepresenting the state of residence of an owner to be a state that does not
16 have a law substantially similar to this section for the purpose of evading or avoiding
17 the provisions of this section.

18 7. STOLI.

Insert 3-19 →

19 (s) "Recklessly" means in conscious and clearly unjustifiable disregard of a
20 substantial likelihood of the existence of the relevant facts or risks, the disregard
21 involving a gross deviation from acceptable standards of conduct.

Insert 3-22 →

22 (w) "Stranger-originated life insurance" or "STOLI" means an act, practice,
23 plan, or arrangement, individually or in concert with others, to initiate a life
24 insurance policy for the benefit of a 3rd party investor who, at the time of policy
25 origination, has no insurable interest in the insured. STOLI includes cases in which

1 life insurance is purchased with resources or guarantees from or through a person
 2 or entity who, at the time of policy inception, could not lawfully initiate the policy by
 3 the person or entity, and in which, at the time of inception, there is an arrangement
 4 or agreement, whether verbal or written, to directly or indirectly transfer the
 5 ownership of the policy or the policy benefits to a 3rd party. Trusts that are created
 6 to give the appearance of insurable interest, and are used to initiate policies for
 7 investors, violate insurable interest laws under s. 631.07 and the common law
 8 prohibition against wagering on life. STOLI does not include a loan, agreement,
 9 assignment, arrangement, or transaction set forth in sub. (1) (j) 2. ✓

Insert 4-12 →

10 ✓(a) No person may commit a fraudulent life settlement act.

Insert 4-13 →

11

(END) ✓

D-note



Insert for 4088/P1

State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-3347/P1

TJD:cjs:ph

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SA ✓

1 AN ACT *to repeal* 632.68; *to renumber and amend* 551.102 (32); *to amend*
 2 49.857 (1) (d) 20., 71.05 (1) (f), 71.26 (3) (ag), 71.45 (2) (a) 14., 73.0301 (1) (d) 12.,
 3 321.60 (1) (a) 20., 551.102 (17) (d), 551.102 (17) (e), 551.102 (28) (intro.), 601.31
 4 (1) (mm), 601.31 (1) (mp), 601.31 (1) (mr) and 601.31 (1) (ms); and *to create*
 5 632.69 of the statutes; **relating to:** life settlement contracts, granting
 6 rule-making authority, and providing a penalty.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

INSERT 1-2

7 SECTION 1. 49.857 (1) (d) 20. of the statutes is amended to read:

8 49.857 (1) (d) 20. A license issued under s. 628.04, 632.68 (2) or (4) 632.69 (2),
 9 or 633.14 or a temporary license issued under s. 628.09.

10 SECTION 2. 71.05 (1) (f) of the statutes is amended to read:

1 71.05 (1) (f) *Income from the sales of certain insurance policies.* Income received
 2 by the original policyholder or original certificate holder from the sale of a life
 3 insurance policy or certificate, or the sale of the death benefit under a life insurance
 4 policy or certificate, under a viatical life settlement contract, as defined in s. 632.68

5 ~~(1) (d) 632.69 (1) (j)~~ → (k) ✓

6 **SECTION 3.** 71.26 (3) (ag) of the statutes is amended to read:

7 71.26 (3) (ag) Section 61 (relating to the definition of gross income) is modified
 8 to exclude income received by the original policyholder or original certificate holder
 9 from the sale of a life insurance policy or certificate, or the sale of the death benefit
 10 under a life insurance policy or certificate, under a viatical life settlement contract,
 11 as defined in s. ~~632.68 (1) (d) 632.69 (1) (j)~~ (k) ✓

12 **SECTION 4.** 71.45 (2) (a) 14. of the statutes is amended to read:

13 71.45 (2) (a) 14. By subtracting from federal taxable income the amount that
 14 is included in that income from the sale by the original policyholder or original
 15 certificate holder of a life insurance policy or certificate, or the sale of the death
 16 benefit under a life insurance policy or certificate, under a viatical life settlement
 17 contract, as defined in s. ~~632.68 (1) (d) 632.69 (1) (j)~~ (k) ✓

18 **SECTION 5.** 73.0301 (1) (d) 12. of the statutes is amended to read:

19 73.0301 (1) (d) 12. A license issued under s. 628.04, ~~632.68 (2) or (4) 632.69 (2)~~,
 20 or 633.14 or a temporary license issued under s. 628.09.

21 **SECTION 6.** 321.60 (1) (a) 20. of the statutes is amended to read:

22 321.60 (1) (a) 20. A license issued under s. 628.04, ~~632.68 (2) or (4) 632.69 (2)~~,
 23 or 633.14 or a temporary license issued under s. 628.09.

24 **SECTION 7.** 551.102 (17) (d) of the statutes is amended to read:

1 551.102 (17) (d) With respect to a fractional or pool interest in a viatical life
2 settlement investment, “issuer” means every person who creates the fractional or
3 pool interest for the purpose of offering or selling the interest.

4 **SECTION 8.** 551.102 (17) (e) of the statutes is amended to read:

5 551.102 (17) (e) With respect to a viatical life settlement investment that is not
6 a fractional or pool interest, “issuer” means the ~~viatical settlement~~ provider, as
7 defined in s. ~~632.68 (1) (e)~~ 632.69 (1) (o)^(p) or the person who purchases or otherwise
8 acquires the viatical life settlement from a ~~viatical settlement~~ provider and then
9 offers or sells viatical life settlement investments ~~therein~~ except that, under this
10 paragraph, “issuer” does not include a broker-dealer or agent registered under this
11 chapter and does not include the ~~viator~~ owner of the insurance policy, certificate of
12 insurance, or death benefit underlying the viatical life settlement investment.

13 **SECTION 9.** 551.102 (28) (intro.) of the statutes is amended to read:

14 551.102 (28) (intro.) “Security” means a note; stock; treasury stock; security
15 future; bond; debenture; evidence of indebtedness; limited partnership interest;
16 viatical life settlement investment or similar agreement; certificate of interest or
17 participation in a profit-sharing agreement; collateral trust certificate;
18 preorganization certificate or subscription; transferable share; investment contract;
19 voting trust certificate; certificate of deposit for a security; fractional undivided
20 interest in oil, gas, or other mineral rights; put, call, straddle, option, or privilege on
21 a security, certificate of deposit, or group or index of securities, including an interest
22 therein or based on the value thereof; put, call, straddle, option, or privilege entered
23 into on a national securities exchange relating to foreign currency; or, in general, an
24 interest or instrument commonly known as a “security”; or a certificate of interest

1 or participation in, temporary or interim certificate for, receipt for, guarantee of, or
2 warrant or right to subscribe to or purchase, any of the foregoing. The term:

3 **SECTION 10.** 551.102 (32) of the statutes is renumbered 551.102 (17m), and
4 551.102 (17m) (intro.) and (a), as renumbered, are amended to read:

5 551.102 **(17m)** (intro.) “Viatical Life settlement investment” means the entire
6 interest or any fractional or pool interest in a life insurance policy or certificate of
7 insurance or in the death benefit thereunder that is the subject of a viatical life
8 settlement, as defined in s. ~~632.68 (1) (b)~~ 632.69 (1) (i), but does not include any of
9 the following: ✓

10 (a) The assignment, transfer, sale, devise or bequest of a death benefit, life
11 insurance policy, or certificate of insurance by the viator owner to a viatical
12 settlement provider pursuant to s. ~~632.68~~ 632.69.

13 **SECTION 11.** 601.31 (1) (mm) of the statutes is amended to read:

14 601.31 **(1)** (mm) For initial issuance of a license as a viatical-settlement
15 provider under s. ~~632.68 (2)~~ 632.69 (2) (b), \$750.

16 **SECTION 12.** 601.31 (1) (mp) of the statutes is amended to read:

17 601.31 **(1)** (mp) For each annual renewal of a license as a viatical-settlement
18 provider under s. ~~632.68 (2)~~ 632.69 (2) (j), \$250.

19 **SECTION 13.** 601.31 (1) (mr) of the statutes is amended to read:

20 601.31 **(1)** (mr) For initial issuance of a license as a viatical-settlement broker
21 under s. ~~632.68 (4)~~ 632.69 (2) (b), \$750.

22 **SECTION 14.** 601.31 (1) (ms) of the statutes is amended to read:

23 601.31 **(1)** (ms) For each annual renewal of a license as a viatical-settlement
24 broker under s. ~~632.68 (4)~~ 632.69 (2) (j), \$250.

25 **SECTION 15.** 632.68 of the statutes is repealed.

1 SECTION 16. 632.69 of the statutes is created to read:

2 **632.69 Life settlements. (1) DEFINITIONS.** In this section, ~~unless the context~~
3 ~~requires otherwise:~~

4 (a) "Advertisement" means any written, electronic, or printed communication
5 or any communication made by means of recorded telephone messages or
6 transmitted on radio, television, the Internet, or similar communications media,
7 including film strips, motion pictures, and videos, published, disseminated,
8 circulated, or placed, directly or indirectly, before the public in this state for the
9 purpose of creating an interest in or inducing a person to purchase or sell, assign,
10 devise, bequeath, or transfer the death benefit or ownership of a policy or an interest
11 in a policy pursuant to a life settlement contract.

12 (b) "Broker" means a person who, on behalf of an owner and for a fee,
13 commission, or other valuable consideration, offers or attempts to negotiate life
14 settlement contracts between an owner and one or more providers, or one or more
15 brokers. "Broker" does not include an attorney or certified public accountant who is
16 retained to represent the owner and whose compensation is not paid directly or
17 indirectly by the provider or purchaser.

18 (c) "Business of life settlements" means an activity involved in the offering
19 soliciting, negotiating, procuring, effectuating, purchasing, investing in, financing,
20 monitoring, tracking, underwriting, selling, transferring, assigning, pledging,
21 hypothecating, or in any other manner, acquiring an interest in a policy by means of
22 a life settlement contract.

23 (d) "Chronically ill" means any of the following:

24 1. Being unable to perform at least 2 activities of daily living, including eating,
25 toileting, transferring, bathing, dressing, or continence.

1 2. Requiring substantial supervision to monitor the health and safety of the
2 individual due to his or her severe cognitive impairment.

3 3. Having a level of disability similar to that described in subd. 1., as defined
4 by the U.S. department of health and human services.

