

1 SB445
2 105896-3
3 By Senators Singleton and Smitherman
4 RFD: Tourism and Marketing
5 First Read: 18-FEB-10

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8 SYNOPSIS: This bill would provide for licensure of
9 providers and brokers of life settlement contracts.

10 This bill would define terms and provide for
11 licensure requirements and fees.

12 This bill would allow the Commissioner of
13 the Department of Insurance the authority to
14 suspend, revoke, or refuse to renew a license under
15 certain circumstances.

16 This bill would require that life settlement
17 contracts and purchase agreement forms be filed
18 with, and approved by, the commissioner; require
19 providers to annually submit statements or reports
20 to the commission regarding settlements of life
21 proceeds; and allow the commissioner to examine the
22 business and affairs of any licensee or applicant
23 for licensure.

24 This bill would allow providers to
25 advertise; require providers to disclose certain
26 information regarding life settlement contracts;
27 and require written signed disclosures.

1 This bill would allow the commissioner to
2 promulgate rules to regulate providers, brokers,
3 insurers, and their agents.

4 This bill would provide for criminal and
5 civil penalties for violations.

6 Amendment 621 of the Constitution of Alabama
7 of 1901, now appearing as Section 111.05 of the
8 Official Recompilation of the Constitution of
9 Alabama of 1901, as amended, prohibits a general
10 law whose purpose or effect would be to require a
11 new or increased expenditure of local funds from
12 becoming effective with regard to a local
13 governmental entity without enactment by a 2/3 vote
14 unless: it comes within one of a number of
15 specified exceptions; it is approved by the
16 affected entity; or the Legislature appropriates
17 funds, or provides a local source of revenue, to
18 the entity for the purpose.

19 The purpose or effect of this bill would be
20 to require a new or increased expenditure of local
21 funds within the meaning of the amendment. However,
22 the bill does not require approval of a local
23 governmental entity or enactment by a 2/3 vote to
24 become effective because it comes within one of the
25 specified exceptions contained in the amendment.

26
27 A BILL

1 TO BE ENTITLED

2 AN ACT

3
4 Relating to life settlements; to provide for
5 licensure of providers of life settlement contracts; to
6 provide definitions; to provide for enforcement by the
7 Commissioner of the Department of Insurance; to provide for
8 penalties; and in connection therewith would have as its
9 purpose or effect the requirement of a new or increased
10 expenditure of local funds within the meaning of Amendment 621
11 of the Constitution of Alabama of 1901, now appearing as
12 Section 111.05 of the Official Recompilation of the
13 Constitution of Alabama of 1901, as amended.

14 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

15 Section 1. This act shall be known and may be cited
16 as the "Life Settlements Act."

17 Section 2. As used in this act, the following terms
18 shall have the following meanings:

19 (1) ADVERTISEMENT. Any written, electronic, or
20 printed communication or any communication by means of
21 recorded telephone messages or transmitted on radio,
22 television, the Internet, or similar communications media,
23 including film strips, motion pictures, and videos, published,
24 disseminated, circulated, or placed directly before an owner
25 in this state, for the purpose of creating an interest in or
26 inducing an owner to purchase or sell, assign, devise,
27 bequeath, or transfer the death benefit or ownership of a life

1 insurance policy or an interest in a life insurance policy
2 pursuant to a life settlement contract.

3 (2) BROKER. A person that, on behalf of an owner and
4 for a fee, commission, or other valuable consideration, offers
5 or attempts to negotiate life settlement contracts between an
6 owner and providers. A broker represents only the owner and
7 owes a fiduciary duty to the owner to act according to the
8 owner's instructions, and in the best interest of the owner,
9 notwithstanding the manner in which the broker is compensated.
10 A broker does not include an attorney, certified public
11 accountant, or financial planner retained in the type of
12 practice customarily performed in his or her professional
13 capacity to represent the owner and whose compensation is not
14 paid directly or indirectly by the provider or any other
15 person, except the owner.

