

SENATE No. 2470

The Commonwealth of Massachusetts

SENATE, December 10, 2012

The committee on Senate committee on Ways and Means to whom was referred the House Bill relative to life settlements and stranger originated life insurance (House, No. 4296) report recommending that the same ought to pass with an amendment striking out all after the enacting clause and inserting in place thereof the text of Senate document numbered 2470.

For the committee,

STEPHEN M. BREWER.

SENATE No. 2470

The Commonwealth of Massachusetts

In the Year Two Thousand Twelve

1 SECTION 1. Chapter 175 of the General Laws is hereby amended by striking out
2 sections 212 to 223, inclusive, as appearing in the 2010 Official Edition, and inserting in place
3 thereof the following 18 sections:-

4 Section 212. As used in this section and sections 213 to 223E, inclusive, the following
5 words shall have the following meanings unless the context clearly requires otherwise:

6 “Advertisement”, a written, electronic or printed communication or a communication by
7 means of a recorded telephone message or transmitted on radio, television, the Internet or similar
8 communications media, published, disseminated, circulated or placed before the public, directly
9 or indirectly, for the purpose of creating an interest in or inducing a person to purchase or sell,
10 assign, devise, bequest or transfer the death benefit or ownership of a life insurance policy or an
11 interest in a life insurance policy pursuant to a life settlement contract.

12 “Business of life settlements”, an activity including, but not limited to, offering to enter
13 into, soliciting, negotiating, procuring, effectuating, monitoring or tracking a life settlement
14 contract.

15 “Chronic illness”, a condition because of which an individual has been certified by a
16 licensed health care practitioner as: (1) being unable to perform at least 2 activities of daily

17 living; (2) requiring substantial supervision to protect the individual from threats to health and
18 safety due to severe cognitive impairment; or (3) having a level of disability similar to that
19 described in clause (1) as determined under regulations promulgated by the United States
20 Secretary of Health and Human Services.

21 “Financing entity”, an underwriter, placement agent, lender, purchaser of securities,
22 purchaser of a policy or certificate from a life settlement provider, credit enhancer or any entity
23 that has a direct ownership in a policy or certificate that is the subject of a life settlement
24 contract, whose principal activity related to the transaction is providing funds to effect the life
25 settlement contract or purchase of a policy and who has an agreement in writing with a life
26 settlement provider to finance the acquisition of a life settlement contract; provided, however,
27 that “financing entity” shall not include a nonaccredited investor or purchaser.

28 “Financing transaction”, a transaction in which a licensed life settlement provider obtains
29 financing from a financing entity including, but not limited to, secured or unsecured financing, a
30 securitization transaction or a securities offering which is registered or exempt from registration
31 under federal and state securities laws.

32 “Individual identification data”, an insured’s name, address, telephone number, facsimile
33 number, electronic mail address, photograph or likeness, employer, employment status, social
34 security number or any other information that is likely to lead to the identification of the insured.

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

37 “Licensee”, a person licensed as a life settlement provider or life settlement broker by the
38 commissioner of insurance.

39 “Life insurance producer”, a person licensed as a resident or nonresident insurance
40 producer who has received qualification for a license in a line of authority for life insurance
41 coverage under sections 162H to 162X, inclusive.

42 “Life settlement broker”, a person who, on behalf of an owner and for a fee, commission
43 or other consideration, offers or attempts to negotiate a life settlement contract between an owner
44 and a life settlement provider.

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

53 (2) the transfer for compensation or value of ownership or beneficial interest in a trust or
54 other entity that owns such policy if the trust or other entity was formed or availed of for the
55 principal purpose of acquiring a life insurance contract, which life insurance contract insures the
56 life of a person residing in the commonwealth; or

57 (3) a premium finance loan made for a policy on or before the date of issuance of the
58 policy where: (i) the loan proceeds are not used solely to pay premiums for the policy and any
59 costs or expenses incurred by the lender or the borrower in connection with the financing; (ii) on
60 the date of the premium finance loan, the owner receives a guarantee of the future life settlement

61 value of the policy; or (iii) the owner agrees on the date of the premium finance loan to sell the
62 policy or a portion of its death benefit on any date following the issuance of the policy; provided,
63 however, that a “life settlement contract” shall not include:

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

67 (ii) a premium finance loan or a loan made by a bank or other licensed financial
68 institution provided that neither a default on such loan nor the transfer of a policy in connection
69 with such default is pursuant to an agreement or understanding with another person to evade
70 regulation under sections 213 to 223E, inclusive;

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

72 (iv) a loan made by a lender under chapter 255C provided that loan is not
73 described in clause (3) and is not otherwise a life settlement contract;

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

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

80 (vii) a bona fide business succession planning arrangement: (A) between
81 shareholders in a corporation or between a corporation and any of its shareholders or any trusts

82 established by its shareholders; (B) between partners in a partnership or between a partnership
83 and any of its partners or any trusts established by its partners; or (C) between members in a
84 limited liability company or between a limited liability company and any of its members or any
85 trusts established by its members;

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

89 (ix) any other contract, transaction or arrangement that the commissioner
90 determines is not of the type intended to be regulated by sections 213 to 223E, inclusive.

91 "Life settlement provider", a person who enters into a life settlement contract with an
92 owner; provided, however, that a life settlement provider shall not include: (1) a bank, savings
93 bank, savings and loan association or credit union; (2) a licensed lending institution or creditor or
94 secured party pursuant to a premium finance loan agreement which takes an assignment of a life
95 insurance policy or certificate issued pursuant to a group life insurance policy as collateral for a
96 loan; (3) the issuer of a life insurance policy or rider which provides accelerated death benefits
97 pursuant to the contract or cash surrender value; (4) a natural person who enters into or
98 effectuates not more than 1 agreement in a calendar year for the transfer of a life insurance
99 policy or certificate issued pursuant to a group life insurance policy for compensation or
100 anything of value less than the expected death benefit payable under the policy; (5) a financing
101 entity; (6) a purchaser; (7) an authorized or eligible insurer that provides stop loss coverage to a
102 life settlement provider, purchaser, financing entity, special purpose entity or related provider
103 trust; (8) a related provider trust; (9) a special purpose entity; (10) a life settlement broker; or

104 (11) an accredited investor or qualified institutional buyer as defined in Regulation D of Rule
105 501 of the federal Securities Act of 1933, 17 C.F.R. section 230.501, as amended, or rule 144A
106 of the federal Securities Act of 1933, 17 C.F.R. 230.144A, as amended, who purchases a life
107 settlement policy from a life settlement provider.