5 (e) "Financing entity" means a person whose principal activity related to a life
6 settlement is providing funds to effect the life settlement contract or purchase of one
7 or more policies and who has an agreement in writing with one or more providers to
8 finance the acquisition of life settlement contracts, including an underwriter,
9 placement agent, lender, purchaser of securities, purchaser of a policy from a life
10 settlement provider, credit enhancer, or any entity that has a direct ownership in a
11 policy that is the subject of a life settlement contract. "Financing entity" does not
12 include a nonaccredited investor or a purchaser.

any that is not an accredited investor, as defined in 17 CFR 230.501(a);
****NOTE: What is a nonaccredited investor and can that term be further defined?****

13 (f) "Financing transaction" means a transaction in which a licensed provider
14 obtains financing from a financing entity including any secured or unsecured
15 financing, any securitization transaction, or any securities offering which is either
16 registered or exempt from registration under federal and state securities law.

End of Ins 3-19

17 (h) ~~e~~ (g) "Licensee" means a provider or broker that holds a license under sub. (2). *x*

18 (i) ~~e~~ (h) "Life expectancy" means the arithmetic mean, considering medical records
19 and appropriate experiential data, of the number of months an insured under the
20 policy to be settled can be expected to live.

21 (j) ~~e~~ (i) 1. "Life settlement" means an agreement regarding the terms under which *y*
22 compensation or any thing of value will be paid, which compensation or thing of value
23 is less than the expected death benefit of the policy but greater than the cash
24 surrender value or accelerated death benefit available under the policy at the time

1 of the application for the life settlement, in return for the owner's present or future
2 assignment, transfer, sale, devise, or bequest of the death benefit or any portion of

3 a policy. "Life settlement" includes all of the following:

interest in

****NOTE: I changed the wording slightly. Is that okay?

4 a. The transfer for compensation or value of ownership or beneficial interest
5 in a trust or other entity that owns a policy that insures the life of a person residing
6 in this state, if the trust or other entity was formed or availed of for the principal
7 purpose of acquiring one or more policies or certificates of insurance.

8 b. A written agreement for a loan or other lending transaction, secured
9 primarily by an individual or group policy.

10 c. A premium finance loan made for a policy on, before, or after the date of
11 issuance of the policy but only if the loan proceeds are not used solely to pay
12 premiums for the policy and any costs or expenses incurred by the lender or the
13 borrower in connection with the financing, or if the owner receives on the date of the
14 premium finance loan a guarantee of the future life settlement value of the policy,
15 or if the owner agrees on the date of the premium finance loan to sell the policy or
16 any portion of its death benefit on any date following the issuance of the policy.

interest in

17 2. "Life settlement" does not include any of the following:

18 a. A policy loan by a life insurance company pursuant to the terms of the policy
19 or accelerated death provisions contained in the policy, whether issued with the
20 original policy or as a rider.

21 b. Except as provided in subd. 1. c., a premium finance loan or any loan made
22 by a bank or other licensed financial institution, provided that neither default on
23 such loan nor the transfer of the policy in connection with such default is pursuant

1 to an agreement or understanding with any other person for the purpose of evading
2 regulation under this section.

3 c. A collateral assignment of a policy by an owner.

4 d. A loan made by a lender that does not violate s. 138.12, if the loan is not
5 described in subd. 1. c. and is not otherwise a life settlement contract.

6 e. An agreement where all the parties are closely related to the insured by blood
7 or law, or have a lawful substantial economic interest in the continued life, health,
8 and bodily safety of the person insured, or are trusts or other entities established
9 primarily for the benefit of such parties.

10 f. Any designation, consent, or agreement by an insured who is an employee
11 of an employer in connection with the purchase by the employer, or trust established
12 by the employer, of life insurance on the life of the employee.

13 g. A bona fide business succession planning arrangement between one or more
14 shareholders in a corporation or between a corporation and one or more of its
15 shareholders or one or more trusts established by or for the benefit of its
16 shareholders; between one or more partners in a partnership or between a
17 partnership and one or more of its partners or one or more trusts established by or
18 for the benefit of its partners; or between one or more members in a limited liability
19 company or between a limited liability company and one or more of its members or
20 one or more trusts established by or for the benefit of its members.

21 h. An agreement, contract, or transaction that the commissioner excludes by
22 rule under sub. (20) (a) after determining that the agreement, contract, or
23 transaction is not intended to be regulated by this section.

****NOTE: I changed the wording of this exclusion in response to comments from
Jim Harris.

K

1 (k) e (j) "Life settlement contract" means a written document providing for and
2 establishing the terms of a life settlement.

3 (L) e (k) "Owner" means the owner of a policy or a certificate holder under a group
4 policy who resides in this state ^{unless the context requires otherwise} and enters or seeks to enter into a life settlement
5 contract. "Owner" does not include any of the following:

x

****NOTE: This definition restricts the owner to those who reside in this state. Later in the draft, the phrase "owner who is a resident of this state" appears. Also, the conflicts of law provision, sub. (16), refers to a situation when "owners are residents of different states" which is not possible under this definition since all owners have to reside in this state. The phrase "who resides in this state" should be removed from this definition. Please note that the definition of policy and provider require the owner to be a resident of the state so the removal of the phrase from the definition of "owner" should not affect the rest of the draft.

- 6 1. A licensee under this section, including a producer acting as a broker under
- 7 this section.
- 8 2. A qualified institutional buyer, as defined in 17 CFR 230.144A (a) (1).
- 9 3. A financing entity.
- 10 4. A special purpose entity.
- 11 5. A related provider trust.

12 (m) e (L) "Policy" means an individual or group policy, certificate, contract, or
13 arrangement of life insurance owned by a resident of this state, regardless of whether
14 delivered or issued for delivery in this state.

x

15 (h) e (m) "Premium finance loan" means a loan made primarily for the purpose of
16 making premium payments on a policy that is secured by an interest in the policy.

x

17 (o) e (n) "Producer" means any person licensed in this state as a resident or
18 nonresident insurance intermediary or agent who has received qualification or
19 authority for life insurance coverage or a life line of coverage pursuant to s. 628.04.

x

1 (P) (o) "Provider" means a person, other than an owner, that enters into or
 2 effectuates a life settlement contract with an owner resident in this state. "Provider"
 3 does not include:

- 4 1. A bank, savings bank, savings and loan association, credit union, or other
 5 licensed lending institution that takes an assignment of a policy solely as collateral
 6 for a loan.
- 7 2. A premium finance company making premium finance loans and exempted
 8 by the commissioner from the licensing requirement under the premium finance law
 9 that takes an assignment of a policy solely as collateral for a loan.

under
S. 138.12 ✓

****NOTE: Please specify what the "premium finance law" is so this provision can
be further clarified.

- 10 3. The issuer of a policy.
- 11 4. An authorized or eligible insurer that provides stop loss coverage or financial
 12 guaranty insurance to a provider, purchaser, financing entity, special purpose entity,
 13 or related provider trust.
- 14 5. Any natural person who enters into or effectuates no more than one
 15 agreement in a calendar year for the transfer of a policy for any value less than the
 16 expected death benefit.
- 17 6. A special purpose entity.
- 18 7. A related provider trust.
- 19 8. A purchaser.
- 20 9. A person that the commissioner excludes by rule under sub. (20) (a) after
 21 determining that the definition is not intended to cover the person.

****NOTE: Please note that I changed the wording of this exclusion in response to
comments by Jim Harris.

1 ~~(q)~~ ~~e~~ ~~(p)~~ "Purchase agreement" means a contract or agreement entered into by a
 2 purchaser, to which the owner is not a party, to purchase a settled policy or an interest
 3 in a settled policy for the purpose of deriving an economic benefit.

4 ~~(r)~~ ~~e~~ ~~(q)~~ "Purchaser" means a person who provides a sum of money as consideration
 5 for a policy or an interest in the death benefits of a policy, or a person who owns or
 6 acquires or is entitled to a beneficial interest in a trust that owns a life settlement
 7 contract or is the beneficiary of a policy that has been or will be the subject of a life
 8 settlement contract, for the purpose of deriving an economic benefit. "Purchaser"
 9 does not include any of the following:

- 10 1. A licensee.
- 11 2. An accredited investor, as defined in 17 CFR 230.501 (a), or qualified
 12 institutional buyer, as defined in 17 CFR 230.114A (a) (1).
- 13 3. A financing entity.
- 14 4. A special purpose entity.
- 15 5. A related provider trust.

End of
Ins 3-19

Ins
3-22

16 ~~(t)~~ ~~e~~ ~~(r)~~ "Related provider trust" means a trust that is established by a licensed
 17 provider or a financing entity for the sole purpose of holding the ownership or
 18 beneficial interest in purchased policies in connection with a financing transaction
 19 and that has a written agreement with the licensed provider under which the
 20 licensed provider is responsible for ensuring compliance with all statutory and
 21 regulatory requirements and under which the trust agrees to make all records and
 22 files relating to life settlement transactions available to the commissioner as if those
 23 records were maintained directly by the licensed provider.

24 ~~(u)~~ ~~e~~ ~~(s)~~ "Settled" means, with respect to a policy, acquired by a provider under a life
 25 settlement contract.

K

K

K

x

1 (v) ~~(t)~~ "Special purpose entity" means a corporation, partnership, trust, limited
 2 liability company, or other similar entity formed solely to provide either direct or
 3 indirect access to institutional capital markets either for a financing entity or
 4 provider or in connection with a transaction in which the securities in the special
 5 purpose entity are either acquired by the owner or by a qualified institutional buyer,
 6 as defined in 17 CFR 230.114A (a) (1) or pay a fixed rate of return commensurate with
 7 established asset-backed institutional capital markets.

End of
Ins
3-22

Ins
4-12

x

8 (x) ~~(u)~~ "Terminally ill" means having an illness or sickness that can reasonably be
 9 expected to result in death in 24 months or less.

10 (2) LICENSING REQUIREMENTS. (a) 1. No person may act as a provider or broker
 11 for an owner who is a resident of this state, without holding a license from the
 12 commissioner.

13 2. A licensed attorney or a certified public accountant who is retained to
 14 represent the owner and whose compensation is not paid directly or indirectly by the
 15 provider or purchaser may negotiate life settlement contracts on behalf of the owner
 16 without having to obtain a license as a broker.

17 (b) An applicant shall make an application for a license to the commissioner on
 18 a form prescribed by the commissioner. For a broker's license, the applicant shall
 19 submit the fee specified in s. 601.31 (1) (mr). For a provider's license, the applicant
 20 shall submit the fee specified in s. 601.31 (1) (mm).

