

HOUSE No. 02069

The Commonwealth of Massachusetts

PRESENTED BY:

Peter J. Koutoujian

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to life settlements and stranger originated life insurance.

PETITION OF:

NAME:

Peter J. Koutoujian

DISTRICT/ADDRESS:

10th Middlesex

HOUSE No. 02069

By Mr. Koutoujian of Waltham, a petition (accompanied by bill, House, No. 2069) of Peter J. Koutoujian relative to life settlements and stranger originated life insurance. Financial Services.

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act relative to life settlements and stranger originated life insurance.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

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

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

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

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

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

12 disseminated, circulated or placed before the public, directly or indirectly, for the purpose of
13 creating an interest in or inducing a person to purchase or sell, assign, devise, bequest or transfer
14 the death benefit or ownership of a life insurance policy or an interest in a life insurance policy
15 pursuant to a life settlement contract.

16 “Business of life settlements”, an activity involved in, but not limited to, offering to enter into,
17 soliciting, negotiating, procuring, effectuating, monitoring or tracking of life settlement
18 contracts.

19 “Chronically ill”, an individual: (1) unable to perform at least 2 activities of daily living; (2)
20 requiring substantial supervision to protect the individual from threats to health and safety due to
21 severe cognitive impairment; or (3) having a level of disability similar to that described in clause
22 (1) as determined by federal regulations promulgated pursuant to 26 U.S.C. section 7702B.

23 “Financing entity”, an underwriter, placement agent, lender, purchaser of securities, purchaser of
24 a policy or certificate from a life settlement provider, credit enhancer or any entity that has a
25 direct ownership in a policy or certificate that is the subject of a life settlement contract, whose
26 principal activity related to the transaction is providing funds to effect the life settlement contract
27 or purchase of 1 or more policies and who has an agreement in writing with 1 or more life
28 settlement providers to finance the acquisition of life settlement contracts. A financing entity
29 shall not include a non-accredited investor or purchaser. “Financing transaction”, a transaction in
30 which a licensed life settlement provider obtains financing from a financing entity including, but
31 not limited to, secured or unsecured financing, a securitization transaction or a securities offering
32 which either is registered or exempt from registration under federal and state securities law.

33 “Fraudulent life settlement act”, an act described in section 218.

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

36 “Licensee”,

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

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

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

55 greater than a cash surrender value or accelerated death benefit available at the time of an
56 application for a life settlement contract;

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

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

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

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

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

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

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

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

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

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

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

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

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

97 (1) a bank, savings bank, savings and loan association or credit union;

98 (2) a licensed lending institution or creditor or secured party pursuant to a premium finance loan

99 agreement which takes an assignment of a life insurance policy or certificate issued pursuant to a

100 group life insurance policy as collateral for a loan;

101 (3) the issuer of a life insurance policy or rider which provides accelerated death benefits

102 pursuant to the contract or cash surrender value;

103 (4) a natural person who enters into or effectuates not more than 1 agreement in a calendar year

104 for the transfer of a life insurance policy or certificate issued pursuant to a group life insurance

105 policy, for compensation or anything of value less than the expected death benefit payable under

106 the policy;

107 (5) a financing entity;

108 (6) a purchaser;

109 (7) an authorized or eligible insurer that provides stop loss coverage to a life settlement provider,

110 purchaser, financing entity, special purpose entity or related provider trust;

111 (8) a related provider trust;

112 (9) a special purpose entity;

113 (10) a life settlement broker; or

114 (11) an accredited investor or qualified institutional buyer as defined in regulation D, rule 501 or

115 rule 144A of the federal Securities Act of 1933, as amended, who purchases a life settlement

116 policy from a life settlement provider.

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

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

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

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

127 (3) a financing entity;

128 (4) a special purpose entity; or

129 (5) a related provider trust.

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

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

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

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

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

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

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

154 “Special purpose entity”, a corporation, partnership, trust, limited liability company or other
155 legal entity formed solely to provide, either directly or indirectly, access to institutional capital
156 markets: (i) for a financing entity or life settlement provider; or (ii) in connection with a

157 transaction in which the securities in the special purpose entity are acquired by the owner or by a
158 qualified institutional buyer as defined in Rule 144 promulgated under the federal Securities Act
159 of 1933, as amended, or the securities pay a fixed rate of return commensurate with established
160 asset-backed institutional capital markets.