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

110 “Owner”, the owner of a life insurance policy or a certificate holder under a group policy
111 who enters or seeks to enter into a life settlement contract; provided, however, that an “owner”
112 shall not be limited to an owner of a life insurance policy or a certificate holder under a group
113 policy that insures the life of an individual with a terminal illness or chronic illness or condition
114 except where specifically addressed; and provided further, that “owner” shall not include: (1) a
115 life settlement provider or broker; (2) a qualified institutional buyer as defined in rule 144A of
116 the federal Securities Act of 1933, 17 C.F.R. 230.144A, as amended; (3) a financing entity; (4) a
117 special purpose entity; or (5) a related provider trust.

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

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

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

126 “Purchaser”, a person who pays compensation or consideration for a beneficial interest in
127 a trust which is vested with, or for the assignment, transfer or sale of, an ownership or other
128 interest in a life insurance policy or a certificate issued pursuant to a group life insurance policy
129 that has been the subject of a life settlement contract.

130 “Related provider trust”, a titling trust or other trust established by a licensed life
131 settlement provider or a financing entity for the sole purpose of holding the ownership or
132 beneficial interest in purchased policies in connection with a financing transaction; provided,
133 however, that in order to qualify as a related provider trust, the trust shall have a written
134 agreement with a licensed life settlement provider under which the licensed life settlement
135 provider shall be responsible for ensuring compliance with all statutory and regulatory
136 requirements and under which the trust agrees to make all records and files relating to life
137 settlement transactions available to the commissioner as if those records and files were
138 maintained directly by the licensed life settlement provider.

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

141 “Special purpose entity”, a person other than a natural person formed solely to provide,
142 either directly or indirectly, access to institutional capital markets: (i) for a financing entity or life
143 settlement provider; or (ii) in connection with a transaction in which the securities in the special
144 purpose entity are acquired by the owner or by a qualified institutional buyer as defined in Rule
145 144 of the federal Securities Act of 1933, as amended, or the securities pay a fixed rate of return
146 commensurate with established asset-backed institutional capital markets.

147 “Stranger-originated life insurance”, an act, practice or arrangement to initiate the
148 issuance of a life insurance policy for the benefit of a third-party investor who, at the time of
149 policy origination, has no insurable interest in the life of the insured; provided, however, that
150 such acts, practices or arrangements shall include, but not be limited to, cases in which life
151 insurance is purchased with resources or guarantees from or through a person who, at the time of
152 policy inception, could not lawfully initiate the policy and where, at the time of inception, there
153 is an arrangement or agreement, whether verbal or written, to directly or indirectly transfer the
154 ownership of the policy or the policy benefits to a third party; provided further, that trusts that
155 are created to give the appearance of insurable interest and that are used to initiate policies for
156 investors shall violate insurable interest laws and the prohibition against wagering on life; and
157 provided further, that “stranger-originated life insurance” arrangements shall not include lawful
158 life settlement contracts authorized in sections 213 to 223E, inclusive, or those practices set forth
159 in clauses (i) to (ix), inclusive, in the definition of life settlement contract, provided that such life
160 settlement contracts or practices are not part of a transaction otherwise prohibited by said
161 sections 213 to 223E, inclusive.

162 “Terminal illness”, a condition that a licensed health care professional certifies can
163 reasonably be expected to result in death in 24 months or less.

164 Section 213. (a) No person shall act as a life settlement provider or, except as provided in
165 clauses (c) and (d), a life settlement broker with an owner who is a resident of the
166 commonwealth, without first obtaining a license from the commissioner.

167 (b) The secretary of administration and finance shall determine the fee for a life
168 settlement provider license and life settlement broker license under section 3B of chapter 7;

169 provided, however, that the term and fees for a life settlement provider license shall be equal to
170 that of a foreign stock life insurance company and the term and fees of a life settlement broker
171 license shall be equal to that of an insurance producer license. Licenses shall be renewed on
172 their anniversary date upon payment of a renewal fee as determined by the secretary. Failure to
173 pay the fees on or before the renewal date shall result in expiration of the license.

174 (c) A life insurance producer duly licensed as a resident insurance producer with a life
175 line of authority in the commonwealth or in the life insurance producer's home state for at least 1
176 year and is licensed as a nonresident producer in the commonwealth shall be deemed to meet the
177 licensing requirements of this section and may operate as a life settlement broker; provided,
178 however, that not later than 30 days from the first day of operating as a life settlement broker, the
179 life insurance producer shall notify the commissioner, on a form prescribed by the commissioner,
180 that the producer is acting as a life settlement broker and the producer shall pay the prescribed
181 fee as determined by the secretary of administration and finance under section 3B of chapter 7.
182 Notification shall include an acknowledgment by the life insurance producer that the producer
183 shall operate as a life settlement broker in accordance with this section.

184 (d) A licensed attorney, certified public accountant or financial planner accredited by a
185 nationally recognized accreditation agency, who is retained in the type of practice customarily
186 performed in their professional capacity to represent the owner and whose compensation is not
187 paid directly or indirectly by the life settlement provider or purchaser, may negotiate life
188 settlement contracts on behalf of the owner without obtaining a license as a life settlement
189 broker.

190 (e) Upon the filing of an application for initial licensure and payment of the application
191 fee, the commissioner shall examine each applicant and may issue a license if the commissioner
192 finds that the applicant:

193 (1) has provided a detailed plan of operation, if the applicant is a life settlement
194 provider;

195 (2) is competent, trustworthy and intends to transact its business in good faith;

196 (3) has a good business reputation and has the experience, training and education
197 to be qualified in the business for which the license is applied;

198 (4) if a legal entity, was formed or organized under the laws of the commonwealth
199 or is a foreign legal entity authorized to transact business in the commonwealth or provides a
200 certificate of good standing from the state of its domicile; and

201 (5) if a life settlement provider, has provided to the commissioner an antifraud
202 plan that meets the requirements of subsection (g) of section 223B.