21 (c) The commissioner may not issue a license under this subsection unless the
 22 applicant provides his or her social security number or its federal employer
 23 identification number or, if the applicant does not have a social security number, a
 24 statement made or subscribed under oath or affirmation that the applicant does not
 25 have a social security number. An applicant who is providing a statement that he or

1 she does not have a social security number, shall provide that statement along with
 2 the application for a license on a form prescribed by the department of children and
 3 families. A licensee shall provide to the commissioner the licensee's social security
 4 number, statement the licensee does not have the social security number, or federal
 5 employment identification number of the licensee at the time that the annual license
 6 renewal fee is paid, if not previously provided. The commissioner shall disclose a
 7 social security number obtained from an applicant or licensee to the department of
 8 children and families in the administration of s. 49.22, as provided in a memorandum
 9 of understanding entered into under s. 49.857. The commissioner may disclose the
 10 social security number or federal employment identification number of an applicant
 11 or licensee to the department of revenue for the purpose of requesting certifications
 12 under s. 73.0301.

13 (d) 1. The commissioner shall refuse to issue or renew a license under this
 14 subsection if the person is delinquent in court-ordered payments of child or family
 15 support, maintenance, birth expenses, medical expenses, or other expenses related
 16 to the support of a child or former spouse, or if the person fails to comply, after
 17 appropriate notice, with a subpoena or warrant issued by the department of children
 18 and families or a county child support agency under s. 59.53 (5) and related to
 19 paternity or child support proceedings, as provided in a memorandum of
 20 understanding entered into under s. 49.857.

21 2. The commissioner shall refuse to issue or renew a license under this
 22 subsection if the department of revenue certifies under s. 73.0301 that the applicant
 23 for the license or renewal of the license is liable for delinquent taxes.

****NOTE: I added "or renew" to these provisions. Is that okay?

1 (e) The applicant shall provide information that the commissioner may require
2 on forms prepared by the commissioner. The commissioner may require the
3 applicant, at any time, to fully disclose the identity of its partners, officers,
4 employees, and stockholders, except stockholders owning fewer than 10 percent of
5 the shares of an applicant whose shares are publicly traded. The commissioner may
6 refuse to issue a license if not satisfied that any officer, employee, stockholder, or
7 partner who may materially influence the applicant's conduct meets the standards
8 of this section.

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

****NOTE: I changed the "and" to "or" in the last line of this provision. Is that okay? ✓

12 (g) Upon the filing of an application and the payment of the license fee, the
13 commissioner shall make an investigation of each applicant and shall issue a license
14 if the commissioner finds that the applicant satisfies all of the following:

- 15 1. If applying for a provider license, has provided a detailed plan of operation.
- 16 2. Is competent and trustworthy and intends to transact its business in good
17 faith.
- 18 3. Has a good business reputation and has either the experience, training, or
19 education so as to be qualified in the business for which the license is applicable.
- 20 4. a. If applying for a provider license, has demonstrated evidence of financial
21 responsibility in a format prescribed by the commissioner through either a surety
22 bond executed and issued by an insurer authorized to issue surety bonds in this state
23 or a deposit of cash, certificates of deposit, or securities or any combination of those
24 in the amount of \$250,000. Any surety bond issued under this subd. 4. a. shall be in

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Ⓟ

7. Has completed the initial training course under sub. (3)(e).

1 the favor of this state and shall specifically authorize recovery by the commissioner
2 on behalf of any person in this state who sustains damages as the result of erroneous
3 acts, failure to act, conviction of fraud, or conviction of unfair practices by the
4 provider. The commissioner shall accept as evidence of financial responsibility proof
5 that financial instruments in accordance with the requirements in this subd. 4. a.
6 have been filed in one state where the applicant is licensed as a provider.

7 b. If applying for a broker license, has provided proof of the acquisition of a
8 policy of professional liability insurance in an amount that is satisfactory to the
9 commissioner.

10 5. If the applicant is a legal entity, is formed or organized under the laws of this
11 state or is a foreign legal entity authorized to transact business in this state, or
12 provides a certificate of good standing from the state of its domicile.

13 6. Has provided to the commissioner an antifraud plan that meets the
14 requirements of sub. (15) (i).

15 (h) The commissioner may request evidence of financial responsibility under
16 par. (g) 4. from an applicant at any time the commissioner deems necessary.

****NOTE: Should the commissioner be able to request the information from licensees as well?

17 (i) The commissioner shall not issue any license to any nonresident applicant,
18 unless a written designation of an agent for service of process is filed and maintained
19 with the commissioner or unless the applicant has filed with the commissioner the
20 applicant's irrevocable consent that any action against the applicant may be
21 commenced against the applicant by service of process on the commissioner in
22 accordance with the procedures set forth in ss. 601.72 and 601.73.

Ⓟ

xxxxNote: The addition of this subd. 7. will require applicants to obtain the initial training before the license is issued.

{4-star note}

1 (j) Licenses may be renewed annually on July 1 upon payment of the fee
 2 specified in s. 601.31 (1) (ms) by a broker, or the fee specified in s. 601.31 (1) (mp) by
 3 a provider. Failure to pay the fee by the renewal date shall result in the automatic
 4 revocation of the license.

5 (k) Each licensee shall file with the commissioner on or before the first day of
 6 March of each year an annual statement containing the information required under
 7 sub. (6) (a) and any information the commissioner requires by rule.

8 (L) A provider may not use any person to perform the functions of a broker
 9 unless the person holds a current, valid license as a broker.

10 (m) A broker may not use any person to perform the functions of a provider
 11 unless the person holds a current, valid license as a provider.

12 (n) A provider or broker shall provide to the commissioner new or revised
 13 information about officers, partners, directors, members, designated employees, or
 14 stockholders, except stockholders owning fewer than 10 percent of the shares of a
 15 provider or broker whose shares are publicly traded, within 30 days of the change.

16 (o) The insurer that issued the policy that is the subject of a life settlement
 17 contract may not be held responsible for any act or omission of a broker or provider
 18 arising out of or in connection with the life settlement, unless the insurer receives
 19 compensation for the placement of a life settlement contract from the broker or
 20 provider or from a purchaser in connection with the life settlement contract.

21 (3) TRAINING OF LICENSEES. (a) An individual licensed as a broker or provider
 22 who engages in the business of life settlements in this state shall receive training to
 23 ensure all of the following:

24 1. The individual understands the relation of life settlement transactions to the
 25 integrity of a comprehensive financial plan of an owner.

Applicant for a license under sub. (2) or a licensee

1 2. The individual has adequate knowledge to competently discuss the material
2 aspects of life settlements with an owner.

3 3. The individual complies with the laws of this state relating to life
4 settlements.

5 (b) Training required under this subsection must be approved by the
6 commissioner and provided by an education provider that is approved by the
7 commissioner. The commissioner may approve the training required under this
8 subsection for continuing education under s. 628.04 (3). Training required under this
9 subsection shall not increase the credit hours of continuing education required by
10 statute or rule. Certification and reporting of completion of the required training
11 shall comply with the requirements of s. Ins 28.07, Wis. Adm. Code. Any person
12 failing to meet the requirements of this subsection shall be subject to the penalties
13 imposed by the commissioner.

****NOTE: In the first sentence of this provision, I assumed that the education
provider must also be approved by the commissioner even though the original language
said "department." Is that correct?

14 (c) The satisfaction of the training requirements of another state that are
15 substantially similar to the requirements set forth in this subsection, and are
16 approved by the commissioner, satisfy the requirements of this subsection.

17 (d) Training provided under this subsection shall include all of the following
18 topics, at a minimum:

- 19 1. Legal structuring of life settlements.
- 20 2. Legal relationships among the parties to a life settlement.
- 21 3. Required disclosures and privacy requirements.
- 22 4. Ethical considerations in selling, soliciting, and negotiating life settlements.
- 23 5. Contract requirements.

- 1 6. Advertising.
- 2 7. Remedies.
- 3 8. Licensing requirements.
- 4 9. Additional matters as determined by the commissioner.

applicant for a license under sub. (2)

A licensee shall complete

An

(e) ~~The individual broker or provider~~ shall complete an initial training course

(6) of not less than 8 hours, and training of not less than 4 hours every 24 months after the initial training course. A person who holds a license under s. 632.68, 2007 stats., on the effective date of this paragraph [LRB inserts date] shall complete initial training within 6 months after the effective date of this paragraph [LRB inserts date].

An electronic confirmation of completion of initial training shall accompany the application for initial licensure.

****NOTE: Is the last sentence intended to require training before obtaining a license under this section? If so, may I add this to the requirements for an application and change the training requirements to apply to applicants too?

12 (4) LICENSE SUSPENSION, REVOCATION, OR REFUSAL TO RENEW. (a) The
13 commissioner may suspend, revoke, or refuse to renew the license of any licensee if,
14 after a hearing, the commissioner finds any of the following:

- 15 1. Any material misrepresentation in the application for the license.
- 16 2. That the licensee or any officer, partner, member, or director of the licensee
- 17 is guilty of fraudulent or dishonest practices, is subject to a final administrative
- 18 action, or is otherwise shown to be untrustworthy or incompetent to act as a licensee.
- 19 3. If the licensee is a provider, that the licensee demonstrates a pattern of
- 20 unreasonably withholding payments to owners.
- 21 4. That the licensee no longer meets the requirements for licensure.
- 22 5. That the licensee or any officer, partner, member, or director of the licensee

23 has been convicted of a felony or of any misdemeanor of which criminal fraud is an

(P) Note: I made changes to this subsection to reflect my understanding of your intent as described in the memo by Jim Harris.

1 element or has pleaded other than not guilty with respect to any felony or any
2 misdemeanor of which criminal fraud or moral turpitude is an element, regardless
3 whether a judgment of conviction has been entered by the court.

4 6. If the licensee is a provider, that the licensee has entered into any life
5 settlement contract the form of which has not been approved by the commissioner
6 under this section.

7 7. If the licensee is a provider, that the licensee has failed to honor obligations
8 set out in a life settlement contract.

9 8. If the licensee is a provider, that the licensee has assigned, transferred, or
10 pledged a settled policy to a person other than a provider licensed in this state, a
11 purchaser, an accredited investor as defined in 17 CFR 230.501 (a) or a qualified
12 institutional buyer as defined in 17 CFR 230.144A (a) (1), a financing entity, a special
13 purpose entity, or a related provider trust.

