

Dodge, Tamara

From: Guidry, Jim R - OCI [Jim.Guidry@wisconsin.gov]
Sent: Wednesday, January 27, 2010 11:36 AM
To: Dodge, Tamara
Cc: Mallow, Eileen K - OCI
Subject: Life settlements legislation tax treatment LRB-4088/p1
Attachments: OCI proposed changes to 71b.doc

Tami,

Hi!

We ran across an issue with the tax treatment of life settlements in the draft, which extended the tax exemptions for viatical settlements to all life settlement transactions. DOR has provided us with language to correct that problem. The change will keep the exemptions for viaticals but not other life settlements.

I have provided Sen. Wirch and Rep. Barca with the same document. You should be receiving a request from Sen. Wirch soon to jacket the bill with the tax changes included. I believe you had reassigned the draft to Sen. Wirch, if my recollection is correct. Rep. Barca's office should also be sending in similar request on the Assembly companion.

I know you are very busy and I appreciate all the work you have put into this bill.

Thanks.

Jim Guidry
Legislative Liaison
Office of the Commissioner of Insurance
125 South Webster Street
PO Box 7873
Madison, WI 53707-7873

Work: (608) 264-6239
Cell: (608) 209-6309

OCI proposed changes to 71.05(1)(f)

71.05(1)(f) *Income from the sales of certain insurance policies.* Income received by the original policyholder or original certificate holder from the sale of a life insurance policy or certificate, or the sale of the death benefit under a life insurance policy or certificate, under a ~~vatical~~ life settlement contract, as defined in s. ~~632.68(1)(d)~~632.69(1)(k).

Possible Correction

71.05(1)(f) *Income from the sales of certain insurance policies.* Income received by the original policyholder or original certificate holder who has a catastrophic or life-threatening illness or condition including AIDS, as defined in s. 49.686(1)(a) and HIV infection, as defined in s. 49.686(1)(d) from the sale of a life insurance policy or certificate, or the sale of the death benefit under a life insurance policy or certificate, under a ~~vatical~~ life settlement contract, as defined in s. ~~632.68(1)(d)~~632.69(1)(k).

Similar language would be added to the proposed changes for s. 71.26(3)(ag) and 71.45(2)(a)14.

Dodge, Tamara

From: Tierney, Michael
Sent: Wednesday, January 27, 2010 4:14 PM
To: Dodge, Tamara
Subject: FW: Review of Life Settlement Legislation

Hi Tami –

Just to confirm, we are ok with the changes Jim references in this email.

Mike

From: Guidry, Jim R - OCI [mailto:Jim.Guidry@wisconsin.gov]
Sent: Wednesday, January 27, 2010 11:30 AM
To: Tierney, Michael
Cc: Mallow, Eileen K - OCI
Subject: RE: Review of Life Settlement Legislation

I agree. We are ready to roll on this end. My conversation with Pam Kahler was that they could make the change at the same time the bill is being jacketed. The LRB draft was reassigned to Sen. Wirch so the request will have to come from your office.

I'll forward the tax changes to Tami Dodge at LRB and let her know you will be getting in touch with her about jacketing.

Thanks Mike.

Jim Guidry
Legislative Liaison
Office of the Commissioner of Insurance
125 South Webster Street
PO Box 7873
Madison, WI 53707-7873

Work: (608) 264-6239
Cell: (608) 209-6309



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-4088/P1

TJD:cjs:rs

In. 1/29/10 Due Monday 2/1/10

RMR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SW
LPS: delete all 4-star notes
Curt

skys

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 settlements, granting rule-making
6 authority, and providing a penalty.

Ins A

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:

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:

Ins 1-10

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) (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) (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) (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) (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) (j), 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:

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

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

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

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

23 1. Being unable to perform at least 2 activities of daily living, including eating,
24 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 an investor that is not an accredited investor, as defined in 17 CFR 230.501
13 (a), or a purchaser.

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

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

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

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

22 a. Presenting, causing to be presented, or preparing with the knowledge or
23 belief that it will be presented to or by a provider, broker, purchaser, financing entity,
24 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; assisting, aiding, or abetting in the commission of; or
14 conspiring to commit the acts or omissions specified in this subsection. Paragraph ✓

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.

19 (h) "Licensee" means a provider or broker that holds a license under sub. (2).

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

23 (j) 1. "Life settlement" means an agreement regarding the terms under which
24 compensation or any thing of value will be paid, which compensation or thing of value
25 is less than the expected death benefit of the policy but greater than the cash

1 surrender value or accelerated death benefit available under the policy at the time
2 of the application for the life settlement, in return for the owner's present or future
3 assignment, transfer, sale, devise, or bequest of the death benefit or any interest in
4 a policy. "Life settlement" includes all of the following:

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

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

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

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

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

22 b. Except as provided in subd. 1. c., a premium finance loan or any loan made
23 by a bank or other licensed financial institution, provided that neither default on
24 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.

24 (k) "Life settlement contract" means a written document providing for and
25 establishing the terms of a life settlement.

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

5 1. A licensee under this section, including a producer acting as a broker under
6 this section.