203 (f) An applicant for a license under this section shall provide such information as the
204 commissioner may require on forms authorized by the commissioner. The commissioner may
205 require an applicant to fully disclose the identity of its stockholders owning 10 per cent or more
206 of the shares of an applicant whose shares are publicly traded, partners, officers and employees.
207 The commissioner shall not issue a license to a qualified applicant if the commissioner
208 determines that an officer, employee, stockholder or partner thereof, who may materially
209 influence the applicant's conduct, has failed to establish its individual qualifications for licensure
210 under this chapter.

211 (g) A license issued to a legal entity shall authorize all members, officers and designated
212 employees to act as licensees under the license; provided, however, that those persons shall be
213 identified in the initial application or in any supplements to the application.

214 (h) The commissioner shall not issue a license to a nonresident applicant unless a written
215 designation of an agent for service of process is filed and maintained with the commissioner or
216 unless the applicant has filed with the commissioner the applicant's written irrevocable consent
217 that any action against the applicant may be commenced against the applicant by service of
218 process on the commissioner.

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

221 (j) A life settlement broker shall not use any person to perform the functions of a life
222 settlement provider unless such person holds a current, valid life settlement provider license.

223 (k) All licensees under this section shall provide to the commissioner any new or revised
224 information about officers, 10 per cent or more stockholders, partners, directors, members or
225 designated employees within 30 days after receiving such information.

226 (l) A person licensed as a life settlement broker shall, on a biennial basis, complete 15
227 hours of training related to the business of life settlements and life settlement transactions as
228 required by the commissioner; provided, however, that a life insurance producer who is
229 operating as a life settlement broker shall not be subject to the requirements of this subsection.
230 Failure to meet the requirements of this subsection may result in suspension or nonrenewal of
231 license by the commissioner.

232 (m) A person licensed as a life settlement broker shall represent only the owner and shall
233 owe a fiduciary duty to the owner to act according to the owner's instructions and in the best
234 interest of the owner, regardless of the manner in which the life settlement broker is
235 compensated.

236 Section 214. (a) The commissioner may suspend, revoke or refuse to renew the license of
237 a licensee if the commissioner finds that:

238 (1) there was a material misrepresentation in the application for the license;

239 (2) the licensee or any officer, partner, member or director has been convicted or
240 determined by a regulator to have committed a fraudulent or dishonest practice, is subject to a
241 final administrative action or is otherwise shown to be untrustworthy or incompetent to act as a
242 licensee;

243 (3) if a life settlement provider, the licensee demonstrates a pattern of
244 unreasonably withholding payments to policy owners;

245 (4) the licensee no longer meets the requirements for initial licensure;

246 (5) the licensee or any officer, partner, member or director has been convicted of a
247 felony or a misdemeanor of which criminal fraud is an element, or the licensee has pleaded
248 guilty or had the case continued without a finding with respect to a felony or a misdemeanor of
249 which criminal fraud or moral turpitude is an element, regardless of whether a judgment of
250 conviction has been entered by the court;

251 (6) the life settlement provider has entered into a life settlement contract using a
252 form that has not been approved under sections 213 to 223E, inclusive;

253 (7) the life settlement provider has failed to honor contractual obligations set out
254 in a life settlement contract;

255 (8) the life settlement provider has assigned, transferred or pledged a settled
256 policy to a person other than a life settlement provider licensed under this chapter, a purchaser,
257 an accredited investor or qualified institutional buyer as defined respectively in Regulation D of
258 Rule 501 of the federal Securities Act of 1933, 17 C.F.R. section 230.501, as amended, or rule
259 144A of the federal Securities Act of 1933, 17 C.F.R. section 230.144A, as amended, a financing
260 entity, a special purpose entity or a related provider trust; or

261 (9) the licensee or any officer, partner, member or key management personnel has
262 violated sections 213 to 223E, inclusive.

263 (b) Before the commissioner denies a license application or suspends, revokes or refuses
264 to renew the license of a licensee under sections 213 to 223E, inclusive, the commissioner shall
265 conduct a hearing in accordance with chapter 30A.

266 Section 215. (a) No person shall use any form of life settlement contract or provide to an
267 owner a disclosure statement form unless it has been filed with and approved by the
268 commissioner. The commissioner shall disapprove a life settlement contract form or disclosure
269 statement form if, in the commissioner's opinion, the contract fails to meet the requirements of
270 sections 219, 220, 222 and subsection (b) of section 223B or are unreasonable, contrary to the
271 interests of the public or are otherwise misleading or unfair to the owner.

272 (b) No insurer shall, as a condition of responding to a request for verification of coverage
273 or in connection with the transfer of a policy under a life settlement contract, require that the
274 owner, insured, life settlement provider or life settlement broker sign any form, disclosure,

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

277 Section 216. (a) A life settlement provider shall file with the commissioner, annually on
278 or before March 1, a statement containing such information as the commissioner may prescribe
279 by regulation. In addition to any other requirements, the annual statement shall: (i) specify the
280 total number, aggregate face amount and life settlement proceeds of policies settled during the
281 immediately preceding calendar year, together with a breakdown of the information by policy
282 issue year for each carrier; (ii) include the names of the insurance companies whose policies
283 have been settled; and (iii) include only those transactions where the owner is a resident of the
284 commonwealth; provided, however, that an annual statement shall not include individual
285 transaction data regarding the business of life settlements or information that there is a
286 reasonable basis to believe could be used to identify the owner or the insured.

287 (b) A life settlement provider that willfully fails to file an annual statement or willfully
288 fails to reply within 30 days after receipt of a written inquiry by the commissioner in connection
289 therewith shall, in addition to any other penalties prescribed by law, be subject, upon due notice
290 and opportunity to be heard, to a penalty of up to \$250 per day of delay, not to exceed \$25,000 in
291 the aggregate, for each such failure.