14 9. That the licensee or any officer, partner, member, or key management
15 personnel has violated any of the provisions of this section.

16 (b) Nothing in this subsection limits the authority of the commissioner to
17 summarily suspend a license under s. 227.51 (3).

18 (c) The commissioner shall suspend a license if the licensee is delinquent in
19 court-ordered payments of child or family support, maintenance, birth expenses,
20 medical expenses, or other expenses related to the support of a child or former spouse
21 or if the licensee fails to comply, after appropriate notice, with a subpoena or warrant
22 issued by the department of children and families or a county child support agency
23 under s. 59.53 (5) that is related to paternity or child support proceedings, as
24 provided in a memorandum of understanding entered into under s. 49.857.

1 (d) The commissioner shall revoke the license of a licensee if the department
2 of revenue certifies under s. 73.0301 that the licensee is liable for delinquent taxes.

3 (5) CONTRACT REQUIREMENTS. (a) No person may use a life settlement contract
4 form or provide to an owner a disclosure statement form in this state unless first filed
5 with and approved by the commissioner. The form is approved if the commissioner
6 does not disapprove of the form within 30 days after filing or within a 30-day
7 extension of that period ordered by the commissioner before the expiration of the first
8 30 days. To disapprove a form, the commissioner shall state in writing the reasons
9 for disapproval sufficiently explicitly that the licensee is provided reasonable
10 guidance in reformulating its forms. The commissioner shall disapprove a life
11 settlement contract form or disclosure statement form if the commissioner
12 determines the form or provisions contained in the form fail to meet the
13 requirements of this section, are unreasonable, are contrary to the interests of the
14 public, or are otherwise misleading or unfair to the owner.

15 (b) No insurer may, as a condition of responding to a request for verification of
16 coverage or in connection with the transfer of a policy under a life settlement
17 contract, require that the owner, insured, provider, or broker sign any form,
18 disclosure, consent, waiver, or acknowledgment that has not been expressly
19 approved by the commissioner for use in connection with life settlement contracts in
20 this state.

****NOTE: I combined two paragraphs in this subsection and added in some of the provisions from s. 631.20. Section 631.20 pertains to policies and group certificates so I thought it would be cleaner to duplicate the provisions. Is that okay?

21 (6) REPORTING REQUIREMENTS AND PRIVACY. (a) 1. In addition to any other
22 requirements, the annual statement that is filed with the commissioner shall specify
23 the total number, aggregate face amount, and life settlement proceeds of policies

1 settled during the immediately preceding calendar year, together with a breakdown
2 of the information by policy issue year. The annual statement shall also include the
3 names of the insurance companies whose policies have been settled and the brokers
4 that were involved in settling the policies. Each provider shall provide in the annual
5 statement any information about any policy settled within 5 years of policy issuance
6 that the commissioner may prescribe by rule.

7 2. Information provided in the annual statement shall be limited to those
8 transactions in which the owner is a resident of this state and shall not include
9 individual transaction data regarding the business of life settlements or information
10 that there is a reasonable basis to believe could be used to identify the owner or the
11 insured.

12 3. Every provider that willfully fails to file an annual statement as required in
13 this section, or willfully fails to reply within 30 days to a written inquiry by the
14 commissioner regarding the annual statement, shall be subject to a forfeiture under
15 s. 601.64 (3) (c) and to license suspension, revocation, or nonrenewal.

16 (b) A provider, broker, insurance company, producer, information bureau,
17 rating agency or company, or any other person with actual knowledge of an insured's
18 identity, shall not disclose the identity of an insured or information that there is a
19 reasonable basis to believe could be used to identify the insured or the insured's
20 financial or medical information to any other person unless one of the following
21 applies:

22 1. The disclosure is necessary to effect a life settlement contract between the
23 owner and a provider, and the owner and insured have provided prior written
24 consent to the disclosure.

1 2. The disclosure is necessary to effectuate a sale of life settlement contracts,
2 or interests in life settlement contracts, as investments, if the sale is conducted in
3 accordance with applicable state and federal securities law and if the owner and the
4 insured have both provided prior written consent to the disclosure.

5 3. The disclosure is provided in response to an investigation or examination by
6 the commissioner or any other governmental officer or agency or pursuant to the
7 requirements of sub. (15).

8 4. The disclosure is a term or condition of the transfer of a policy by one provider
9 to another provider. In such cases, the receiving provider shall be required to comply
10 with the confidentiality requirements of this subsection.

11 5. The disclosure is necessary to allow the provider or broker or their
12 authorized representatives to make contacts for the purpose of determining health
13 status. For the purposes of this subdivision, "authorized representative" does not
14 include any person who has or may have any financial interest in the life settlement
15 contract other than a provider, broker, financing entity, related provider trust, or
16 special purpose entity. A provider or broker shall require its authorized
17 representative to agree in writing to adhere to the privacy provisions of this
18 subsection.

19 6. The disclosure is required to purchase stop loss coverage.

20 (c) Nonpublic personal information solicited or obtained in connection with a
21 proposed or actual life settlement contract shall be subject to all applicable laws of
22 this state relating to confidentiality of nonpublic personal information.

23 **(7) EXAMINATIONS AND ALTERNATIVES.** (a) The commissioner may, whenever the
24 commissioner determines it is necessary in order to be informed about any matter

1 related to the enforcement of this section, examine the business and affairs of any
2 licensee or applicant for a license, under the provisions of ss. 601.43 to 601.45.

3 (b) The commissioner shall consider names and individual identification data
4 for all owners, purchasers, and insureds private and confidential information and
5 shall not disclose names or identification data unless the disclosure is to another
6 regulator or is required by law.

7 (c) 1. A person required to be licensed by this section shall for 5 years retain,
8 and make available to the commissioner for inspection at all reasonable times in
9 accordance with s. 601.42, copies of all of the following:

10 a. Proposed, offered, or executed life settlement contracts, purchase
11 agreements, underwriting documents, policy forms, and applications from the date
12 of the proposal, offer, or execution of a life settlement contract or purchase
13 agreement, whichever is later.

14 b. All checks, drafts, or other evidence and documentation related to the
15 payment, transfer, deposit, or release of funds from the date of the financing
16 transaction, life settlement, or purchase agreement.

****NOTE: I substituted for the word "transaction" since it was vague. Is that okay?

17 c. All other records and documents related to the requirements of this section.

18 2. Records required to be retained under subd. 1. must be legible and complete
19 and may be retained in paper, photograph, microprocess, magnetic, mechanical or
20 electronic media, or by any process that accurately reproduces or forms a durable
21 medium for reproduction of a record.

22 **(8) DISCLOSURES TO OWNER; DISCLOSURE TO INSURED.** (a) 1. With each application
23 for a life settlement, a provider or broker shall disclose to the owner, in a separate
24 document that is signed by the owner and the provider or broker, at least all of the

1 following information no later than the time the application for the life settlement
2 is signed by all parties:

3 a. That there are possible alternatives to life settlement contracts, including
4 any accelerated death benefits or policy loans offered under the owner's policy.

5 b. That the broker represents exclusively the owner, and not the insurer or the
6 provider, and owes a fiduciary duty to the owner, including the duty to act according
7 to the owner's instructions and in the best interest of the owner.

8 c. That some or all of the proceeds of the life settlement may be taxable under
9 federal income tax and state franchise and income tax laws, and the owner should
10 seek assistance from a professional tax advisor.

11 d. That proceeds from a life settlement may be subject to the claims of creditors.

12 e. That receipt of proceeds from a life settlement may adversely affect the
13 owner's eligibility for Medical Assistance or other government benefits or
14 entitlements, and the owner should seek advice from the appropriate government
15 agencies.

16 f. That the owner has a right to rescind a life settlement contract before the
17 earlier of 30 calendar days after the date upon which the life settlement contract is
18 executed by all parties or 15 calendar days after the life settlement proceeds have
19 been paid to the owner, as provided in sub. (11) (d). Rescission, if exercised by the
20 owner, is effective only if both notice of the rescission is given and the owner repays
21 all proceeds and any premiums, loans, and loan interest paid on account of the life
22 settlement within the rescission period. If the insured dies during the rescission
23 period, the life settlement contract is rescinded, subject to repayment by the owner
24 or the owner's estate to the provider or purchaser of all life settlement proceeds, and

1 any premiums, loans, and loan interest that have been paid by the provider or
2 purchaser, which shall be repaid within 60 calendar days of the death of the insured.

3 g. That funds will be sent to the owner within 3 business days after the provider
4 has received the insurer's or group administrator's written acknowledgement that
5 ownership of the policy or interest in the certificate has been transferred and the
6 beneficiary has been designated.

7 h. That entering into a life settlement contract may cause other rights or
8 benefits, including conversion rights and waiver of premium benefits that may exist
9 under the policy, to be forfeited by the owner, and the owner should seek assistance
10 from a professional financial advisor.

11 i. The language: "All medical, financial, or personal information solicited or
12 obtained by a provider or broker about an insured, including the insured's identity
13 or the identity of family members, a spouse, or a significant other, may be disclosed
14 as necessary to effect the life settlement between the owner and provider. If you are
15 asked to provide this information, you will be asked to consent to the disclosure. The
16 information may be provided to someone who buys the policy or provides funds for
17 the purchase. You may be asked to renew your permission to share information every
18 2 years."

19 j. That, following execution of a life settlement contract, the insured may be
20 contacted for the purpose of determining the insured's health status and to confirm
21 the insured's residential or business street address and telephone number, or as
22 otherwise allowed in this section. This contact shall be limited to once every 3
23 months if the insured has a life expectancy of more than one year and no more than
24 once per month if the insured has a life expectancy of one year or less. All such
25 contacts with the insured shall be made only by a provider licensed in the state in

1 which the owner resided at the time of the life settlement, or by an authorized
2 representative of the provider.

3 2. At the time the disclosures in subd. 1. are provided, the broker or provider
4 shall provide to the owner a brochure describing the process of life settlements that
5 is approved by the commissioner.

6 (b) A provider shall disclose to the owner, either conspicuously displayed in the
7 life settlement contract or in a separate document signed by the owner, at least all
8 of the following information no later than the date the life settlement contract is
9 signed by all parties:

10 1. The affiliation, if any, between the provider and the issuer of the policy to be
11 settled.