16 (3) BUSINESS OF LIFE SETTLEMENTS. An activity
17 involved in, but not limited to, the offering to enter into,
18 soliciting, negotiating, procuring, effectuating, monitoring,
19 or tracking of life settlement contracts.

20 (4) CHRONICALLY ILL. Any of the following
21 conditions:

22 a. Being unable to perform at least two activities
23 of daily living such as eating, toileting, transferring,
24 bathing, dressing, or continence.

25 b. Requiring substantial supervision to protect the
26 individual from threats to health and safety due to severe
27 cognitive impairment.

1 c. Having a level of disability similar to that
2 described in paragraph a. as determined by the United States
3 Secretary of Health and Human Services.

4 (5) COMMISSIONER. The Commissioner of the Department
5 of Insurance.

6 (6) FINANCING ENTITY. An underwriter, placement
7 agent, lender, purchaser of securities, purchaser of a policy
8 or certificate from a provider, credit enhancer, or any entity
9 that has a direct ownership in a policy or certificate that is
10 the subject of a life settlement contract, and the following
11 apply:

12 a. Whose principal activity related to the
13 transaction is providing funds to effect the life settlement
14 contract or purchase of one or more policies.

15 b. Who has an agreement in writing with one or more
16 providers to finance the acquisition of life settlement
17 contracts.

18 Financing entity does not include a non-accredited
19 investor or purchaser.

20 (7) FINANCING TRANSACTION. A transaction in which a
21 licensed provider obtains financing from a financing entity
22 including, without limitation, any secured or unsecured
23 financing, any securitization transaction, or any securities
24 offering which is either registered or exempt from
25 registration under federal and state securities law.

26 (8) FRAUDULENT LIFE SETTLEMENT ACT. Includes all of
27 the following:

1 a. Acts or omissions committed by any person that,
2 knowingly and with intent to defraud, for the purpose of
3 depriving another of property or for pecuniary gain, commits
4 or permits its employees or its agents to engage in acts
5 including, but not limited to, the following:

6 1. Presenting, causing to be presented, or
7 preparing, with knowledge and belief that it will be presented
8 to or by a provider, premium finance lender, broker, insurer,
9 insurance producer, or any other person, false material
10 information, or concealing material information, as part of,
11 in support of, or concerning a fact material to one or more of
12 the following:

13 (i) An application for the issuance of a life
14 settlement contract or insurance policy.

15 (ii) The underwriting of a life settlement contract
16 or insurance policy.

17 (iii) A claim for payment or benefit pursuant to a
18 life settlement contract or insurance policy.

19 (iv) Premiums paid on an insurance policy.

20 (v) Payments and changes in ownership or beneficiary
21 made in accordance with the terms of a life settlement
22 contract or insurance policy.

23 (vi) The reinstatement or conversion of an insurance
24 policy.

25 (vii) In the solicitation, offer to enter into, or
26 effectuation of a life settlement contract or insurance
27 policy.

1 (viii) The issuance of written evidence of life
2 settlement contracts or insurance.

3 (ix) Any application for or the existence of or any
4 payments related to a loan secured directly or indirectly by
5 any interest in a life insurance policy.

6 (x) Stranger-originated life insurance.

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

9 b. In the furtherance of a fraud or to prevent the
10 detection of a fraud, the commission by any person of or
11 permission by any person for his or her employees or agents to
12 commit any of the following:

13 1. Removing, concealing, altering, destroying, or
14 sequestering from the commissioner the assets or records of a
15 licensee or other person engaged in the business of life
16 settlements.

17 2. Misrepresenting or concealing the financial
18 condition of a licensee, financing entity, insurer, or other
19 person.

20 3. Transacting the business of life settlements in
21 violation of laws requiring a license, certificate of
22 authority, or other legal authority for the transaction of the
23 business of life settlements.

24 4. Filing with the commissioner or the chief
25 insurance regulatory official of another jurisdiction a
26 document containing false information or otherwise concealing
27 information about a material fact from the commissioner.