292 Section 217. (a) Except as otherwise authorized or required by law, a life settlement
293 provider, life settlement broker, insurance company, life insurance producer, information bureau,
294 rating agency or company or any other person with actual knowledge of an insured's identity
295 shall not disclose the individual identification data of an insured or information that there is a

296 reasonable basis to believe could be used to identify the insured or the insured's financial or
297 medical information to any other person unless the disclosure is:

298 (1) necessary to effect a life settlement contract between the owner and a life
299 settlement provider and the owner and insured have provided prior written consent to the
300 disclosure;

301 (2) necessary to effectuate the sale of a life settlement contract, or interests
302 therein, as investments; provided, however, that the sale shall be conducted in accordance with
303 applicable state and federal securities laws; and provided further, that the owner and the insured
304 shall have both provided prior written consent to the disclosure;

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

307 (4) a term or condition to the transfer of a policy by 1 life settlement provider to
308 another life settlement provider;

309 (5) necessary to allow the life settlement provider or life settlement broker or an
310 authorized representative to make contacts for the purpose of determining health status;
311 provided, however, that for the purposes of this section, the term "authorized representative"
312 shall not include a person who has or may have a financial interest in the life settlement contract
313 other than a licensed life settlement provider, licensed life settlement broker, financing entity,
314 related provider trust or special purpose entity; and provided further, that a life settlement
315 provider or life settlement broker shall require its authorized representative to agree in writing to
316 adhere to the privacy provisions of this section; or

317 (6) required to purchase stop loss coverage.

318 (b) Private information solicited or obtained in connection with a proposed or actual life
319 settlement contract shall be subject to the provisions applicable to financial institutions under the
320 Gramm Leach Bliley Act, P.L. 106-102 (1999), and all other state and federal laws relating to the
321 confidentiality of nonpublic personal information.

322 Section 218. (a) The commissioner may, when the commissioner deems it reasonably
323 necessary to protect the interests of the public, examine the business and affairs of any licensee
324 or applicant for a license. The commissioner may order a licensee or applicant to produce
325 records, books, files or other information reasonably necessary to ascertain whether such licensee
326 or applicant is acting or has acted in violation of the law or otherwise contrary to the interests of
327 the public. The expenses incurred in conducting an examination shall be paid by the licensee or
328 applicant.

329 (b) For a foreign or alien licensee, the commissioner may accept an examination report
330 on the licensee as prepared by the appropriate licensing authority for the licensee's state of
331 domicile or port-of-entry state.

332 (c) Individual identification data for all owners, purchasers and insureds shall be
333 considered private and confidential information and shall not be disclosed by the commissioner
334 unless the disclosure is required by law or is disclosed to the National Association of Insurance
335 Commissioners, to the insurance department of any other state or country or to law enforcement
336 officials of the commonwealth or any other state or agency of the federal government at any
337 time, so long as the agency or office receiving the information agrees in writing to hold such
338 material confidential.

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

342 (e) (1) In conducting an examination, the commissioner shall use methods common
343 to the examination of licensees, including guidelines and procedures for examinations as adopted
344 by the National Association of Insurance Commissioners.

345 (2) A licensee or person from whom information is sought, including the
346 licensee's or person's officers, directors and agents, shall provide to the commissioner timely,
347 convenient and free access at its offices to all books, records, accounts, papers, documents, assets
348 and computer or other recordings relating to the property, assets, business and affairs of the
349 licensee being examined. The officers, directors, employees and agents of the licensee or person
350 shall facilitate the examination and aid in the examination so far as it is in their power to do so.
351 The refusal of a licensee, or its officers, directors, employees or agents, to submit to examination
352 or to comply with a reasonable written request of the commissioner shall be grounds for
353 suspension, refusal or nonrenewal of a license or authority held by the licensee to engage in the
354 life settlement business or any other business subject to the commissioner's jurisdiction.

355 (3) The commissioner may issue subpoenas, administer oaths and examine under
356 oath any person as to any matter pertinent to the examination. Upon the failure or refusal of a
357 person to obey a subpoena under this section, the commissioner may petition a court of
358 competent jurisdiction and, upon proper showing, the court may enter an order compelling the
359 witness to appear and testify or produce documentary evidence.

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

364 (5) Nothing in sections 213 to 223E, inclusive, shall limit the commissioner's
365 authority to terminate or suspend an examination in order to pursue other legal or regulatory
366 action under any other insurance law. Findings of fact and conclusions made pursuant to an
367 examination shall be prima facie evidence in a legal or regulatory action.

368 (6) Nothing in sections 213 to 223E, inclusive, shall limit the commissioner's
369 authority to use and, if the commissioner deems appropriate, to make public any final or
370 preliminary examination report, any examiner's or licensee's work papers or other documents or
371 any other information discovered or developed during the course of an examination in the
372 furtherance of a legal or regulatory action.

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

377 (2) Not later than 60 days after completion of the examination, the commissioner
378 shall transmit a report of the examination to the licensee examined, together with a notice that
379 shall afford the licensee examined a reasonable opportunity of not more than 30 days to make a
380 written submission or rebuttal with respect to any matters contained in the examination report,
381 which shall become part of the report, or to request a hearing on any matter in dispute.

382 (g) Except as otherwise provided, all examination reports, working papers, recorded
383 information, documents and copies thereof produced by, obtained by or disclosed to the
384 commissioner or any other person in the course of an examination, or in the course of analysis or
385 investigation by the commissioner of the financial condition or market conduct of a licensee,
386 shall be confidential and privileged, shall not be subject to chapter 66 or clause Twenty-sixth of
387 section 7 of chapter 4, shall not be subject to subpoena and shall not be subject to discovery or
388 admissible in evidence in any private civil action. The commissioner may use the documents,
389 materials or other information in the furtherance of any regulatory or legal action brought as part
390 of the commissioner's official duties. The licensee being examined shall have access to all
391 documents used to make the report.

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

397 (2) Notwithstanding the requirements of this subsection, the commissioner may
398 retain from time to time, on an individual basis, qualified actuaries, certified public accountants
399 or other similar individuals who are independently practicing their professions, even though such
400 persons may from time to time be similarly employed or retained by persons subject to
401 examination under sections 213 to 223E, inclusive.

402 (i) (1) No cause of action shall arise and no liability shall be imposed against the
403 commissioner, the commissioner's authorized representatives or any examiner appointed by the

404 commissioner for statements made or conduct performed in good faith while carrying out
405 sections 213 to 223E, inclusive.