12 2. The name, business address, and telephone number of the provider.

13 3. Any affiliation or contractual arrangements between the provider and the
14 purchaser.

15 4. If a policy to be settled has been issued as a joint policy or involves family
16 riders or any coverage of a life other than that of the insured under the policy to be
17 settled, the possible loss of coverage on the other lives under the policy, together with
18 a statement advising the owner to consult with the insurer issuing the policy for
19 advice concerning the proposed life settlement.

20 5. The dollar amount of the current death benefit that will be payable to the
21 provider under the policy. If known, the provider shall also disclose the availability
22 of any additional guaranteed insurance benefits, the dollar amount of any accidental
23 death and dismemberment benefits under the policy, and the extent to which the
24 owner's interest in those benefits will be transferred as a result of the life settlement
25 contract.

1 6. That the funds will be escrowed with an independent 3rd party during the
2 transfer process; the name, business address, and telephone number of the
3 independent 3rd party escrow agent; and that the owner may inspect or receive
4 copies of the relevant escrow or trust agreements or documents.

****NOTE: Later in the draft, in the general requirements subsection, it appears
that use of an independent escrow agent is required so I changed this paragraph
accordingly. Is that correct?

5 (c) A broker shall disclose to the owner, either conspicuously displayed in the
6 life settlement contract or in a separate document signed by the owner, at least all
7 of the following information no later than the date the life settlement contract is
8 signed by all parties:

9 1. The name, business address, and telephone number of the broker.

10 2. A full, complete, and accurate description of all offers, counteroffers,
11 acceptances, and rejections related to the proposed life settlement contract.

12 3. A written statement of any affiliation or contractual arrangement between
13 the broker and any person making an offer in connection with the proposed life
14 settlement contract.

15 4. The amount of the broker's compensation, including anything of value paid
16 or given to the broker for the placement of the policy.

17 5. If any portion of the broker's compensation is taken from a proposed life
18 settlement, the total amount of the life settlement offer and the percentage of the life
19 settlement comprised by the broker's compensation.

20 (d) If the provider transfers ownership or changes the beneficiary of the policy,
21 the provider shall communicate in writing the change in ownership or beneficiary to
22 the insured within 20 days after the change.

1 (9) DISCLOSURES TO PURCHASER. (a) 1. A provider shall disclose to a purchaser,
2 conspicuously displayed in the purchase agreement or in a separate document signed
3 by the purchaser and provider, at least all of the following information prior to the
4 date the purchase agreement is signed by all parties:

5 a. That the purchaser will receive no returns, including dividends and interest,
6 until the insured dies and a death claim payment is made.

7 b. That the actual rate of return on a life settlement contract is dependent upon
8 an accurate projection of the insured's life expectancy and the actual date of the
9 insured's death and that an annual guaranteed rate of return is not determinable.

10 c. That the settled policy should not be considered a liquid purchase since it is
11 impossible to predict the exact timing of its maturity and the funds are not available
12 until the death of the insured and that there is no established secondary market for
13 resale of a settled policy by the purchaser.

14 d. That the purchaser may lose all benefits or may receive substantially
15 reduced benefits if the insurer goes out of business before the death of the insured

****NOTE: Is the change to this provision okay? during the contract term of the life settlement investment

16 e. That the purchaser is responsible for payment of the insurance premiums
17 or other costs related to the policy, if required by the terms of the purchase
18 agreement, even if the insured returns to health, and that the payments may reduce
19 the purchaser's return. If a party other than the purchaser is responsible for the
20 payment, the name and address of the party responsible for payment shall be
21 disclosed.

22 f. The amount of the premiums, if applicable.

23 g. The name, business address, and telephone number of the independent 3rd
24 party providing escrow services and any relationship to the broker.

1 h. The amount of any trust fees or expenses to be charged the purchaser.

2 i. Whether the purchaser is entitled to a refund of all or part of the purchaser's
3 investment under the purchase agreement if the policy is later determined to be null
4 and void.

****NOTE: I changed "life settlement contract" to "purchase agreement." Is that
correct?

5 j. That group policies may contain limitations or caps in the conversion rights,
6 that additional premiums may have to be paid if the policy is converted, the name
7 of the party responsible for payment of any additional premiums, and that if a group
8 policy is terminated and replaced by another group policy, there may be no right to
9 convert the original coverage.

10 k. The risks associated with policy contestability, including the risk that the
11 purchaser will have no claim or only a partial claim to death benefits should the
12 insurer rescind the policy within the contestability period.

13 L. Whether the purchaser will be the owner of the policy in addition to being
14 the beneficiary, and if the purchaser is the beneficiary only and not also the owner,
15 the special risks associated with that status, including the risk that the beneficiary
16 may be changed or the premium may not be paid.

17 m. The experience and qualifications of the person who determines the life
18 expectancy of the insured, including in-house staff, independent physicians, and
19 specialty firms that weigh medical and actuarial data, the information the projection
20 is based on, and the relationship of the projection maker to the provider, if any.

21 2. At the time the disclosures in subd. 1. are provided, the provider shall provide
22 to the purchaser a brochure approved by the commissioner describing the process of
23 the purchase of a settled policy.

1 (b) A provider shall disclose to a purchaser, in a document signed by the
2 purchaser and provider, at least all of the following no later than at the time of the
3 assignment, transfer, or sale of all ^{of} ~~a~~ ^{an interest in} ~~portion of~~ a policy:

4 1. All the life expectancy certifications obtained by the provider in the process
5 of determining the price to be paid to the owner.

6 2. Whether the premium payments or other costs related to the policy have
7 been escrowed and, if so, the date upon which the escrowed funds will be depleted,
8 whether the purchaser will be responsible for payment of premiums after the
9 depletion of escrowed funds, and the amount of the premium if the purchaser is
10 responsible for payment.

11 3. Whether the premiums or other costs related to the policy have been waived
12 and, if so, whether the purchaser will be responsible for payment of the premiums
13 if the insurer that issued the policy terminates the waiver after purchase and, if so,
14 the amount of the premiums.

15 4. Whether the type of policy offered or sold is whole life, term life, universal
16 life, a group policy, or another type of policy, any additional benefits contained in the
17 policy, and the current status of the policy.

18 5. If the policy is term insurance, the special risks associated with term
19 insurance including the purchaser's responsibility for additional premiums if the
20 owner continues the term policy at the end of the current term.

21 6. Whether the policy is contestable.

22 7. Whether the insurer that issued the policy has any additional rights that
23 could negatively affect or extinguish the purchaser's rights under the purchase
24 agreement and, if so, what those rights are and under what conditions those rights
25 are activated.

****NOTE: The rights in this subdivision are under a purchase agreement, right?

1 8. The name and address of the person responsible for monitoring the insured's
2 condition, how often the monitoring is done, how the date of death is determined, and
3 how and when the information will be transmitted to the purchaser.

4 **(10) DISCLOSURE TO INSURER.** Before initiating a plan, transaction, or series of
5 transactions, a broker or provider shall fully disclose to the insurer a plan,
6 transaction, or series of transactions to which the broker or provider is a party to
7 originate, renew, continue, or finance a policy with the insurer for the purpose of
8 engaging in the business of life settlements at any time prior to, or during the first
9 5 years after, issuance of the policy.

10 **(11) GENERAL REQUIREMENTS.** (a) 1. Before entering into a life settlement
11 contract, a provider shall obtain all of the following:

12 a. If the owner is the insured, a written statement from a licensed attending
13 physician that the owner is of sound mind and under no constraint or undue
14 influence to enter into a life settlement contract.

****NOTE: If you intend this section to provide an evidentiary statement, may I suggest the statement be qualified so the physician states that he or she does not know of, or is not aware of, any constraint or undue influence.

15 b. A document in which the insured consents to the release of his or her medical
16 records to a licensed provider, licensed broker, and the insurer that issued the policy
17 covering the life of the insured.

18 2. Within 20 days after an owner executes documents necessary to transfer any
19 rights under a policy or within 20 days after the owner enters any agreement, option,
20 promise, or any other form of understanding, express or implied, to settle the policy,
21 the provider shall give written notice to the insurer that issued the policy that the
22 policy has or will become a settled policy.

1 3. The provider shall deliver a copy of the medical release required under subd.
2 1. b., a copy of the owner's application for the life settlement contract, the notice
3 required under subd 2., and a request for verification of coverage to the insurer that
4 issued the policy that is the subject of the life settlement. The provider shall use a
5 form created by the National Association of Insurance Commissioners for
6 verification of coverage unless the commissioner develops and approves another
7 form.

8 4. The insurer shall respond to a request for verification of coverage that is
9 submitted on an approved form by a provider or broker within 30 calendar days after
10 the date the request is received and shall indicate whether, based on the medical
11 evidence and documents provided, the insurer intends to pursue an investigation
12 regarding the validity of the insurance contract or possible fraud. The insurer shall
13 accept a request for verification of coverage made on a form created by the National
14 Association of Insurance Commissioners or any other form approved by the
15 commissioner, and shall accept an original, facsimile, or electronic copy of the
16 request and any accompanying signed authorization.

****NOTE: Should "or broker" be omitted from the first sentence since subdivision
3. puts the requirement to send the verification request on the provider?

17 5. Before or at the time of execution of the life settlement contract, the provider
18 shall obtain a witnessed document in which the owner does all of the following:

19 a. Consents to the life settlement contract.

20 b. Represents that he or she has a complete understanding of the life settlement
21 contract.

22 c. Represents that he or she has a complete understanding of the benefits of the
23 policy.

1 d. Acknowledges that he or she is entering into the life settlement contract
2 freely and voluntarily.

3 e. If applicable, acknowledges that the insured has a terminal or chronic illness
4 and that the terminal or chronic illness or condition was diagnosed after the policy
5 was issued.

6 6. If a broker performs any of the activities required in subd. 1., 2., 3., or 5., the
7 provider shall be considered to have performed that activity.

8 (b) All medical information solicited or obtained by any licensee shall be subject
9 to the applicable provisions of state law relating to confidentiality of medical
10 information, including s. 610.70.