7 2. A qualified institutional buyer, as defined in 17 CFR 230.144A (a) (1).

8 3. A financing entity.

9 4. A special purpose entity.

10 5. A related provider trust.

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

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

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

19 (p) "Provider" means a person, other than an owner, that enters into or
20 effectuates a life settlement contract with an owner. "Provider" does not include:

21 1. A bank, savings bank, savings and loan association, credit union, or other
22 licensed lending institution that takes an assignment of a policy solely as collateral
23 for a loan.

1 2. A premium finance company making premium finance loans and exempted
2 by the commissioner from the licensing requirement under the premium finance law
3 under s. 138.12 that takes an assignment of a policy solely as collateral for a loan.

4 3. The issuer of a policy.

5 4. An authorized or eligible insurer that provides stop loss coverage or financial
6 guaranty insurance to a provider, purchaser, financing entity, special purpose entity,
7 or related provider trust.

8 5. Any natural person who enters into or effectuates no more than one
9 agreement in a calendar year for the transfer of a policy for any value less than the
10 expected death benefit.

11 6. A special purpose entity.

12 7. A related provider trust.

13 8. A purchaser.

14 9. A person that the commissioner excludes by rule under sub. (20) (a) after
15 determining that the definition is not intended to cover the person.

16 (q) "Purchase agreement" means a contract or agreement entered into by a
17 purchaser, to which the owner is not a party, to purchase a settled policy or an interest
18 in a settled policy for the purpose of deriving an economic benefit.

19 (r) "Purchaser" means a person who provides a sum of money as consideration
20 for a policy or an interest in the death benefits of a policy, or a person who owns or
21 acquires or is entitled to a beneficial interest in a trust that owns a life settlement
22 contract or is the beneficiary of a policy that has been or will be the subject of a life
23 settlement contract, for the purpose of deriving an economic benefit. "Purchaser"
24 does not include any of the following:

25 1. A licensee.

1 2. An accredited investor, as defined in 17 CFR 230.501 (a), or qualified
2 institutional buyer, as defined in 17 CFR 230.114A (a) (1).

3 3. A financing entity.

4 4. A special purpose entity.

5 5. A related provider trust.

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

9 (t) "Related provider trust" means a trust that is established by a licensed
10 provider or a financing entity for the sole purpose of holding the ownership or
11 beneficial interest in purchased policies in connection with a financing transaction
12 and that has a written agreement with the licensed provider under which the
13 licensed provider is responsible for ensuring compliance with all statutory and
14 regulatory requirements and under which the trust agrees to make all records and
15 files relating to life settlement transactions available to the commissioner as if those
16 records were maintained directly by the licensed provider.

17 (u) "Settled" means, with respect to a policy, acquired by a provider under a life
18 settlement contract.

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

1 (w) "Stranger-originated life insurance" or "STOLI" means an act, practice,
2 plan, or arrangement, individually or in concert with others, to initiate a life
3 insurance policy for the benefit of a 3rd-party investor who, at the time of policy
4 origination, has no insurable interest in the insured. STOLI includes cases in which
5 life insurance is purchased with resources or guarantees from or through a person
6 or entity who, at the time of policy inception, could not lawfully initiate the policy by
7 the person or entity, and in which, at the time of inception, there is an arrangement
8 or agreement, whether verbal or written, to directly or indirectly transfer the
9 ownership of the policy or the policy benefits to a 3rd party. Trusts that are created
10 to give the appearance of insurable interest, and are used to initiate policies for
11 investors, violate insurable interest laws under s. 631.07 and the common law
12 prohibition against wagering on life. STOLI does not include a loan, agreement,
13 assignment, arrangement, or transaction set forth in sub. (1) (j) 2.

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

16 (2) LICENSING REQUIREMENTS. (a) 1. No person may act as a provider or broker
17 for an owner, without holding a license from the commissioner.

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

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

1 (c) The commissioner may not issue a license under this subsection unless the
2 applicant provides his or her social security number or its federal employer
3 identification number or, if the applicant does not have a social security number, a
4 statement made or subscribed under oath or affirmation that the applicant does not
5 have a social security number. An applicant who is providing a statement that he or
6 she does not have a social security number, shall provide that statement along with
7 the application for a license on a form prescribed by the department of children and
8 families. A licensee shall provide to the commissioner the licensee's social security
9 number, statement the licensee does not have the social security number, or federal
10 employment identification number of the licensee at the time that the annual license
11 renewal fee is paid, if not previously provided. The commissioner shall disclose a
12 social security number obtained from an applicant or licensee to the department of
13 children and families in the administration of s. 49.22, as provided in a memorandum
14 of understanding entered into under s. 49.857. The commissioner may disclose the
15 social security number or federal employment identification number of an applicant
16 or licensee to the department of revenue for the purpose of requesting certifications
17 under s. 73.0301.

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

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

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

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

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

18 1. If applying for a provider license, has provided a detailed plan of operation.

19 2. Is competent and trustworthy and intends to transact its business in good
20 faith.

21 3. Has a good business reputation and has either the experience, training, or
22 education so as to be qualified in the business for which the license is applicable.