1 5. Engaging in embezzlement, theft,
2 misappropriation, or conversion of monies, funds, premiums,
3 credits, or other property of a provider, insurer, insured,
4 owner, insurance, policy owner, or any other person engaged in
5 the business of life settlements or insurance.

6 6. Knowingly and with intent to defraud, entering
7 into, brokering, or otherwise dealing in a life settlement
8 contract, the subject of which is a life insurance policy that
9 was obtained by presenting false information concerning any
10 fact material to the policy or by concealing, for the purpose
11 of misleading another, information concerning any fact
12 material to the policy, where the owner or the owner's agent
13 intended to defraud the policy's issuer.

14 7. Attempting to commit, assisting, aiding or
15 abetting the commission of, or conspiring to commit the acts
16 or omissions specified in this section.

17 8. Misrepresenting the state of residence of an
18 owner to be a state or jurisdiction that does not have a law
19 substantially similar to this act for the purpose of evading
20 or avoiding the provisions of this act.

21 (9) INSURED. The person covered under the policy
22 being considered for sale in a life settlement contract.

23 (10) LIFE EXPECTANCY. The arithmetic mean of the
24 months the insured under the life insurance policy to be
25 settled can be expected to live considering medical records
26 and appropriate experiential data.

1 (11) LIFE INSURANCE PRODUCER. Any person licensed in
2 this state as a resident or nonresident insurance producer who
3 has received qualification or authority for life insurance
4 coverage or a life line of coverage pursuant to Sections
5 27-7-4.3 and 27-7-5, Code of Alabama 1975.

6 (12) LIFE SETTLEMENT CONTRACT. A written agreement
7 entered into between a provider and an owner, establishing the
8 terms under which compensation or any thing of value will be
9 paid, which compensation or thing of value is less than the
10 expected death benefit of the insurance policy or certificate,
11 in return for the owner's assignment, transfer, sale, devise,
12 or bequest of the death benefit or any portion of an insurance
13 policy or certificate of insurance for compensation, provided,
14 however, that the minimum value for a life settlement contract
15 shall be greater than a cash surrender value or accelerated
16 death benefit available at the time of an application for a
17 life settlement contract. Life settlement contract also
18 includes the transfer for compensation or value of ownership
19 or beneficial interest in a trust or other entity that owns
20 such policy if the trust or other entity was formed or availed
21 of for the principal purpose of acquiring one or more life
22 insurance contracts, which life insurance contract insures the
23 life of a person residing in this state.

24 a. Life settlement contract also includes a premium
25 finance loan made for a policy on or before the date of
26 issuance of the policy where any of the following applies:

1 1. The loan proceeds are not used solely to pay
2 premiums for the policy and any costs or expenses incurred by
3 the lender or the borrower in connection with the financing.

4 2. The owner receives on the date of the premium
5 finance loan a guarantee of the future life settlement value
6 of the policy.

7 3. The owner agrees on the date of the premium
8 finance loan to sell the policy or any portion of its death
9 benefit on any date following the issuance of the policy.

10 b. Life settlement contract does not include any of
11 the following:

12 1. A policy loan by a life insurance company
13 pursuant to the terms of the life insurance policy or
14 accelerated death provisions contained in the life insurance
15 policy, whether issued with the original policy or as a rider.

16 2. A premium finance loan, as defined herein, or any
17 loan made by a bank or other licensed financial institution,
18 provided that neither default on such loan nor the transfer of
19 the policy in connection with such default is pursuant to an
20 agreement or understanding with any other person for the
21 purpose of evading regulation under this act.

22 3. A collateral assignment of a life insurance
23 policy by an owner.

24 4. A loan made by a lender that does not violate
25 Chapter 40 of Title 27 of the Code of Alabama 1975, provided
26 the loan is not described in paragraph a. and is not otherwise
27 within the definition of life settlement contract.

1 5. An agreement where all the parties are closely
2 related to the insured by blood or law or have a lawful
3 substantial economic interest in the continued life, health,
4 and bodily safety of the person insured or are trusts
5 established primarily for the benefit of such parties.