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

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

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

178 owner or multiple owners who is a resident of the commonwealth, without first having obtained
179 a license from the commissioner.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

242 by the commissioner; provided, however, that a life insurance producer who is operating as a life
243 settlement broker shall not be subject to the requirements of this subsection. An individual
244 failing to meet the requirements of this subsection shall be subject to the penalties imposed by
245 the commissioner.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

305 be used to identify the insured or the insured's financial or medical information to any other
306 person unless the disclosure:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

384 (2) No later than 60 days following completion of the examination, the examiner in charge shall
385 file with the commissioner a verified written report of examination under oath. Upon receipt of
386 the verified report, the commissioner shall transmit the report to the licensee examined, together
387 with a notice that shall afford the licensee examined a reasonable opportunity of not more than
388 30 days to make a written submission or rebuttal with respect to any matters contained in the

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

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

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

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

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

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

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

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

433 commonwealth, it becomes necessary or expedient for the commissioner or any deputies or
434 examiners to travel outside the commonwealth, such licensee shall pay the proper expenses of
435 the commissioner or any deputies or examiners incurred. Whenever the commissioner deems it
436 advisable, the commissioner shall cause a complete audit of the books of the licensee to be made
437 by a disinterested expert accountant, and such licensee shall pay the proper expenses of such
438 audit.

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

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

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

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

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

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

452 (d) At the commissioner’s discretion, the commissioner may require the submission of
453 advertising material.

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

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

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

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

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

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

467 (v) that the owner has a right to terminate a life settlement contract within 15 days of the date it
468 is executed by all parties; that the owner has received the disclosures required by this section;
469 and that the following statement regarding rescission is included: "Rescission, if exercised by
470 the owner, is effective only if both notice of the rescission is given, and the owner repays all
471 proceeds and any premiums, loans, and loan interest paid on account of the life settlement
472 provider within the rescission period. If the insured dies during the rescission period, the life
473 settlement contract shall be deemed to have been rescinded subject to repayment by the owner or

474 the owner's estate of all proceeds and any premiums, loans, and loan interest to the life
475 settlement provider";

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

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

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

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

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

490 (xi) the following statement: "All medical, financial or personal information solicited or obtained
491 by a life settlement provider or life settlement broker about an insured, including the insured's
492 identity or the identity of family members, a spouse or a significant other, may be disclosed as
493 necessary to effect the life settlement contract between the owner and life settlement provider. If
494 you are asked to provide this information, you will be asked to consent to the disclosure. The

495 information may be provided to someone who buys the policy or provides funds for the
496 purchase. You may be asked to renew your permission to share information every 2 years.”;

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

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

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

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

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

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

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

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

522 (b) A life settlement broker shall provide the owner and the life settlement provider with the
523 following disclosures no later than the date the life settlement contract is signed by all parties.

524 The disclosures shall be conspicuously displayed in the life settlement contract or in a separate
525 document signed by the owner and provide the following information:

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

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

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

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

535 (v) a complete reconciliation of the gross offer or bid by the life settlement provider to the net
536 amount of proceeds or value to be received by the owner. For the purpose of this section, gross

537 offer or bid shall mean the total amount or value offered by the life settlement provider for the
538 purchase of 1 or more life insurance policies, inclusive of commissions and fees; and
539 (vi) that a failure to provide the disclosures or rights described in this section shall be deemed an
540 unfair trade practice pursuant to chapter 176D.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

576 (ii) a document in which the insured consents to the release of his medical records to a life
577 settlement provider, life settlement broker or insurance producer and, if the policy was issued

578 less than 2 years from the date of application for a life settlement contract, to the insurance
579 company that issued the policy.

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

584 (b) The insurer shall respond to a request for verification of coverage submitted by a life
585 settlement provider, life settlement broker or life insurance producer not later than 30 calendar
586 days of the date the request is received. The request for verification of coverage shall be made
587 on a form approved by the commissioner. The insurer shall complete and issue the verification
588 of coverage or indicate in which respects it is unable to respond. In its response, the insurer shall
589 indicate whether, based on the medical evidence and documents provided, the insurer intends to
590 pursue an investigation regarding the validity of the insurance contract.

591 (c) Prior to or at the time of execution of the life settlement contract, the life settlement provider
592 shall obtain a witnessed document in which the owner: (i) consents to the life settlement contract,
593 (ii) represents that the owner has a full and complete understanding of the life settlement
594 contract, (iii) represents that the owner has a full and complete understanding of the benefits of
595 the policy,(iv) acknowledges that the owner is entering into the life settlement contract freely
596 and voluntarily, and,(v) for persons with a terminal or chronic illness or condition, acknowledges
597 that the insured has a terminal or chronic illness and that the terminal or chronic illness or
598 condition was diagnosed after the policy was issued.