406 (2) No cause of action shall arise and no liability shall be imposed against a
407 person for communicating or delivering information or data to the commissioner, the
408 commissioner's authorized representative or an examiner related to an examination if the
409 communication or delivery was performed in good faith and without fraudulent intent or the
410 intent to deceive. Nothing in this paragraph shall abrogate or modify any common law or
411 statutory privilege or immunity enjoyed by any person referenced in paragraph (1).

412 (3) A person referenced in paragraph (1) or (2) shall be entitled to an award of
413 attorneys' fees and costs if that person is the prevailing party in a civil action for libel, slander or
414 any other relevant tort arising out of activities in carrying out sections 213 to 223E, inclusive and
415 the party bringing the action was not substantially justified in doing so. For purposes of this
416 section "substantially justified" shall mean that the action had a reasonable basis in law or in fact
417 at the time it was initiated.

418 (j) The charge for an examination under this section shall be determined annually by the
419 secretary of administration and finance under section 3B of chapter 7 and shall be paid by each
420 licensee within 30 days after notice from the commissioner of the charge. The charge shall
421 include an amount equal to the cost of fringe benefits as established by the secretary of
422 administration and finance under section 5D of chapter 29. If in the course of an examination of
423 a domestic or foreign licensee that maintains a branch office outside the commonwealth it
424 becomes necessary or expedient for the commissioner or any deputies or examiners to travel
425 outside the commonwealth, the licensee shall pay the proper expenses incurred by the

426 commissioner or the deputies or examiner. Whenever the commissioner deems it advisable, the
427 commissioner shall cause a complete audit of the books of the licensee to be made by a
428 disinterested expert accountant and such licensee shall pay the proper expenses of the audit.

429 Section 219. (a) A licensed life settlement broker or life settlement provider may conduct
430 or participate in advertisements. The advertisements shall comply with all advertising laws or
431 rules and regulations promulgated by the commissioner that are applicable to insurers, life
432 insurance producers, brokers and providers.

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

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

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

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

440 (3) with respect to a life settlement provider, enter into a life settlement contract
441 unless the related advertisements, as may be prescribed by regulation, have been filed with the
442 commissioner.

443 (d) Prior to publication, the commissioner may require the submission of advertising
444 material.

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

448 Section 220. (a) Not later than the date of application for a life settlement contract, a life
449 settlement provider shall provide to the owner, in a separate document signed by the owner, the
450 following information:

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

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

455 (3) that the proceeds from a life settlement contract may be subject to the claims
456 of creditors;

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

460 (5) that the owner has a right to terminate a life settlement contract not more than
461 15 days after the date it is executed by all parties;

462 (6) that the owner has received the disclosures required by this section;

463 (7) that the following statement regarding rescission is included: "Rescission, if
464 exercised by the owner, is effective only if both notice of the rescission is given and the owner
465 repays all proceeds and any premiums, loans and loan interest paid on account of the life

466 settlement provider within the rescission period. If the insured dies during the rescission period,
467 the life settlement contract shall be deemed to have been rescinded subject to repayment by the
468 owner or the owner's estate of all proceeds and any premiums, loans and loan interest to the life
469 settlement provider.”;

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

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

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

481 (11) the date by which the funds will be available to the owner and the transmitter
482 of the funds;

483 (12) that the commissioner shall require delivery of a buyer's guide or a similar
484 consumer advisory package in the form prescribed by the commissioner to owners during the
485 solicitation process;

486 (13) the following statement: “All medical, financial or personal information
487 solicited or obtained by a life settlement provider or life settlement broker about an insured,
488 including the insured’s identity or the identity of the insured’s family members, a spouse or a
489 significant other, may be disclosed as necessary to effect the life settlement contract between the
490 owner and the life settlement provider. If you are asked to provide this information, you will be
491 asked to consent to the disclosure. The information may be provided to someone who buys the
492 policy or provides funds for the purchase. You may be asked to renew your permission to share
493 information every 2 years.”;

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

499 (15) that the insured may be contacted by either the life settlement provider or life
500 settlement broker or its authorized representative for the purpose of determining the insured’s
501 health status or to verify the insured’s address; provided, however, that this contact shall be
502 limited to once every 3 months if the insured has a life expectancy of more than 1 year and not
503 more than once per month if the insured has a life expectancy of 1 year or less;

504 (16) the affiliation, if any, between the life settlement provider and the issuer of
505 the insurance policy to be settled;

506 (17) that a life settlement broker represents exclusively the owner and not the
507 insurer, the life settlement provider or any other person and that the broker owes a fiduciary duty

508 to the owner, including a duty to act according to the owner's instructions and in the best interest
509 of the owner;

510 (18) the name, address and telephone number of the provider;

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

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

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

520 (c) A life settlement broker shall provide the owner and the life settlement provider with
521 the following disclosures not later than the date the life settlement contract is signed by all
522 parties. The disclosures shall be conspicuously displayed in the life settlement contract or in a
523 separate document signed by the owner and provide the following information:

524 (1) the name, business address and telephone number of the life settlement broker;

525 (2) a complete and accurate description of all the offers, counter offers,
526 acceptances and rejections relating to the proposed life settlement contract;

527 (3) any affiliations or contractual arrangements between the life settlement broker
528 and any person making an offer in connection with the proposed life settlement contracts;

529 (4) the name of each life settlement broker involved in the life settlement
530 agreement who receives compensation and the amount of compensation received by that broker,
531 which compensation shall include anything of value paid or given to the life settlement broker in
532 connection with the life settlement contract;

533 (5) a complete reconciliation of the gross offer or bid by the life settlement
534 provider to the net amount of proceeds or value to be received by the owner; provided, however,
535 that for the purpose of this section, “gross offer” or “bid” shall mean the total amount or value
536 offered by the life settlement provider for the purchase of a life insurance policies, inclusive of
537 commissions and fees; and

538 (6) that a failure to provide the disclosures or rights described in this section shall
539 be deemed an unfair trade practice under chapter 176D.

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

542 Section 221. (a) Insurance carriers may inquire in the application for insurance whether
543 the proposed owner intends to pay premiums with the assistance of financing from a lender that
544 will use the policy as collateral to support the financing.