6 6. Any designation, consent, or agreement by an
7 insured who is an employee of an employer in connection with
8 the purchase by the employer, or trust established by the
9 employer, of life insurance on the life of the employee.

10 7. A bona fide business succession planning
11 arrangement between one or more involving any of the
12 following:

13 (i) Between one or more shareholders in a
14 corporation or between a corporation and one or more of its
15 shareholders or one or more than one trust established by its
16 shareholders.

17 (ii) Between one or more partners in a partnership
18 or between a partnership and one or more of its partners or
19 one or more than one trust established by its partners.

20 (iii) Between one or more members in a limited
21 liability company or between a limited liability company and
22 one or more of its members or one or more than one trust
23 established by its members.

24 8. An agreement entered into by a service recipient,
25 or a trust established by the service recipient, and a service
26 provider, or a trust established by the service provider, who

1 performs significant services for the service recipient's
2 trade or business.

3 9. Any other contract, transaction, or arrangement
4 from the definition of life settlement contract that the
5 commissioner determines is not of the type intended to be
6 regulated by this act.

7 (13) NET DEATH BENEFIT. The amount of the life
8 insurance policy or certificate to be settled less any
9 outstanding debts or liens.

10 (14) OWNER. The owner of a life insurance policy or
11 a certificate holder under a group policy, with or without a
12 terminal illness, who enters or seeks to enter into a life
13 settlement contract. For the purposes of this act, an owner
14 shall not be limited to an owner of a life insurance policy or
15 a certificate holder under a group policy that insures the
16 life of an individual with a terminal or chronic illness or
17 condition except where specifically addressed. The term owner
18 does not include any of the following:

19 a. A provider or other licensee under this act.

20 b. A qualified institutional buyer as defined in
21 Rule 144A of the Federal Securities Act of 1933, as amended.

22 c. A financing entity.

23 d. A special purpose entity.

24 e. A related provider trust.

25 (15) PATIENT IDENTIFYING INFORMATION. An insured's
26 address, telephone number, facsimile number, electronic mail
27 address, photograph or likeness, employer, employment status,

1 Social Security number, or any other information that is
2 likely to lead to the identification of the insured.

3 (16) POLICY. An individual or group policy, group
4 certificate, contract, or arrangement of life insurance owned
5 by a resident of this state, regardless of whether delivered
6 or issued for delivery in this state.

7 (17) PREMIUM FINANCE LOAN. A loan made primarily for
8 the purposes of making premium payments on a life insurance
9 policy, which loan is secured by an interest in such life
10 insurance policy.

11 (18) PERSON. Any natural person or legal entity,
12 including, but not limited to, a partnership, limited
13 liability company, association, trust, or corporation.

14 (19) PROVIDER. A person, other than an owner, who
15 enters into or effectuates a life settlement contract with an
16 owner. A provider does not include any of the following:

17 a. Any bank, savings bank, savings and loan
18 association, or credit union.

19 b. A licensed lending institution or creditor or
20 secured party pursuant to a premium finance loan agreement
21 which takes an assignment of a life insurance policy or
22 certificate issued pursuant to a group life insurance policy
23 as collateral for a loan.

24 c. The insurer of a life insurance policy or rider
25 to the extent of providing accelerated death benefits or
26 riders or cash surrender value.

1 d. Any natural person who enters into or effectuates
2 no more than one agreement in a calendar year for the transfer
3 of a life insurance policy or certificate issued pursuant to a
4 group life insurance policy for compensation or any thing of
5 value less than the expected death benefit payable under the
6 policy.

7 e. A purchaser.

8 f. Any authorized or eligible insurer that provides
9 stop loss coverage to a provider, purchaser, financing entity,
10 special purpose entity, or related provider trust.

11 g. A financing entity.

12 h. A special purpose entity.

13 i. A related provider trust.

14 j. A broker.

15 k. An accredited investor or qualified institutional
16 buyer as defined in, respectively, Regulation D, Rule 501 or
17 Rule 144A of the Federal Securities Act of 1933, as amended,
18 who purchases a life settlement policy from a provider.