23 4. a. If applying for a provider license, has demonstrated evidence of financial
24 responsibility in a format prescribed by the commissioner through either a surety
25 bond executed and issued by an insurer authorized to issue surety bonds in this state

1 or a deposit of cash, certificates of deposit, or securities or any combination of those
2 in the amount of \$250,000. Any surety bond issued under this subd. 4. a. shall be in
3 the favor of this state and shall specifically authorize recovery by the commissioner
4 on behalf of any person in this state who sustains damages as the result of erroneous
5 acts, failure to act, conviction of fraud, or conviction of unfair practices by the
6 provider. The commissioner shall accept as evidence of financial responsibility proof
7 that financial instruments in accordance with the requirements in this subd. 4. a.
8 have been filed in one state where the applicant is licensed as a provider.

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

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

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

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

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

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

20 (i) The commissioner shall not issue any license to any nonresident applicant,
21 unless a written designation of an agent for service of process is filed and maintained
22 with the commissioner or unless the applicant has filed with the commissioner the
23 applicant's irrevocable consent that any action against the applicant may be

1 commenced against the applicant by service of process on the commissioner in
2 accordance with the procedures set forth in ss. 601.72 and 601.73.

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

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

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

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

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

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

23 **(3) TRAINING.** (a) An individual applicant for a license under sub. (2) or a
24 licensee who engages in the business of life settlements in this state shall receive
25 training to ensure all of the following:

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

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

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

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

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

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

21 1. Legal structuring of life settlements.

22 2. Legal relationships among the parties to a life settlement.

23 3. Required disclosures and privacy requirements.

24 4. Ethical considerations in selling, soliciting, and negotiating life settlements.

25 5. Contract requirements.

1 6. Advertising.

2 7. Remedies.

3 8. Licensing requirements.

4 9. Additional matters as determined by the commissioner.

5 (e) An individual applicant for a license under sub. (2) shall complete an initial
6 training course of not less than 8 hours. An electronic confirmation of completion of
7 initial training shall accompany the application for initial licensure. A licensee shall
8 complete training of not less than 4 hours every 24 months after the initial training
9 course. A person who holds a license under s. 632.68, 2007 stats., on the effective date
10 of this paragraph [LRB inserts date] shall complete initial training within 6
11 months after the effective date of this paragraph [LRB inserts date].

****NOTE: I made changes to this subsection to reflect my understanding of your
intent as described in the memo by Jim Harris.

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

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.

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
24 settled during the immediately preceding calendar year, together with a breakdown
25 of the information by policy issue year. The annual statement shall also include the

1 names of the insurance companies whose policies have been settled and the brokers
2 that were involved in settling the policies. Each provider shall provide in the annual
3 statement any information about any policy settled within 5 years of policy issuance
4 that the commissioner may prescribe by rule.

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

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

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

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

23 2. The disclosure is necessary to effectuate a sale of life settlement contracts,
24 or interests in life settlement contracts, as investments, if the sale is conducted in

1 accordance with applicable state and federal securities law and if the owner and the
2 insured have both provided prior written consent to the disclosure.

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

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

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

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

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

21 **(7) EXAMINATIONS AND ALTERNATIVES.** (a) The commissioner may, whenever the
22 commissioner determines it is necessary in order to be informed about any matter
23 related to the enforcement of this section, examine the business and affairs of any
24 licensee or applicant for a license, under the provisions of ss. 601.43 to 601.45.

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

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

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

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

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

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

20 **(8) DISCLOSURES TO OWNER; DISCLOSURE TO INSURED.** (a) 1. With each application
21 for a life settlement, a provider or broker shall disclose to the owner, in a separate
22 document that is signed by the owner and the provider or broker, at least all of the
23 following information no later than the time the application for the life settlement
24 is signed by all parties:

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

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

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

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

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

14 f. That the owner has a right to rescind a life settlement contract before the
15 earlier of 30 calendar days after the date upon which the life settlement contract is
16 executed by all parties or 15 calendar days after the life settlement proceeds have
17 been paid to the owner, as provided in sub. (11) (d). Rescission, if exercised by the
18 owner, is effective only if both notice of the rescission is given and the owner repays
19 all proceeds and any premiums, loans, and loan interest paid on account of the life
20 settlement within the rescission period. If the insured dies during the rescission
21 period, the life settlement contract is rescinded, subject to repayment by the owner
22 or the owner's estate to the provider or purchaser of all life settlement proceeds, and
23 any premiums, loans, and loan interest that have been paid by the provider or
24 purchaser, which shall be repaid within 60 calendar days of the death of the insured.

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

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

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

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

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

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

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

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

11 3. Any affiliation or contractual arrangements between the provider and the
12 purchaser.

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

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

24 6. That the funds will be escrowed with an independent 3rd party during the
25 transfer process; the name, business address, and telephone number of the

1 independent 3rd party escrow agent; and that the owner may inspect or receive
2 copies of the relevant escrow or trust agreements or documents.

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

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

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

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

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

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

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

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

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

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

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

10 d. That the purchaser may lose all benefits or may receive substantially
11 reduced benefits if the insurer goes out of business during the contract term of the
12 life settlement investment.