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

548 (c) The insurance carrier may disclose certain information to the applicant and the
549 insured, either on the application or an amendment to the application to be completed not later

550 than the delivery of the policy including, but not limited to, the following disclosure: “If you
551 have entered into a loan arrangement where the policy is used as collateral and the policy
552 changes ownership at some point in the future in satisfaction of the loan, the following may be
553 true:

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

556 (2) a change of ownership could, in the future, limit your ability to purchase
557 future insurance on the insured’s life because there is a limit on the amount of coverage insurers
558 will issue on 1 life;

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

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

566 (d) The insurance carrier may require certifications from the applicant or the insured,
567 including the following certified statements:

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

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

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

575 Section 222. (a) A life settlement provider entering into a life settlement contract with an
576 owner of a policy, where the insured has a terminal or chronic illness or condition, shall first
577 obtain:

578 (1) if the owner is the insured, a written statement from a licensed attending
579 physician that the owner is of sound mind; and

580 (2) a document in which the insured consents to the release of the insured’s
581 medical records to a life settlement provider, life settlement broker or insurance producer and, if
582 the policy was issued less than 2 years from the date of application for a life settlement contract,
583 to the insurance company that issued the policy.

584 (b) Within 20 days after an owner executes the life settlement contract, the life settlement
585 provider shall give written notice to the insurer that issued the insurance policy that the policy
586 has become subject to a life settlement contract. The notice shall be accompanied by the
587 documents required in clauses (i) and (ii) of subsection (a).

588 (c) The insurer shall respond to a request for verification of coverage submitted by a life
589 settlement provider, life settlement broker or life insurance producer not later than 30 calendar
590 days after the date the request was received. The request for verification of coverage shall be

591 made on a form approved by the commissioner. The insurer shall complete and issue the
592 verification of coverage or indicate in which respects it is unable to respond. In its response, the
593 insurer shall indicate whether, based on the medical evidence and documents provided, the
594 insurer intends to pursue an investigation regarding the validity of the insurance contract.

595 (d) Prior to or at the time of execution of the life settlement contract, the life settlement
596 provider shall obtain a witnessed document in which the owner: (1) consents to the life
597 settlement contract; (2) represents that the owner has a full and complete understanding of the
598 life settlement contract; (3) represents that the owner has a full and complete understanding of
599 the benefits of the policy; (4) acknowledges that the owner is entering into the life settlement
600 contract freely and voluntarily; and (5) for persons with a terminal or chronic illness or
601 condition, acknowledges that the insured has a terminal or chronic illness or condition and that
602 the terminal or chronic illness or condition was diagnosed after the policy was issued.

603 (e) The insurer shall not unreasonably delay effecting a change of ownership or
604 beneficiary with a life settlement contract lawfully entered into in the commonwealth or with a
605 resident of the commonwealth.

606 (f) If a life settlement broker or life insurance producer performs any of the activities in
607 subsections (a) and (b) or (d), the life settlement provider shall be deemed to have fulfilled the
608 requirements of this section.

609 (g) If a life settlement broker performs those verification of coverage activities required
610 of the life settlement provider, the life settlement provider shall be deemed to have fulfilled the
611 requirements of this section.

612 (h) All medical information solicited or obtained by a licensee shall be subject to
613 applicable provisions of this chapter and any other law relating to the confidentiality of
614 medical information, if not otherwise provided in sections 213 to 223E, inclusive.

615 (i) A life settlement contract shall provide that the owner may rescind the life settlement
616 contract not more than 15 days after the date it was executed by all parties. Rescission, if
617 exercised by the owner, shall be effective only if: (1) notice of the rescission is given and (2) the
618 owner repays all proceeds and any premiums, loans and loan interest paid on account of the life
619 settlement provider within the rescission period. If the insured dies during the rescission period,
620 the life settlement contract shall be deemed to have been rescinded, subject to repayment by the
621 owner or the owner's estate of all proceeds and any premiums, loans and loan interest to the life
622 settlement provider. Failure to give written notice of the right of rescission shall toll the right of
623 rescission until 30 days after the written notice of the right of rescission has been given.

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

630 (k) Failure to tender the life settlement contract proceeds to the owner by the date
631 disclosed to the owner renders the life settlement contract voidable by the owner for lack of
632 consideration until such time as the proceeds are tendered to and accepted by the owner.

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

638 (m) No person at any time prior to, or at the time of the application for, or issuance of a
639 policy, or during a 2-year period commencing with the date of issuance of the policy shall enter
640 into a life settlement contract regardless of the date the compensation is to be provided and
641 regardless of the date the assignment, transfer, sale, devise, bequest or surrender of the policy is
642 to occur.

643 (n) (1) The prohibition in subsection (m) shall not apply if:

644 (i) the owner certifies to the provider that the policy was issued upon the
645 owner's exercise of conversion rights arising out of a group or individual policy; provided,
646 however, that the total of the time covered under the conversion policy plus the time covered
647 under the prior policy shall be at least 24 months; and provided further, that the time covered
648 under a group policy shall be calculated without regard to a change in insurance carriers, if the
649 coverage has been continuous and under the same group sponsorship; or

650 (ii) the owner submits independent evidence to the life settlement provider
651 that any of the following conditions have been met within the 2-year period:

652 (A) the owner or insured has a terminal or chronic illness or
653 condition;

654 (B) the owner or insured disposes of the owner's or insured's
655 ownership interests in a closely held corporation, pursuant to the terms of a buyout or other
656 similar agreement in effect at the time the insurance policy was initially issued;

657 (C) the owner's spouse dies;

658 (D) the owner obtains a divorce;

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

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

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

667 (2) Copies of the independent evidence required by clause (ii) of paragraph (1)
668 shall be submitted to the insurer when the life settlement provider submits a request to the insurer
669 for verification of coverage. The copies shall be accompanied by a letter of attestation from the
670 life settlement provider that the copies are true and correct copies of the documents received by
671 the life settlement provider. Nothing in this section shall prohibit an insurer from exercising its
672 right to contest the validity of a policy.

673 (3) If the life settlement provider submits to the insurer a copy of independent
674 evidence provided for in subclause (A) of clause (ii) of paragraph (1) when the life settlement

675 provider submits a request to the insurer to effect the transfer of the policy to the life settlement
676 provider, the copy shall be deemed to establish that the life settlement contract satisfies the
677 requirements of this section.