11 (c) All life settlement contracts entered into in this state shall provide the
12 owner with an absolute right to rescind the contract before the earlier of 30 calendar
13 days after the date on which the life settlement contract is executed by all parties or
14 15 calendar days after the life settlement proceeds have been sent to the owner as
15 provided in par. (d). Rescission by the owner may be conditioned upon the owner both
16 giving notice and repaying to the provider, within the rescission period, all proceeds
17 of the settlement and any premiums, loans, and loan interest paid by or on behalf of
18 the provider in connection with or as a consequence of the life settlement. If the
19 insured dies during the rescission period, the life settlement contract is rescinded,
20 subject to repayment, within 60 calendar days after the death of the insured, by the
21 owner or the owner's estate to the provider or purchaser of all life settlement
22 proceeds and any premiums, loans, and loan interest that have been paid by the
23 provider or purchaser. If a life settlement contract is rescinded under this
24 paragraph, ownership of the policy shall revert to the owner or the owner's estate if
25 the owner is deceased, irrespective of any transfer of ownership of the policy by the

1 owner, provider, or any other person. In the event of any rescission, if the provider
2 has paid commissions or other compensation to a broker in connection with the
3 rescinded life settlement contract, the broker shall refund the commissions and
4 compensation to the provider within 5 business days following receipt of written
5 demand from the provider, which demand shall be accompanied by the applicable
6 document initiating the rescission within the rescission period, either the owner's
7 notice of rescission or the notice of death of the insured.

8 (d) The provider shall instruct the owner to send the executed documents
9 required to effect the change in ownership, assignment, or change in beneficiary
10 directly to the independent escrow agent. Within 3 business days after the date the
11 independent escrow agent receives the documents, or after the date the provider
12 receives the documents if the owner erroneously provides the documents directly to
13 the provider, the provider shall pay or transfer the proceeds of the life settlement into
14 an escrow or trust account that is maintained in a state or federally chartered
15 financial institution whose deposits are insured by the Federal Deposit Insurance
16 Corporation and managed by an independent trustee or escrow agent. Upon
17 payment of the life settlement proceeds into the escrow account, the independent
18 escrow agent shall deliver the original change in ownership, assignment, or change
19 in beneficiary form to the provider or related provider trust or other designated
20 representative of the provider. Upon the escrow agent's receipt of acknowledgement
21 of the properly completed transfer of ownership, assignment, or designation of
22 beneficiary from the insurer, the independent escrow agent shall pay the life
23 settlement proceeds to the owner.

24 (e) Failure to tender the life settlement proceeds to the owner within the time
25 set forth in the disclosure under sub. (8) (a) 1. g., renders the life settlement contract

1 voidable by the owner for lack of consideration until the time the proceeds are
2 tendered to and accepted by the owner. Funds are sent by a provider to an owner as
3 of the date that the escrow agent either releases funds for wire transfer to the owner
4 or places a check for delivery to the owner via the U.S. postal service or other
5 nationally recognized delivery service.

6 (f) For the purpose of determining the health status of the insured after the life
7 settlement has occurred, only the provider or broker licensed in this state or a person
8 it authorizes may contact the insured. Contact with the insured shall be limited to
9 once every 3 months for an insured with a life expectancy of more than one year, and
10 to no more than once per month for an insured with a life expectancy of one year or
11 less. The provider or broker shall explain the procedure for the contacts to the owner
12 at the time the life settlement contract is entered into. The limitations in this
13 paragraph do not apply to any contacts with an insured for reasons other than
14 determining the insured's health status. Providers and brokers shall be responsible
15 for the actions of a person they authorize to make the contact.

16 **(12) PROHIBITED CONTRACTS; REQUIRED FORM; ACKNOWLEDGEMENT; FIDUCIARY DUTY.**

17 (a) No person may enter into a life settlement contract at any time before the
18 application or issuance of a policy that is the subject of a life settlement contract or
19 within a 5-year period commencing with the date of issuance of the policy unless any
20 of the following conditions have been met:

21 1. The owner certifies to the provider that, within the 5-year period, the policy
22 was issued upon the owner's exercise of conversion rights arising out of a group or
23 individual policy, provided the total of the time covered under the conversion policy
24 plus the time covered under the prior policy is at least 60 months. The time covered

1 under the group policy shall be calculated without regard to any change in insurance
2 carriers, if the coverage has been continuous and under the same group sponsorship.

3 2. The owner submits independent evidence to the provider that any of the
4 following conditions have been met within the 5-year period:

5 a. The owner or insured is terminally or chronically ill.

6 b. The owner's spouse or child dies.

7 c. The owner divorces his or her spouse.

8 d. The owner retires from full-time employment.

9 e. The owner becomes physically or mentally disabled and a physician
10 determines that the disability prevents the owner from maintaining full-time
11 employment.

12 f. A final order, judgment, or decree is entered by a court of competent
13 jurisdiction, on the application of a creditor of the owner, adjudicating the owner
14 bankrupt or insolvent, approving a petition seeking reorganization of the owner, or
15 appointing a receiver, trustee, or liquidator to all or a substantial part of the owner's
16 assets.

17 g. The sole beneficiary of the policy is a family member of the owner and the
18 beneficiary dies.

19 h. The owner is a charitable organization with an insurable interest that has
20 received from the federal Internal Revenue Service a determination letter that is
21 currently in effect stating that the charitable organization is described in section 501
22 (c) (3) of the Internal Revenue Code and is exempt from federal income taxation
23 under section 501 (a) of the Internal Revenue Code.

1 i. The owner or insured disposes of ownership interests in a closely held
2 corporation pursuant to the terms of a buyout or other similar agreement in effect
3 at the time the policy was initially issued.

4 j. Other circumstances exist that are established as eligible exemptions by the
5 commissioner by rule, including substantial adverse financial circumstances or
6 other factors substantially affecting the owner.

7 3. The owner certifies to the provider that the owner is entering into a life
8 settlement contract more than 2 years after the date of issuance of a policy and, with
9 respect to the policy, at all times before the date that is 2 years after policy issuance
10 all of the following conditions are met:

11 a. Policy premiums are funded exclusively with unencumbered assets,
12 including an interest in the policy being financed only to the extent of its net cash
13 surrender value, provided by, or full recourse liability incurred by, the insured or a
14 person described in sub. (1) (i) 2. e. (j) ✓

****NOTE: The wording of this provision seems unclear as I do not know how the assets, liability and the insured relate. Perhaps you could break the "full recourse liability incurred by" clause out into a separate sentence.

15 b. There is no agreement or understanding with any other person to guarantee
16 any such liability or to purchase, or stand ready to purchase, the policy, including
17 through an assumption or forgiveness of a loan.

****NOTE: Does the liability in this provision refer to the "full recourse liability" in subdivision 3. a.?

18 c. Neither the insured nor the policy has been evaluated for settlement.

19 (b) Copies of the independent evidence described in par. (a) 2. and documents
20 required by sub. (11) (a) shall be submitted to the insurer when the provider entering
21 into a life settlement contract with an owner submits a request to the insurer for
22 verification of coverage. The provider shall submit, along with the copies, a letter of

1 attestation from the provider that the copies are true and correct copies of the
2 documents received by the provider.

3 (c) If the provider submits to the insurer a copy of the owner's certification
4 under par. (a) 1. or 3. or independent evidence under par. (a) 2. when the provider
5 submits a request to the insurer to effect the transfer of the policy to the provider,
6 the copy conclusively establishes that the life settlement contract satisfies the
7 requirements of this subsection and the insurer shall timely respond to the request.

8 (d) No insurer may, as a condition of responding to a request for verification of
9 coverage or effecting the transfer of a policy pursuant to a life settlement contract,
10 require that the owner, insured, provider, or broker sign any form, disclosure,
11 consent, or waiver that has not been expressly approved by the commissioner for use
12 in connection with life settlement contracts in this state.

13 (e) Upon receipt of a properly completed request for change of ownership or
14 beneficiary of a policy, the insurer shall respond in writing within 30 calendar days
15 with acknowledgement confirming that the change has been effected or specifying
16 the reasons why the requested change cannot be processed.

17 (f) A broker represents only the owner and owes a fiduciary duty to the owner
18 to act according to the owner's instructions and in the best interest of the owner,
19 notwithstanding the manner in which the broker is compensated.

****NOTE: I agree with the notes from Jim Harris that this provision is a type of
conflict of interest. I had not included it in sub. (13) because that entire subsection is
subject to penalties, the same penalties as a fraudulent life settlement act. If you would
like a violation of this duty to be subject to those penalties, I can move the provision to
sub. (13).

20 **(13) PROHIBITED PRACTICES AND CONFLICTS OF INTEREST.** (a) No person may enter
21 into a life settlement contract if the person knows or reasonably should have known

1 that the policy that is the subject of the life settlement contract was obtained by
2 means of a false, deceptive, or misleading application for the policy.

3 (b) No person may engage in any transaction, practice, or course of business if
4 the person knows or reasonably should know that the intent is to avoid the notice
5 requirements of this section.

6 (c) No person may engage in any fraudulent act or practice in connection with
7 any transaction relating to any life settlement involving an owner who is a resident
8 of this state.

9 (d) No person may issue, solicit, market, or otherwise promote the purchase of
10 a policy for the primary purpose of or with a primary emphasis on settling the policy.

11 (e) No person may enter into a premium finance agreement with any person
12 or agency, or any person affiliated with such person or agency, pursuant to which the
13 person who is providing premium financing receives any proceeds, fees, or other
14 consideration, directly or indirectly, from the policy or owner of the policy or any other
15 person with respect to the premium finance agreement or any life settlement
16 contract or other transaction related to the policy that is in addition to the amounts
17 required to pay the principal, interest, and service charges related to policy
18 premiums pursuant to the premium finance agreement or subsequent sale of the
19 agreement. Any payments, charges, fees, or other amounts in addition to the
20 amounts required to pay the principal, interest, and service charges related to policy
21 premiums paid under the premium finance agreement shall be remitted to the
22 original owner of the policy or to the owner's estate if the owner is not living at the
23 time of the determination of the overpayment.

24 (f) With respect to any life settlement contract or policy, no broker may
25 knowingly solicit an offer from, effectuate a life settlement with, or make a sale to

1 any provider, purchaser, financing entity, or related provider trust that is controlling,
2 controlled by, or under common control with the broker unless the relationship is
3 disclosed to the owner.

4 (g) With respect to any life settlement contract or policy, no provider may
5 knowingly enter into a life settlement contract with an owner, if, in connection with
6 the life settlement contract, anything of value will be paid to a broker that is
7 controlling, controlled by, or under common control with the provider or the
8 purchaser, financing entity, or related provider trust that is involved in the life
9 settlement contract unless the relationship is disclosed to the owner.