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

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

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

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

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

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

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

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

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

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

20 (b) A provider shall disclose to a purchaser, in a document signed by the
21 purchaser and provider, at least all of the following no later than at the time of the
22 assignment, transfer, or sale of all of or an interest in a policy:

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

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

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

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

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

16 6. Whether the policy is contestable.

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

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

24 **(10) DISCLOSURE TO INSURER.** Before initiating a plan, transaction, or series of
25 transactions, a broker or provider shall fully disclose to the insurer a plan,

1 transaction, or series of transactions to which the broker or provider is a party to
2 originate, renew, continue, or finance a policy with the insurer for the purpose of
3 engaging in the business of life settlements at any time prior to, or during the first
4 5 years after, issuance of the policy.

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

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

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

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

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

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

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

12 a. Consents to the life settlement contract.

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

15 c. Represents that he or she has a complete understanding of the benefits of the
16 policy.

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

19 e. If applicable, acknowledges that the insured has a terminal or chronic illness
20 and that the terminal or chronic illness or condition was diagnosed after the policy
21 was issued.

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

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

4 (c) All life settlement contracts entered into in this state shall provide the
5 owner with an absolute right to rescind the contract before the earlier of 30 calendar
6 days after the date on which the life settlement contract is executed by all parties or
7 15 calendar days after the life settlement proceeds have been sent to the owner as
8 provided in par. (d). Rescission by the owner may be conditioned upon the owner both
9 giving notice and repaying to the provider, within the rescission period, all proceeds
10 of the settlement and any premiums, loans, and loan interest paid by or on behalf of
11 the provider in connection with or as a consequence of the life settlement. If the
12 insured dies during the rescission period, the life settlement contract is rescinded,
13 subject to repayment, within 60 calendar days after the death of the insured, by the
14 owner or the owner's estate to the provider or purchaser of all life settlement
15 proceeds and any premiums, loans, and loan interest that have been paid by the
16 provider or purchaser. If a life settlement contract is rescinded under this
17 paragraph, ownership of the policy shall revert to the owner or the owner's estate if
18 the owner is deceased, irrespective of any transfer of ownership of the policy by the
19 owner, provider, or any other person. In the event of any rescission, if the provider
20 has paid commissions or other compensation to a broker in connection with the
21 rescinded life settlement contract, the broker shall refund the commissions and
22 compensation to the provider within 5 business days following receipt of written
23 demand from the provider, which demand shall be accompanied by the applicable
24 document initiating the rescission within the rescission period, either the owner's
25 notice of rescission or the notice of death of the insured.

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

17 (e) Failure to tender the life settlement proceeds to the owner within the time
18 set forth in the disclosure under sub. (8) (a) 1. g., renders the life settlement contract
19 voidable by the owner for lack of consideration until the time the proceeds are
20 tendered to and accepted by the owner. Funds are sent by a provider to an owner as
21 of the date that the escrow agent either releases funds for wire transfer to the owner
22 or places a check for delivery to the owner via the U.S. postal service or other
23 nationally recognized delivery service.

24 (f) For the purpose of determining the health status of the insured after the life
25 settlement has occurred, only the provider or broker licensed in this state or a person

1 it authorizes may contact the insured. Contact with the insured shall be limited to
2 once every 3 months for an insured with a life expectancy of more than one year, and
3 to no more than once per month for an insured with a life expectancy of one year or
4 less. The provider or broker shall explain the procedure for the contacts to the owner
5 at the time the life settlement contract is entered into. The limitations in this
6 paragraph do not apply to any contacts with an insured for reasons other than
7 determining the insured's health status. Providers and brokers shall be responsible
8 for the actions of a person they authorize to make the contact.

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

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

14 1. The owner certifies to the provider that, within the 5-year period, the policy
15 was issued upon the owner's exercise of conversion rights arising out of a group or
16 individual policy, provided the total of the time covered under the conversion policy
17 plus the time covered under the prior policy is at least 60 months. The time covered
18 under the group policy shall be calculated without regard to any change in insurance
19 carriers, if the coverage has been continuous and under the same group sponsorship.

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

- 22 a. The owner or insured is terminally or chronically ill.
23 b. The owner's spouse or child dies.
24 c. The owner divorces his or her spouse.
25 d. The owner retires from full-time employment.

1 e. The owner becomes physically or mentally disabled and a physician
2 determines that the disability prevents the owner from maintaining full-time
3 employment.

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

9 g. The sole beneficiary of the policy is a family member of the owner and the
10 beneficiary dies.

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

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

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

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

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

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

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

9 (b) Copies of the independent evidence described in par. (a) 2. and documents
10 required by sub. (11) (a) shall be submitted to the insurer when the provider entering
11 into a life settlement contract with an owner submits a request to the insurer for
12 verification of coverage. The provider shall submit, along with the copies, a letter of
13 attestation from the provider that the copies are true and correct copies of the
14 documents received by the provider.

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

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

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

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

8 **(13) PROHIBITED PRACTICES AND CONFLICTS OF INTEREST.** (a) No person may enter
9 into a life settlement contract if the person knows or reasonably should have known
10 that the policy that is the subject of the life settlement contract was obtained by
11 means of a false, deceptive, or misleading application for the policy.