678 Section 223. (a) If there is more than 1 owner on a single policy and the owners are
679 residents of different states, the life settlement contract shall be governed by the law of the state
680 in which the owner having the largest percentage of ownership resides or, if the owners hold
681 equal ownership, the state of residence of 1 owner agreed upon in writing by all of the owners.
682 The law of the state of the insured shall govern in the event that equal owners fail to agree in
683 writing upon a state of residence for jurisdictional purposes.

684 (b) A life settlement provider from the commonwealth who enters into a life settlement
685 contract with an owner who is a resident of another state that has enacted laws or adopted
686 regulations governing life settlement contracts shall be governed in the effectuation of that life
687 settlement contract by the laws and regulations of the owner's state of residence. If the state in
688 which the owner is a resident has not enacted laws or regulations governing life settlement
689 contracts, the life settlement provider shall give the owner notice that neither state regulates the
690 transaction upon which the owner is entering. For transactions in those states, however, the life
691 settlement provider shall maintain all records required if the transactions were executed in the
692 owner's state of residence. The forms used in those states shall not require the approval of the
693 commissioner.

694 (c) If there is a conflict in the laws that apply to an owner and a purchaser in an
695 individual transaction, the laws of the state that apply to the owner shall take precedence and the
696 provider shall comply with those laws.

697 Section 223A. (a) A person shall not commit a fraudulent life settlement act.

698 (b) For the purpose of this section and sections 223B and 223D, “fraudulent life
699 settlement act” shall mean:

700 (1) an act or omission committed by a person who, in connection with a life
701 settlement contract, knowingly and with an intent to defraud, for the purpose of depriving
702 another of property or for pecuniary gain, commits or permits its employees or its agents to
703 engage in acts including, but not limited to:

704 (i) presenting, causing to be presented or preparing with knowledge and
705 belief that it will be presented to or by a life settlement provider, premium finance lender, life
706 settlement broker, insurer, insurance producer or any other person, false material information or
707 concealing material information, as part of, in support of or concerning a fact material to any of
708 the following:

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

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

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

715 (D) premiums paid on an insurance policy;

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

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

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

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

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

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

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

730 (iii) employing any device, scheme or artifice to defraud in the business of
731 life settlements.

732 (2) acts committed by a person or that such person permits an employee or agent
733 to commit in the furtherance of a fraud or to prevent the detection of fraud:

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

736 (ii) to misrepresent or conceal the financial condition of a licensee,
737 financing entity, insurer or other person;

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

741 (iv) to file with the commissioner or the chief insurance regulatory official
742 of another jurisdiction a document containing false information or otherwise concealing
743 information about a material fact from the commissioner;

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

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

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

756 (viii) to misrepresent the state of residence of an owner to be a state or
757 jurisdiction that does not have a law substantially similar to sections 213 to 223E, inclusive, for
758 the purpose of evading or avoiding the provisions of said sections 213 to 223E, inclusive.

759 (c) It shall be unlawful for a person to:

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

763 (2) engage in a transaction, practice or course of business if such person knows or
764 reasonably should have known that the intent was to avoid the notice requirements of sections
765 213 to 223E, inclusive;

766 (3) engage in a fraudulent act or practice in connection with a transaction relating
767 to a settlement involving an owner who is a resident of the commonwealth;

768 (4) issue, solicit or market the purchase of a new policy for the purpose of or with
769 a significant emphasis on settling the policy;

770 (5) if providing premium financing, receive any proceeds, fees or other
771 consideration from the policy or owner of the policy that are in addition to the amounts required
772 to pay principal, interest and any reasonable costs or expenses incurred by the lender or borrower
773 in connection with the premium finance agreement, except in the event of a default, unless either
774 the default on the loan or transfer of the policy occurs pursuant to an agreement or understanding
775 with another person for the purpose of evading regulation under sections 213 to 223E, inclusive;

776 (6) with respect to any life settlement contract or insurance policy and a life
777 settlement broker, knowingly solicit an offer from, effectuate a life settlement contract with or
778 make a sale to a life settlement provider, financing entity or related provider trust that is

779 controlling, controlled by or under common control with such life settlement broker unless the
780 relationship is disclosed to the owner;

781 (7) with respect to a life settlement contract or insurance policy and a life
782 settlement provider, knowingly enter into a life settlement contract with an owner if, in
783 connection with the life settlement contract, anything of value will be paid to a life settlement
784 broker that is controlling, controlled by or under common control with the life settlement
785 provider, the financing entity or a related provider trust that is involved in the life settlement
786 contract unless the relationship is disclosed to the owner;

787 (8) create a trust that gives the appearance of insurable interest and is used to
788 initiate policies for investors;

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

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

795 (d) The commissioner may investigate suspected fraudulent life settlement acts and
796 persons engaged in the business of life settlements.

797 Section 223B. (a) (1) A person shall not knowingly and intentionally interfere with the
798 enforcement or investigations of suspected or actual violations of sections 213 to 223E,
799 inclusive.

800 (2) A person in the business of life settlements shall not knowingly or
801 intentionally permit any person convicted of a felony involving dishonesty or breach of trust to
802 participate in the business of life settlements.

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

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

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

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

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

819 (d) (1) No civil liability shall be imposed on and no cause of action shall arise from a
820 person furnishing information concerning suspected, anticipated or completed fraudulent life

821 settlement acts or suspected or completed fraudulent insurance acts if the information is provided
822 to:

823 (i) the commissioner or the commissioner's employees, agents or
824 representatives;

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

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

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

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

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

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

839 (3) A person identified in paragraph (1) shall be entitled to an award of attorneys'
840 fees and costs if the person is the prevailing party in a civil cause of action for libel, slander or
841 any other relevant tort arising out of activities in carrying out sections 213 to 223E, inclusive,

842 and the party bringing the action was not substantially justified in doing so. For the purposes of
843 this paragraph a proceeding shall be “substantially justified” if it had a reasonable basis in law or
844 fact at the time that it was initiated.

845 (4) This section shall not abrogate or modify common law or statutory privileges
846 or immunities enjoyed by a person described in paragraph (1).