10 (h) No life settlement promotional, advertising, or marketing materials may
11 reference that the insurance is “free” for any period of time, or include any reference
12 that would cause an owner to reasonably believe that the insurance is free for any
13 period of time.

14 (i) No producer, insurer, broker, or provider may make any statement or
15 representation to an applicant or policyholder in connection with the sale or
16 financing of a policy to the effect that the insurance is free or without cost to the
17 policyholder for any period of time unless provided in the policy.

18 **(14) ADVERTISEMENTS OF LIFE SETTLEMENT CONTRACTS AND PURCHASE AGREEMENTS.**

19 (a) This subsection applies to any advertising of life settlement contracts, purchase
20 agreements, or related products or services intended for dissemination in this state,
21 including Internet advertising viewed by persons located in this state.

22 (b) If disclosure requirements are established by federal regulation, this
23 subsection shall be interpreted so as to minimize or eliminate conflict with federal
24 regulation.

1 (c) The commissioner may require a broker or provider to submit advertising
2 material at any time.

3 (d) Every licensee shall establish and maintain a system of control over the
4 content, form, and method of dissemination of all advertisements of its life
5 settlement contracts, products, and services. All advertisements, regardless who
6 wrote, created, designed, or presented the advertisement, shall be the responsibility
7 of the licensee and the person who created or presented the advertisement. The
8 system of control shall include regular routine notification of the requirements and
9 procedures for approval prior to use of any advertisements not furnished by the
10 licensee, at least once a year, to producers, brokers, and others authorized by the
11 licensee who disseminate advertisements.

12 (e) Advertisements shall be truthful and not misleading in fact or by
13 implication. The form and content of an advertisement of a life settlement contract
14 or purchase agreement, product, or service shall be sufficiently complete and clear
15 so as to avoid deception. The advertisement may not have the capacity or tendency
16 to mislead or deceive. The commissioner shall determine whether an advertisement
17 has the capacity or tendency to mislead or deceive from the overall impression that
18 the advertisement may be reasonably expected to create upon a person of average
19 education or intelligence within the segment of the public to which it is directed.

20 (f) Disclosures that are required under this subsection may not be minimized,
21 rendered obscure, presented in an ambiguous fashion, or intermingled with the text
22 of the advertisement so as to be confusing or misleading.

23 (g) An advertisement may not do any of the following:

24 1. Omit material information or use words, phrases, statements, references, or
25 illustrations if the omission or use has the capacity, tendency, or effect of misleading

1 or deceiving an owner, purchaser, or prospective purchaser as to the nature or extent
2 of any benefit, covered loss, premium payable, or state or federal tax consequences.

3 A misleading statement is not remedied by any of the following:

4 a. Making the life settlement contract or purchase agreement available for
5 inspection prior to consummation of the sale.

6 b. Offering to refund payment if the owner is not satisfied.

7 c. Including in the life settlement contract or purchase agreement a “free look”
8 period that satisfies or exceeds the requirements of law.

9 2. Use the name or title of a life insurance company or a policy unless the
10 advertisement has been approved by the insurer.

11 3. Represent that premium payments will not be required on the policy that is
12 the subject of a life settlement contract or purchase agreement in order to maintain
13 the policy unless that is the fact.

14 4. State or imply that interest charged on an accelerated death benefit or loan
15 is unfair, inequitable, or, in any manner, an incorrect or improper practice.

16 5. Use the words “free,” “no cost,” “without cost,” “no additional cost,” “at no
17 extra cost,” or similar words or phrases with respect to any benefit or services, unless
18 true. An advertisement may specify the charge for a benefit or service or may state
19 that a charge is included in the payment or use other appropriate language.

20 6. Use testimonials, appraisals, analyses, or endorsements in advertisements
21 unless they are genuine; represent the current opinion of the author; are applicable
22 to the life settlement contract or purchase agreement, product, or service advertised;
23 and are reproduced with sufficient completeness to avoid misleading or deceiving
24 prospective owners or purchasers as to the nature or scope of the testimonial,
25 appraisal, analysis, or endorsement. Any financial interest in or benefit received

1 from the licensee by the person making a testimonial, appraisal, or analysis, directly
2 or indirectly, shall be prominently disclosed in the advertisement. If an endorsement
3 refers to benefits received under a life settlement contract or purchase agreement,
4 the licensee shall retain all pertinent information forming a basis of the endorsement
5 for a period of 5 years following its use.

6 7. State or imply that a life settlement contract or purchase agreement, benefit,
7 or service has been approved or endorsed by a group, society, association, or other
8 organization unless that is the fact and unless any relationship between the
9 organization and the licensee is disclosed. If the entity making the endorsement is
10 owned, controlled, or managed by the licensee, or receives any payment or other
11 consideration from the licensee for making an endorsement or testimonial, that fact
12 must be disclosed in the advertisement.

13 8. Contain statistical information unless the information accurately reflects
14 recent and relevant facts. An advertisement shall identify the source of all statistics
15 used in the advertisement.

16 9. Disparage insurers, providers, brokers, producers, policies, services, or
17 methods of marketing.

18 10. Omit the name of the actual licensee from any advertisement. No
19 advertisement may use a trade name, group designation, name of the parent
20 company of a licensee, name of a division of a life settlement licensee, service mark,
21 slogan, symbol, or other device or reference if the advertisement would have the
22 capacity or tendency to mislead or deceive as to the true identity of the licensee or
23 to create the impression that any entity other than the licensee would have any
24 responsibility for the financial obligation under a life settlement contract or
25 purchase agreement.

1 11. Use any combination of words, symbols, or physical materials that by the
2 their content, phraseology, shape, color, or other characteristics are so similar to a
3 combination of words, symbols, or physical materials used by a government program
4 or agency that they tend to mislead or deceive prospective owners or purchasers into
5 believing the advertisement is in some manner connected with a government
6 program or agency.

7 12. Exaggerate the fact that a licensee under this section is licensed in the state
8 where the advertisement appears or suggest or imply that competing licensees may
9 not be so licensed. An advertisement may ask the audience to consult the licensee's
10 Web site or contact the office of the commissioner for licensing requirements and the
11 status of a license.

12 13. Create the impression, directly or indirectly, that a licensee; its business
13 practices or methods of operation; the merits desirability or advisability of any life
14 settlement contract or purchase agreement; or any life insurance company are
15 recommended, approved, or endorsed by any government entity.

16 14. Emphasize the speed with which the settlement will occur, except that the
17 advertisement may disclose the average time from the completion of the application
18 to the date of offer and from the acceptance of the offer to receipt of the settlement
19 funds by the owner.

20 15. Emphasize the dollar amounts available to an owner, except that the
21 advertisement may disclose the average purchase price as a percent of the face value
22 obtained by owners contracting with the licensee during the prior 6 months.

23 (h) The name of the licensee shall be clearly identified in all advertisements
24 about the licensee or its life settlement contracts, purchase agreements, products, or
25 services. If any specific life settlement contract or purchase agreement of a licensee

1 is advertised, the contract or agreement shall be identified either by form number
2 or other appropriate description. If an application is part of the advertisement, the
3 name of the provider shall be shown on the application.

End
Ins 4-12

(15) FRAUD PREVENTION AND CONTROL; FRAUDULENT LIFE SETTLEMENT ACTS.

(a) In

5 this subsection:

****NOTE: Please review carefully because I have made some changes in this subsection.

6 1. "Fraudulent life settlement act" means an act or omission done while
7 engaging in the business of life settlements or while entering a purchase agreement
8 for the purpose of depriving another of property or for unlawful or improper
9 pecuniary gain.

10 2. "Recklessly" means engaging in conduct in conscious and clearly
11 unjustifiable disregard of a substantial likelihood of the existence of the relevant
12 facts or risks, the disregard involving a gross deviation from acceptable standards
13 of conduct.

14 3. "Stranger-originated life insurance" or "STOLI" means a policy for the
15 benefit of a 3rd party who, at the time of the policy origination, has no insurable
16 interest in the insured. "STOLI" includes life insurance that is purchased with
17 resources or guarantees from or through a person or entity that, at the time of policy
18 inception, could not lawfully initiate the policy and for which, at the time of inception,
19 there is an arrangement or agreement, whether verbal or written, to directly or
20 indirectly transfer the ownership of the policy or the policy benefits to a 3rd party.
21 "STOLI" does not include a loan, agreement, assignment, arrangement, or
22 transaction set forth in sub. (1) (i) 2.

1 (am) No person may commit, or permit its employees or agents to commit a
2 fraudulent life settlement act, including any of the following:

3 1. Presenting, causing to be presented, or preparing with knowledge or belief
4 that it will be presented to or by a provider, broker, purchaser, financing entity,
5 insurer, producer, or any other person, false material information, or concealing
6 material information, as part of, in support of, or concerning a fact material to one
7 or more of the following:

8 a. An application for a life settlement contract or a policy.

9 b. The underwriting of a life settlement contract or a policy.

10 c. A claim for payment or benefit pursuant to a life settlement contract or a
11 policy.

12 d. Premiums paid on a policy.

13 e. Payments and changes in ownership or beneficiary made in accordance with
14 the terms of a life settlement contract or a policy.

15 f. The reinstatement or conversion of a policy.

16 g. The solicitation, offer, effectuation, or sale of a life settlement contract or a
17 policy.

18 h. The issuance of written evidence of a life settlement contract or a policy.

19 i. A financing transaction.

20 2. Employing any device, scheme, or artifice to defraud in the business of life
21 settlements.

22 3. Failing to disclose to an insurer, if the request for such disclosure has been
23 made by the insurer, that the prospective insured has undergone a life expectancy
24 evaluation by any person or entity other than the insurer or its authorized
25 representatives in connection with the issuance of the policy.

1 4. Any of the of the following acts, in the furtherance of a fraud or to prevent
2 the detection of a fraud:

3 a. Removing, concealing, altering, destroying, or sequestering from the
4 commissioner the assets or records of a licensee or other person engaged in the
5 business of life settlements.

6 b. Misrepresenting or concealing the financial condition of a licensee, financing
7 entity, insurer, or other person.

8 c. Transacting the business of life settlements in violation of laws requiring a
9 license, certificate of authority, or other legal authority for the transaction of the
10 business of life settlements.