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

15 (c) No person may engage in any fraudulent act or practice in connection with
16 any transaction relating to any life settlement involving an owner.

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

19 (e) No person may enter into a premium finance agreement with any person
20 or agency, or any person affiliated with such person or agency, pursuant to which the
21 person who is providing premium financing receives any proceeds, fees, or other
22 consideration, directly or indirectly, from the policy or owner of the policy or any other
23 person with respect to the premium finance agreement or any life settlement
24 contract or other transaction related to the policy that is in addition to the amounts
25 required to pay the principal, interest, and service charges related to policy

1 premiums pursuant to the premium finance agreement or subsequent sale of the
2 agreement. Any payments, charges, fees, or other amounts in addition to the
3 amounts required to pay the principal, interest, and service charges related to policy
4 premiums paid under the premium finance agreement shall be remitted to the
5 original owner of the policy or to the owner's estate if the owner is not living at the
6 time of the determination of the overpayment.

7 (f) With respect to any life settlement contract or policy, no broker may
8 knowingly solicit an offer from, effectuate a life settlement with, or make a sale to
9 any provider, purchaser, financing entity, or related provider trust that is controlling,
10 controlled by, or under common control with the broker unless the relationship is
11 disclosed to the owner.

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

18 ^{represent} (h) No life settlement promotional, advertising, or marketing materials may
19 reference that the insurance is "free" for any period of time, or include any reference
20 that would cause an owner to reasonably believe that the insurance is free for any
21 period of time.

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

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

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

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

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

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

19 (e) Advertisements shall be truthful and not misleading in fact or by
20 implication. The form and content of an advertisement of a life settlement contract
21 or purchase agreement, product, or service shall be sufficiently complete and clear
22 so as to avoid deception. The advertisement may not have the capacity or tendency
23 to mislead or deceive. The commissioner shall determine whether an advertisement
24 has the capacity or tendency to mislead or deceive from the overall impression that

1 the advertisement may be reasonably expected to create upon a person of average
2 education or intelligence within the segment of the public to which it is directed.

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

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

7 1. Omit material information or use words, phrases, statements, references, or
8 illustrations if the omission or use has the capacity, tendency, or effect of misleading
9 or deceiving an owner, purchaser, or prospective purchaser as to the nature or extent
10 of any benefit, covered loss, premium payable, or state or federal tax consequences.

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

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

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

15 c. Including in the life settlement contract or purchase agreement a "free look"
16 period that satisfies or exceeds the requirements of law.

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

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

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

24 5. Use the words "free," "no cost," "without cost," "no additional cost," "at no
25 extra cost," or similar words or phrases with respect to any benefit or services, unless

1 true. An advertisement may specify the charge for a benefit or service or may state
2 that a charge is included in the payment or use other appropriate language.

3 6. Use testimonials, appraisals, analyses, or endorsements in advertisements
4 unless they are genuine; represent the current opinion of the author; are applicable
5 to the life settlement contract or purchase agreement, product, or service advertised;
6 and are reproduced with sufficient completeness to avoid misleading or deceiving
7 prospective owners or purchasers as to the nature or scope of the testimonial,
8 appraisal, analysis, or endorsement. Any financial interest in or benefit received
9 from the licensee by the person making a testimonial, appraisal, or analysis, directly
10 or indirectly, shall be prominently disclosed in the advertisement. If an endorsement
11 refers to benefits received under a life settlement contract or purchase agreement,
12 the licensee shall retain all pertinent information forming a basis of the endorsement
13 for a period of 5 years following its use.

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

21 8. Contain statistical information unless the information accurately reflects
22 recent and relevant facts. An advertisement shall identify the source of all statistics
23 used in the advertisement.

24 9. Disparage insurers, providers, brokers, producers, policies, services, or
25 methods of marketing.

1 10. Omit the name of the actual licensee from any advertisement. No
2 advertisement may use a trade name, group designation, name of the parent
3 company of a licensee, name of a division of a life settlement licensee, service mark,
4 slogan, symbol, or other device or reference if the advertisement would have the
5 capacity or tendency to mislead or deceive as to the true identity of the licensee or
6 to create the impression that any entity other than the licensee would have any
7 responsibility for the financial obligation under a life settlement contract or
8 purchase agreement.

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

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

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

24 14. Emphasize the speed with which the settlement will occur, except that the
25 advertisement may disclose the average time from the completion of the application

1 to the date of offer and from the acceptance of the offer to receipt of the settlement
2 funds by the owner.

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

6 (h) The name of the licensee shall be clearly identified in all advertisements
7 about the licensee or its life settlement contracts, purchase agreements, products, or
8 services. If any specific life settlement contract or purchase agreement of a licensee
9 is advertised, the contract or agreement shall be identified either by form number
10 or other appropriate description. If an application is part of the advertisement, the
11 name of the provider shall be shown on the application.

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

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

14 (b) No person may knowingly or intentionally interfere with the enforcement
15 of this subsection or sub. (13) or investigations of suspected or actual violations of this
16 subsection or sub. (13).