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

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

853 (i) in administrative or judicial proceedings to enforce laws administered
854 by the commissioner;

855 (ii) to federal, state or local law enforcement or regulatory agencies or to
856 an organization established for the purpose of detecting and preventing fraudulent life settlement
857 acts; or

858 (iii) at the discretion of the commissioner, to a person in the business of
859 life settlements that is aggrieved by a fraudulent life settlement act.

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

862 (f) Sections 213 to 223E, inclusive, shall not:

863 (1) preempt the authority or relieve the duty of law enforcement or regulatory
864 agencies to investigate, examine and prosecute suspected violations of law;

865 (2) preempt, supersede or limit securities laws in the commonwealth or any rule,
866 order or notice issued thereunder;

867 (3) prevent or prohibit a person from disclosing voluntarily information
868 concerning life settlement fraud to a law enforcement or regulatory agency other than the
869 commissioner; or

870 (4) limit the powers granted elsewhere by the laws of the commonwealth to the
871 commissioner or an insurance fraud unit to investigate and examine possible violations of law
872 and to take appropriate action against wrongdoers.

873 (g) (1) Life settlement providers and life settlement brokers shall have antifraud
874 initiatives in place to detect, prosecute and prevent fraudulent life settlement acts. At the
875 discretion of the commissioner, the commissioner may order, or a licensee may request and the
876 commissioner may grant, such modifications of the following required initiatives as necessary to
877 ensure an effective antifraud program. The modifications may be more or less restrictive than the
878 required initiatives so long as the modifications reasonably expect to accomplish the purpose of
879 this section. Antifraud initiatives shall include:

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

882 (ii) an antifraud plan, which shall be submitted to the commissioner;
883 provided, however, that the antifraud plan shall include, but not be limited to:

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

887 (B) a description of the procedures for reporting possible
888 fraudulent life settlement acts to the commissioner;

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

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

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

898 (h) An insurer that issued a policy that is the subject of a life settlement contract shall not
899 be responsible for any act or omission of a life settlement broker, life settlement provider or
900 purchaser arising out of, or in connection with, the life settlement transaction, unless the insurer
901 receives compensation for the placement of the life settlement contract from the life settlement
902 provider, life settlement broker or purchaser.

903 Section 223C. (a) If a person violates any provisions of sections 213 to 223E, inclusive,
904 or any rule or regulation promulgated thereunder, the commissioner may seek an injunction in a

905 court of competent jurisdiction in the county wherein the person resides or has a principal place
906 of business and may apply for temporary and permanent orders that the commissioner
907 determines necessary to restrain the person from further committing the violation.

908 (b) A person damaged by the acts of another person in violation of any provisions of
909 sections 213 to 223E, inclusive, or any rule or regulation promulgated thereunder may bring a
910 civil action for damages against the person committing the violation in a court of competent
911 jurisdiction.

912 (c) The commissioner may issue a cease and desist order, in accordance with chapter
913 30A, upon a person who violates any provision of sections 213 to 223E, inclusive, any
914 regulation, rule or order adopted by the commissioner or any written agreement entered into with
915 the commissioner.

916 (d) When the commissioner finds that an action presents an immediate danger to the
917 public and requires immediate action, the commissioner may issue an emergency cease and
918 desist order reciting with particularity the facts underlying such findings. The emergency cease
919 and desist order shall be effective immediately upon service of a copy of the order on the
920 respondent and shall remain effective for 90 days. If the commissioner begins nonemergency
921 cease and desist proceedings under subsection (c), the emergency cease and desist order shall
922 remain effective, absent an order by an appellate court pursuant to chapter 30A. In the event of a
923 willful violation of this act, the trial court may award statutory damages in addition to actual
924 damages in an amount up to 3 times the actual damage award.

925 (e) Sections 213 to 223E, inclusive, shall not be waived by any agreement. Except for a
926 valid agreement under subsection (a) of section 223, a choice of law provision shall not be

927 utilized to prevent the application of said sections 213 to 223E, inclusive, to a life settlement
928 contract in which a party to the life settlement contract is a resident of the commonwealth.

929 Section 223D. (a) If a person is found guilty of committing a fraudulent life settlement
930 act, that person shall also be guilty of committing insurance fraud and shall be subject to
931 additional penalties.

932 (b) The commissioner may levy a civil penalty, not to exceed \$10,000 for each violation,
933 upon any person, including those persons and their employees licensed pursuant to sections 213
934 to 223E, inclusive, who is found to have committed a fraudulent life settlement act or violated
935 any other provision of sections 213 to 223E, inclusive.

936 (c) The license of a person licensed under sections 213 to 223E, inclusive, that has
937 committed a fraudulent life settlement act shall be revoked for at least 1 year.

938 Section 223E. A violation of sections 213 to 223E, inclusive, shall be an unfair trade
939 practice under sections 3 and 4 of chapter 176D and shall be subject to the penalties set forth in
940 section 7 of said chapter 176D.

941 Section 223F. The commissioner may promulgate regulations to implement sections 212
942 to 223E, inclusive.

943 SECTION 2. (a) A person licensed to act as a viatical settlement broker or viatical
944 settlement provider on the effective date of this act shall be deemed to be qualified for licensure
945 as a life settlement broker or life settlement provider, respectively, and shall be subject to
946 sections 213 to 223E, inclusive, of chapter 175 of the General Laws as if the person was
947 originally licensed as a life settlement broker or life settlement provider.

948 (b) A viatical settlement provider lawfully transacting business prior to the effective date
949 of this act may continue to do so pending approval or disapproval of the application for a license
950 as long as the application is filed with the commissioner not later than 30 days after publication
951 by the commissioner of an application form and instructions for licensure of life settlement
952 providers. During the time that an application is pending with the commissioner, the applicant
953 may use any form of life settlement contract that has been filed with the commissioner pending
954 approval thereof; provided, however, that such form shall otherwise be in compliance with
955 sections 213 to 223E, inclusive. Any person transacting business under this section shall comply
956 with all other requirements of this act.

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

964 SECTION 3. Nothing in this act shall limit the incontestability standard as set forth in
965 section 132 of chapter 175 of the General Laws.

966 SECTION 4. This act shall apply to life settlement contracts entered into on or after June
967 1, 2013, involving a life insurance policy in effect, or entered into, on or after the effective date
968 of this act.