11 d. Filing with the commissioner or the chief insurance regulatory official of
12 another jurisdiction a document containing false information or otherwise
13 concealing information about a material fact from the commissioner.

14 5. Embezzlement, theft, misappropriation, or conversion of monies, funds,
15 premiums, credits, or other property of a provider, insurer, insured, owner, or any
16 other person engaged in the business of life settlements or insurance.

17 6. Recklessly entering into, negotiating, brokering, or otherwise dealing in a
18 life settlement contract, the subject of which is a policy that was obtained by
19 presenting false information concerning any fact material to the policy or by
20 concealing for the purpose of misleading another information concerning any fact
21 material to the policy, if the person or persons intended to defraud the policy's issuer,
22 the provider, or the owner.

23 7. Attempting to commit, assisting, aiding, or abetting in the commission of,
24 or conspiring to commit, an act or omission specified in this subsection.

1 8. Misrepresenting the state of residence of an owner to be a state that does not
 2 have a law substantially similar to this section for the purpose of evading or avoiding
 3 the provisions of this section.

4 9. Engaging in an act, practice, plan, or arrangement, individually or in concert
 5 with others, to initiate STOLI.

6 10. Trusts that are created to give the appearance of insurable interest and are
 7 used to initiate policies for investors violate insurable interest laws and the
 8 prohibition against wagering on life.

****NOTE: Could I add a reference to s. 631.07 to this section since this is our
 insurable interest law? Also, is the prohibition against wagering on life part of a federal
 or state statute or rule or is it a common law prohibition?

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9 (b) No person may knowingly or intentionally interfere with the enforcement
 10 of this subsection or sub. (13) or investigations of suspected or actual violations of this
 11 subsection or sub. (13).

12 (c) No person in the business of life settlements may knowingly or intentionally
 13 permit any person convicted of a felony involving dishonesty or breach of trust to
 14 participate in the business of life settlements.

15 (d) 1. Life settlement contracts, purchase agreements, and applications for life
 16 settlements, regardless of the form of transmission, shall contain the following
 17 statement or a substantially similar statement: "Any person who knowingly
 18 presents false information in an application for insurance, a life settlement, or a
 19 purchase agreement may be subject to civil and criminal penalties."

20 2. A person may not use the lack of the statement required under subd. 1. as
 21 a defense to any prosecution for a violation of this subsection or sub. (13).

22 (e) 1. Any person engaged in the business of life settlements having knowledge
 23 or a reasonable belief that a violation of this subsection or sub. (13) is being, will be,

1 or has been committed shall provide to the commissioner the information required
2 by, and in a manner prescribed by, the commissioner.

3 2. Any other person having knowledge or a reasonable belief that a violation
4 of this subsection or sub. (13) is being, will be, or has been committed may provide
5 to the commissioner the information required by, and in a manner prescribed by, the
6 commissioner.

7 (f) 1. In the absence of actual malice, no civil liability shall be imposed on and
8 no cause of action shall arise from a person's furnishing information concerning
9 suspected, anticipated, or completed violations of this subsection or sub. (13) or
10 suspected, anticipated, or completed fraudulent insurance acts, if the information is
11 provided to or received from any of the following:

12 a. The commissioner or the commissioner's employees, agents, or
13 representatives.

14 b. Federal, state, or local law enforcement or regulatory officials or their
15 employees, agents, or representatives.

16 c. A person involved in the prevention and detection of fraud or that person's
17 agents, employees, or representatives.

18 d. The National Association of Insurance Commissioners, the Financial
19 Industry Regulatory Authority, the North American Securities Administrators
20 Association, or their employees, agents, or representatives or other regulatory body
21 overseeing life insurance, life settlements, securities, or investment fraud.

22 e. The life insurer that issued the policy covering the life of the insured.

23 2. This paragraph does not abrogate or modify common law or statutory
24 privileges or immunities enjoyed by a person who supplies information concerning

1 suspected, anticipated, or completed fraudulent acts related to life settlements or
2 insurance.

3 (g) Information, documents, and evidence provided under par. (e) or obtained
4 by the commissioner in an investigation of suspected or actual violations of this
5 subsection or sub. (13) shall be privileged and confidential, shall not be a public
6 record, and shall not be subject to discovery or subpoena in a civil or criminal action.
7 The commissioner may release information, documents, and evidence provided
8 under par. (e) or obtained in an investigation of suspected or actual violations of this
9 subsection or sub. (13) in administrative or judicial proceedings to enforce laws
10 administered by the commissioner, to federal, state, or local law enforcement or
11 regulatory agencies, to an organization established for the purpose of detecting and
12 preventing fraud related to life settlements, to the National Association of Insurance
13 Commissioners, or, at the discretion of the commissioner, to a person in the business
14 of life settlements that is aggrieved by a violation of this subsection or sub. (13).
15 Release by the commissioner of information, documents, and evidence as set forth in
16 this paragraph does not abrogate, modify, or waive the privilege established in this
17 paragraph.

18 (h) This section does not do any of the following:

19 1. Preempt the authority or relieve the duty of law enforcement or regulatory
20 agencies other than the commissioner to investigate, examine, and prosecute
21 suspected violations of law.

22 2. Prevent or prohibit a person from disclosing voluntarily information
23 concerning life settlement fraud to a law enforcement or regulatory agency other
24 than the commissioner.

1 3. Limit the powers granted elsewhere by the laws of this state to the
2 commissioner to investigate and examine possible violations of law and to take
3 appropriate action.

4 (i) 1. Providers and brokers shall have in place antifraud initiatives reasonably
5 calculated to detect, prosecute, and prevent violations of this subsection and sub.
6 (13). The commissioner may modify the antifraud initiatives from time to time as
7 necessary to ensure an effective antifraud program and to accomplish the purpose
8 of this paragraph.

9 2. Antifraud initiatives shall include having fraud investigators, who may be
10 employees of the provider or broker or who may be independent contractors, and an
11 antifraud plan, which the provider or broker shall submit to the commissioner and
12 which shall include all of the following:

13 a. A description of the procedures that the provider or broker will use for
14 detecting and investigating possible fraud and violations of this subsection and sub.
15 (13) and for resolving material inconsistencies between medical records and
16 insurance applications.

17 b. A description of the procedures that the provider or broker will use for
18 reporting possible violations of this subsection and sub. (13) to the commissioner.

19 c. A description of the plan that the provider or broker will follow for antifraud
20 education and training of underwriters and other personnel.

21 d. A description or chart outlining the organizational arrangement of the
22 antifraud personnel who are responsible for investigating and reporting possible
23 violations of this subsection and sub. (13) and investigating unresolved material
24 inconsistencies between medical records and insurance applications.

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

4 **(16) CONFLICTS OF LAW.** If there is more than one owner on a single policy and
5 the owners are residents of different states, a life settlement shall be governed by the
6 law of the state in which the owner having the largest percentage ownership resides
7 or, if the owners hold equal ownership, the state of residence of one owner agreed
8 upon in writing by all owners.

9 **(17) FRATERNAL BENEFIT SOCIETIES.** Nothing in this section shall prohibit a
10 fraternal benefit society under ch. 614 from enforcing the terms of its bylaws or rules
11 regarding permitted beneficiaries and owners.

12 **(18) CIVIL ACTION.** Any person damaged by a violation of this section may bring
13 a civil action against the person committing the violation in a court of competent
14 jurisdiction.

15 **(19) PENALTIES.** Any person who violates this section is subject to the penalties
16 provided under s. 601.64, suspension or revocation of a license or certificate of
17 authority, and an order under s. 601.41.

18 **(20) POWERS OF COMMISSIONER.** The commissioner may do any of the following:

19 (a) Adopt rules implementing and administering this section.

20 (b) Establish standards for evaluating the reasonableness of payments under
21 life settlement contracts for persons who are terminally or chronically ill, including
22 regulation of discount rates used to determine the amount paid in exchange for
23 assignment, transfer, sale, devise, or bequest of a benefit under a policy insuring the
24 life of a person who is terminally or chronically ill.

1 (c) Establish appropriate licensing requirements and standards for continued
2 licensure for providers and brokers.

3 (d) Require a bond or other mechanism for financial accountability for
4 providers and brokers.

5 (e) Adopt rules governing the relationship and responsibilities of insurers,
6 providers, and brokers during settlement of a policy.

7 **SECTION 17. Initial applicability.**

8 (1) This act first applies to life settlement contracts and purchase agreements
9 entered into on the effective date of this subsection

10 **SECTION 18. Effective date.**

11 (1) This act takes effect on the first day of the 6th month beginning after
12 publication.

13

end **(END)** Insert 4-13

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-40882dn

TJD:/:....

ys

PI

Date

To Jim Guidry:

requester

Please review this preliminary draft to ensure it complies with your intent, and please review the notes embedded in the draft.

Please note that this draft has a new LRB number as is my practice when the requester changes without the original requester's request to switch the original draft number to the new drafter. Since OCI instigated the changes to this draft, I entered the draft with OCI as the requester and you may provide the draft to Senator Wirch, or whomever you wish. If Senator Wirch decides to sponsor the draft, I will designate him as the requester using this LRB number for the draft.

You requested that the definitions of "fraudulent life settlement act" and "STOLI" be returned to the original language as provided by OCI. I have restored those definitions to their original locations in substantially the original language except for some corrections to the grammar.

You requested that I retain the phrase "who resides in this state" in the definition of "owner." I have done so and have removed the redundant references to an owner who resides in this state from the remainder of the draft. I have included the phrase "unless the context requires otherwise" in the definition because there are at least three instances in the draft where "owner" does not solely refer to a Wisconsin resident.

The draft was inconsistent when referring to a part, portion, or interest in a policy. I have changed all references to "interest in a policy" for consistency.

Tamara J. Dodge
Legislative Attorney
Phone: (608) 267-7380
E-mail: tamara.dodge@legis.wisconsin.gov

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-4088/P1dn
TJD:cjs:rs

January 15, 2010

To Jim Guidry:

Please review this preliminary draft to ensure it complies with your intent, and please review the notes embedded in the draft.

Please note that this draft has a new LRB number as is my practice when the requester changes without the original requester's request to switch the original draft number to the new requester. Since OCI instigated the changes to this draft, I entered the draft with OCI as the requester and you may provide the draft to Senator Wirch, or whomever you wish. If Senator Wirch decides to sponsor the draft, I will designate him as the requester using this LRB number for the draft.

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