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

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

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

3 (e) 1. Any person engaged in the business of life settlements having knowledge
4 or a reasonable belief that a violation of this subsection or sub. (13) is being, will be,
5 or has been committed shall provide to the commissioner the information required
6 by, and in a manner prescribed by, the commissioner.

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

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

16 a. The commissioner or the commissioner's employees, agents, or
17 representatives.

18 b. Federal, state, or local law enforcement or regulatory officials or their
19 employees, agents, or representatives.

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

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

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

2 2. This paragraph does not abrogate or modify common law or statutory
3 privileges or immunities enjoyed by a person who supplies information concerning
4 suspected, anticipated, or completed fraudulent acts related to life settlements or
5 insurance.

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

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

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

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

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

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

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

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

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

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

24 d. A description or chart outlining the organizational arrangement of the
25 antifraud personnel who are responsible for investigating and reporting possible

1 violations of this subsection and sub. (13) and investigating unresolved material
2 inconsistencies between medical records and insurance applications.

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

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

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

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

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

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

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

22 (b) Establish standards for evaluating the reasonableness of payments under
23 life settlement contracts for persons who are terminally or chronically ill, including
24 regulation of discount rates used to determine the amount paid in exchange for

1 assignment, transfer, sale, devise, or bequest of a benefit under a policy insuring the
2 life of a person who is terminally or chronically ill.

3 (c) Establish appropriate licensing requirements and standards for continued
4 licensure for providers and brokers.

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

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

9 **SECTION 17. Initial applicability.**

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

12 **SECTION 18. Effective date.**

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

15 (END)

1 INSERT A

Under current law, the owner of a life insurance policy that insures a person who has a catastrophic or life-threatening illness or condition, including AIDS or HIV infection, may sell the policy for an amount that is less than the expected death benefit under the policy in a transaction known as a viatical settlement. The person that makes the payment under the viatical settlement is known as a viatical settlement provider (provider) and must be licensed by the commissioner of insurance (commissioner). A person who, for a fee, offers or attempts to negotiate a settlement between the owner of a life insurance policy and one or more ~~viatical settlement~~ ^{viatica} providers is known as a viatical settlement broker (broker) and must be licensed by the commissioner. The commissioner may revoke, suspend, or refuse to renew a provider's or broker's license if the licensee misrepresented information in the application; engaged in fraudulent or dishonest practices or is shown to be untrustworthy or incompetent to act as a ~~viatical settlement~~ provider or broker; has been convicted of a misdemeanor or felony involving fraud, deceit, or misrepresentation; violated Wisconsin law regarding viatical settlements; or if licensed as a provider, failed to meet the minimum settlement payment requirements or demonstrated a pattern of making unreasonable payments to policy owners. Every provider or broker must maintain records for all viatical settlements and make those records available to the commissioner for inspection.

Currently, if a policy owner who is seeking a viatical settlement has a catastrophic or life-threatening illness or condition and is the insured under the policy, the provider must obtain from the policy owner's physician a statement that the owner is of sound mind before entering into a viatical settlement contract with the policy owner. The provider must also obtain a written statement in which the policy owner consents to the viatical settlement contract; acknowledges his or her catastrophic or life-threatening illness or condition; releases his or her medical records to the provider; represents that he or she understands the viatical settlement contract, the benefits under the life insurance policy, and the relationship between the viatical settlement contract and the life insurance policy; acknowledges that he or she is entering into the viatical settlement contract freely and voluntarily; and affirms that he or she has received a recommendation from a provider or broker to seek financial advice regarding the effect of the viatical settlement on creditor claims, income taxes, and government benefits. Before the execution of the viatical settlement contract, the provider or broker must make disclosures, including that there may be alternatives to viatical settlements; that the policy owner should obtain financial advice; that some or all of the viatical settlement proceeds may be taxable or subject to the claims of creditors; that a viatical settlement may adversely affect the recipient's eligibility for government benefits; that the policy owner may rescind the viatical settlement contract; the frequency of and procedure for contacts by the provider or broker to determine the health status of the policy owner; the requirements imposed on the bank and escrow agent for the payment of viatical

settlement proceeds; and that no beneficiary named by the policy owner will receive any insurance proceeds under the policy except under certain circumstances.

Current law requires every viatical settlement to be reasonable and sets

- ✓ minimum payment requirements based on the insured's life expectancy. The policy owner may rescind the contract within 30 days after entering into the contract or 15
- ✓ days after receiving the viatical settlement proceeds, whichever is sooner. Under current law, a provider or broker may not discriminate in making a viatical settlement contract, unless the factor on which the provider or broker is
- ✓ discriminating affects the insured's life expectancy. A provider or broker may not pay or offer to pay a finder's fee to a person providing medical, legal, or financial planning services to a policy owner whose policy may become the subject of a viatical
- ✓ settlement. Current law limits the number of times the provider or broker may contact the insured based on the insured's life expectancy. A provider or broker may not solicit or accept as investors in a policy that is the subject of a viatical settlement contract persons who are in a position to influence the treatment of the insured's
- ✓ catastrophic or life-threatening illness or condition.