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

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

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

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

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

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

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

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

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

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

638 (m) This prohibition shall not apply if:

639 (i) the owner certifies to the provider that the policy was issued upon the owner's exercise of
640 conversion rights arising out of a group or individual policy; provided that the total of the time
641 covered under the conversion policy plus the time covered under the prior policy is at least 24

642 months; provided, further that the time covered under a group policy shall be calculated without
643 regard to a change in insurance carriers, if the coverage has been continuous and under the same
644 group sponsorship; or

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

647 (A) the owner or insured is terminally or chronically ill;

648 (B) the owner or insured disposes of his ownership interests in a closely held corporation,
649 pursuant to the terms of a buyout or other similar agreement in effect at the time the insurance
650 policy was initially issued;

651 (C) the owner's spouse dies;

652 (D) the owner divorces their spouse;

653 (E) the owner retires from full-time employment;

654 (F) the owner becomes physically or mentally disabled and a physician determines that the
655 disability prevents the owner from maintaining full-time employment; or

656 (G) a final order, judgment or decree is entered by a court of competent jurisdiction on the
657 application of a creditor of the owner adjudicating the owner bankrupt or insolvent, or approving
658 a petition seeking reorganization of the owner or appointing a receiver, trustee or liquidator to all
659 or a substantial part of the owner's assets;

660 (2) Copies of the independent evidence required by clause (ii) shall be submitted to the insurer
661 when the life settlement provider submits a request to the insurer for verification of coverage.

662 The copies shall be accompanied by a letter of attestation from the life settlement provider that
663 the copies are true and correct copies of the documents received by the life settlement provider.
664 Nothing in this section shall prohibit an insurer from exercising its right to contest the validity of
665 any policy.

666 (3) If the life settlement provider submits to the insurer a copy of independent evidence provided
667 for in subclause (A) of clause (ii) when the life settlement provider submits a request to the
668 insurer to effect the transfer of the policy to the life settlement provider, the copy is deemed to
669 establish that the life settlement contract satisfies the requirements of this section.

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

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

677 (ii) A life settlement provider from the commonwealth who enters into a life settlement contract
678 with an owner who is a resident of another state that has enacted statutes or adopted regulations
679 governing life settlement contracts, shall be governed in the effectuation of that life settlement
680 contract by the statutes and regulations of the owner's state of residence. If the state in which the
681 owner is a resident has not enacted statutes or regulations governing life settlement contracts, the
682 life settlement provider shall give the owner notice that neither state regulates the transaction
683 upon which he is entering. For transactions in those states, however, the life settlement provider

684 is to maintain all records required if the transactions were executed in the owner's state of
685 residence. The forms used in those states need not be approved by the commissioner.

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

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

690 (1) Acts or omissions committed by a person that, knowingly and with an intent to defraud, for
691 the purpose of depriving another of property or for pecuniary gain, commits or permits its
692 employees or its agents to engage in acts, including, but not limited to, the following:

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

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

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

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

700 (D) premiums paid on an insurance policy;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

760 (vii) with respect to a life settlement contract or insurance policy and a life settlement provider,
761 knowingly enter into a life settlement contract with an owner if, in connection with the life
762 settlement contract, anything of value will be paid to a life settlement broker that is controlling,
763 controlled by or under common control with the life settlement provider, the financing entity or a

764 related provider trust that is involved in the life settlement contract unless the relationship is
765 disclosed to the owner;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

824 (i) in administrative or judicial proceedings to enforce laws administered by the commissioner;
825 (ii) to federal, state or local law enforcement or regulatory agencies or to an organization
826 established for the purpose of detecting and preventing fraudulent life settlement acts; or
827 (iii) at the discretion of the commissioner, to a person in the business of life settlements that is
828 aggrieved by a fraudulent life settlement act.

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

831 (f) This act shall not:

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

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

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

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

840 (g) (1) Life settlement providers and life settlement brokers shall have in place antifraud
841 initiatives to detect, prosecute and prevent fraudulent life settlement acts. At the discretion of the
842 commissioner, the commissioner may order, or a licensee may request and the commissioner
843 may grant, such modifications of the following required initiatives as necessary to ensure an

844 effective antifraud program. The modifications may be more or less restrictive than the required
845 initiatives so long as the modifications may reasonably be expected to accomplish the purpose of
846 this section. Antifraud initiatives shall include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

896 Section 223G. A violation of this act shall be considered an unfair trade practice under sections
897 3 and 4 of chapter 176D, and shall be subject to the penalties set forth in section 7 of said chapter
898 176D.

899 SECTION 2. (a) A person licensed to act as a viatical settlement broker or viatical settlement
900 provider as of the effective date of this act, shall be deemed qualified for licensure as a life
901 settlement broker or life settlement provider, respectively, and shall be subject to all the
902 provisions of this article as if the person were originally licensed as a life settlement broker or
903 life settlement provider.

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

913 (c) A person who has lawfully negotiated life settlement contracts between an owner residing in
914 the commonwealth and 1 or more life settlement providers for at least 1 year immediately prior
915 to the effective date of this act may continue to do so pending approval or disapproval of that
916 person's application for a license as long as the application is filed with the commissioner not
917 later than 30 days after publication by the commissioner of an application form and instructions
918 for licensure of life settlement brokers. Any person transacting business under this provision
919 shall be obligated to comply with all other requirements of this act.

920 SECTION 3. This act shall apply to all life settlement contracts entered into on or after January
921 1, 2011 involving a life insurance policy in effect, or entered into, on or after the effective date of
922 this act.