Current law requires ~~that~~ advertising related to viatical settlements to be truthful and not misleading by fact or implication, in addition to other requirements.

This bill changes the terminology for the sale of a life insurance policy for an amount less than the death benefit but greater than the cash surrender value or accelerated death benefit under the policy to "life settlement." The bill allows any individual in addition to one with catastrophic or life threatening illnesses or conditions to obtain a life settlement. Under the bill, a policy may be the subject of a life settlement within a five-year period commencing with the date of issuance of the policy only under certain conditions; one of these conditions is the terminal or chronic illness of the insured. The bill modifies the definitions of provider, broker, owner, life settlement, and other terms related to life settlements. The bill also regulates certain aspects of the purchase of a policy that is the subject of a life settlement from a provider. In addition, the bill makes various changes related to life settlement laws, including the following:

1. The bill directs the commissioner to investigate each applicant for a provider's or broker's license and issue a license to an applicant if the applicant meets certain qualifications, including completion of an initial training course. The bill specifies the requirements for training of license applicants and of brokers and providers, including certain topics the training must cover. The bill adds to the bases for which the commissioner may suspend, revoke, or refuse to renew a license that the licensee no longer meets the requirements for licensure; that the licensee, if a provider, has entered into any life settlement contract using a form that was not approved by the commissioner; that the licensee has failed to honor obligations in a life settlement contract; that the licensee has assigned or transferred a settled policy to a person other than a person specified in the bill; that any officer, partner, member, or key management personnel has violated any of the requirements for life settlement in the bill. The commissioner may examine the business and affairs of licensed providers and brokers and applicants for licenses.

if a provider (use 2x)

and

the following

*delete
extra
space*

2. Under the bill, the insurer that issued the life insurance policy that was the subject of a life settlement is not responsible for an act or omission of a broker or provider unless the insurer received compensation for the placement of the life settlement contract from the broker or provider or from a purchaser of the life settlement contract. ✓

3. The bill prohibits any person from using a life settlement contract form that has not been approved by the commissioner. In addition, no insurer may require any owner, insured, provider, or broker to sign a form that has not been approved by the commissioner for use in connection with life settlement contracts. ✓

4. Under the bill, every licensed provider and broker must annually file with the commissioner a statement containing certain information, including any information that the commissioner prescribes by rule about a policy settled within five years of policy issuance. Licensees must keep certain records regarding life settlements and make those records available to the commissioner for inspection. ✓

move 5. The bill adds disclosures to those that a provider or broker must make to the owner, including that the broker represents the owner exclusively and owes a fiduciary duty to the owner; that the funds from the life settlement will be sent to the owner within three business days after the provider has received acknowledgment that ownership of the policy has been transferred; that entering into a life settlement contract may cause forfeiture of other rights and benefits under the policy; and that medical, financial, or personal information may be disclosed to others to effect the life settlement. The provider must make certain disclosures to the owner, including the affiliation between the provider and the issuer of the policy to be settled; any affiliation or contractual arrangement between the provider and the purchaser; that, if the policy to be subject to a life settlement is a joint policy or involves family riders, the life settlement may result in the loss of coverage to the other family members; the dollar amount of the current death benefit; and that the funds from the life settlement will be escrowed with a third party. The broker must disclose to the owner of the policy that is the subject of a life settlement the name, business address, and telephone number of the broker; a complete and accurate description of all offers, counteroffers, acceptances, and rejections related to the life settlement; the amount of the broker's compensation; the amount of the life settlement offer; the percentage of the life settlement, if any, comprised by the broker's compensation. If the provider transfers ownership or changes the beneficiary of the policy the provider must communicate that in writing to the insured within 20 days. The provider must disclose certain information to the purchaser of a policy that is the subject of a life settlement. A broker or provider must disclose to the insurer a plan or transaction to originate, renew, continue, or finance a policy for the purpose of engaging in the business of life settlements at any time before, or during the first five years after, issuance of the policy. ✓

6. The bill eliminates the minimum payment requirement for life settlements. ✓

7. The bill requires that, before entering into a life settlement contract, the provider must obtain from the owner's physician, if the owner is the insured under the policy to be settled, a statement that the owner is under no constraint or undue influence to enter into a life settlement contract. Within 20 days of an owner's ✓

✓
✓
✓
✓
and
←
✓

✓ application for insurance, a life settlement, or a purchase agreement may be subject to civil and criminal penalties. The bill requires a person who engages in the business of life settlements and has knowledge or a reasonable belief that a certain
 ✓ violations related to life settlements have been or will be committed to report that
 ✓ to the commissioner. Providers and brokers must have in place antifraud initiatives
 ✓ described in the bill.

13. Relating to advertisement of life settlements, the bill requires providers and brokers to maintain a system of control over the advertising of life settlements;
 ✓ requires that disclosures not be minimized or obscured; prohibits the omission of information or using misleading information about a benefit, covered loss, premium
 ✓ payable, or tax consequences; prohibits the use of the name or title of a life insurance
 ✓ company or policy unless the insurer has approved the advertisement; prohibits use
 ✓ of testimonials, appraisals, or analyses unless they are genuine; prohibits the implication that a life settlement contract or purchase agreement has been endorsed by an organization unless that is the fact; prohibits inaccurate statistical information; prohibits the disparagement of insurers, providers, brokers, producers,
 ✓ policies, services, or methods of marketing; requires the name of the provider or broker to be in all advertisements; prohibits the use of materials that mislead policy owners or prospective purchasers into believing that the advertisement is connected with a government program or agency; prohibits exaggeration of the fact that the provider or broker holds a license so as to suggest that competing licensees are not licensed; prohibits emphasizing the dollar amounts available to an owner except as
 ✓ an average purchase price as a percent of the face value obtained by other policy owners in life settlements with the licensee during the previous six months; and
 2 imposes other requirements. The commissioner may require a provider or broker to submit advertising materials. ✓

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

1

2 INSERT 1-10

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

4 71.05 (1) (f) *Income from the sales of certain insurance policies.* Income received
 5 by the original policyholder or original certificate holder who has a catastrophic or
 6 life-threatening illness or condition including AIDS, as defined in s. 49.686 (1) (a),
 7 and HIV infection, as defined in s. 49.686 (1) (d), from the sale of a life insurance
 8 policy or certificate, or the sale of the death benefit under a life insurance policy or

1 certificate, under a viatical life settlement contract, as defined in s. 632.68 (1) (d)

2 632.69 (1) (k).

History: 1987 a. 312; 1987 a. 411 ss. 42, 43, 45, 47 to 49, 51 to 53; 1989 a. 31, 46; 1991 a. 2, 37, 39, 269; 1993 a. 16, 112, 204, 263, 437; 1995 a. 27, 56, 209, 227, 261, 371, 403, 453; 1997 a. 27, 35, 39, 237; 1999 a. 9, 32, 44, 54, 65, 167; 2001 a. 16, 104, 105, 109; 2003 a. 85, 99, 119, 135, 183, 255, 289, 321, 326; 2005 a. 22, 25, 216, 254, 335, 361, 479, 483; 2007 a. 20, 96, 226; 2009 a. 2, 28.

3

4 SECTION 2. 71.26 (3) (ag) of the statutes is amended to read:

5 71.26 (3) (ag) Section 61 (relating to the definition of gross income) is modified

6 to exclude income received by the original policyholder or original certificate holder

7 who has a catastrophic or life-threatening illness or condition including AIDS, as

8 defined in s. 49.686 (1) (a), and HIV infection, as defined in s. 49.686 (1) (d), from the

9 sale of a life insurance policy or certificate, or the sale of the death benefit under a

10 life insurance policy or certificate, under a viatical life settlement contract, as

11 defined in s. 632.68 (1) (d) 632.69 (1) (k).

History: 1987 a. 312; 1987 a. 411 ss. 22, 124 to 129; 1989 a. 31, 336; 1991 a. 37, 39, 221, 269; 1993 a. 16, 112, 246, 263, 399, 437, 491; 1995 a. 27, 56, 351, 371, 380, 428; 1997 a. 27, 37, 184, 237; 1999 a. 9, 65; 1999 a. 150 s. 672; 1999 a. 167, 194; 2001 a. 16, 38, 106, 109; 2003 a. 33, 85, 99, 135, 255, 326; 2005 a. 25, 74, 335, 361, 362, 479, 483; 2007 a. 20, 96, 97, 151, 226; 2009 a. 2, 28.

12 SECTION 3. 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 who has a catastrophic or life-threatening illness or condition

16 including AIDS, as defined in s. 49.686 (1) (a), and HIV infection, as defined in s.

17 49.686 (1) (d), of a life insurance policy or certificate, or the sale of the death benefit

18 under a life insurance policy or certificate, under a viatical life settlement contract,

19 as defined in s. 632.68 (1) (d) 632.69 (1) (k).

History: 1987 a. 312; 1989 a. 31, 336, 359; 1991 a. 37, 39, 269; 1993 a. 16, 112, 263, 437; 1995 a. 27, 56, 371, 380; 1997 a. 27, 37, 237; 1999 a. 9, 65; 1999 a. 150 s. 672; 1999 a. 167, 194; 2001 a. 16, 38, 109; 2003 a. 37, 85, 99, 135, 255, 326; 2005 a. 74, 297, 335, 361, 479, 483; 2007 a. 20, 96, 226; 2009 a. 2, 28.

⊙ In this paragraph, ^{use 2x}
“catastrophic or life-threatening illness or condition” includes AIDS, as defined in s. 49.686 (1) (a), and HIV infection, as defined in s. 49.686 (1) (d).

⊙ In this subdivision, ^v
“catastrophic or life-threatening illness or condition” includes AIDS, as defined in s. 49.686 (1) (a), and HIV infection as defined in s. 49.686 (1) (d).

Barman, Mike

From: Tierney, Michael
Sent: Monday, February 01, 2010 3:28 PM
To: LRB.Legal
Subject: Draft Review: LRB 09-4088/1 Topic: Life settlement regulation

Please Jacket LRB 09-4088/1 for the SENATE.