19 (20) PURCHASED POLICY. A policy or group certificate
20 that has been acquired by a provider pursuant to a life
21 settlement contract.

22 (21) PURCHASER. A person who pays compensation or
23 any thing of value as consideration for a beneficial interest
24 in a trust which is vested with, or for the assignment,
25 transfer, or sale of, an ownership or other interest in a life
26 insurance policy or a certificate issued pursuant to a group

1 life insurance policy which has been the subject of a life
2 settlement contract.

3 (22) RELATED PROVIDER TRUST. A titling trust or
4 other trust established by a licensed provider or a financing
5 entity for the sole purpose of holding the ownership or
6 beneficial interest in purchased policies in connection with a
7 financing transaction. In order to qualify as a related
8 provider trust, the trust must have a written agreement with
9 the licensed provider under which the licensed provider is
10 responsible for ensuring compliance with all statutory and
11 regulatory requirements and under which the trust agrees to
12 make all records and files relating to life settlement
13 transactions available to the Department of Insurance as if
14 those records and files were maintained directly by the
15 licensed provider.

16 (23) SETTLED POLICY. A life insurance policy or
17 certificate that has been acquired by a provider pursuant to a
18 life settlement contract.

19 (24) SPECIAL PURPOSE ENTITY. A corporation,
20 partnership, trust, limited liability company, or other legal
21 entity formed solely to provide, either directly or
22 indirectly, access to institutional capital markets for a
23 financing entity or provider or in connection with a
24 transaction in which the securities in the special purpose
25 entity (i) are acquired by the owner or by a qualified
26 institutional buyer as defined in Rule 144 promulgated under
27 the Federal Securities Act of 1933, as amended, or (ii) the

1 securities pay a fixed rate of return commensurate with
2 established asset-backed institutional capital markets.

3 (25) STRANGER-ORIGINATED LIFE INSURANCE (STOLI). An
4 act, practice, or arrangement to initiate the issuance of a
5 life insurance policy in this state for the benefit of a third
6 party investor who, at the time of policy origination, has no
7 insurable interest, under the laws of this state, in the life
8 of the insured. STOLI practices include, but are not limited
9 to, cases in which life insurance is purchased with resources
10 or guarantees from or through a person, or entity, who, at the
11 time of policy inception, could not lawfully initiate the
12 policy himself, herself, or itself, and where, at the time of
13 inception, there is an arrangement or agreement to directly or
14 indirectly transfer the ownership of the policy or the policy
15 benefits to a third party. Trusts that are created to give the
16 appearance of insurable interest and are used to initiate
17 policies for investors violate insurable interest laws and the
18 prohibition against wagering on life. STOLI arrangements do
19 not include otherwise lawful life settlement contracts
20 permitted by this act or those practices set forth in
21 subdivision (12) of this section.

22 (26) TERMINALLY ILL. Having an illness or sickness
23 that can reasonably be expected to result in death in 24
24 months or less.

25 Section 3. (a) No person, wherever located, shall
26 act as a provider or broker with an owner who is a resident of
27 this state, without first having obtained a license from the

1 commissioner. If there is more than one owner on a single
2 policy and the owners are residents of different states, the
3 life settlement contract shall be governed by the law of the
4 state in which the owner having the largest percentage
5 ownership resides or, if the owners hold equal ownership, the
6 state of residence of one owner agreed upon in writing by all
7 owners.

8 (b) Application for a provider or broker license
9 shall be made to the commissioner by the applicant on a form
10 prescribed by the commissioner. The application shall be
11 accompanied by a fee in an amount established by the
12 commissioner. The license and renewal fees for a provider
13 license shall be reasonable and the license and renewal fees
14 for a broker license shall not exceed those established for an
15 insurance producer, as such fees are otherwise provided for in
16 this act.

17 (c) A life insurance producer who has been duly
18 licensed as a resident insurance producer with a life line of
19 authority in this state or his or her home state for at least
20 one year and is licensed as a nonresident producer in this
21 state shall be deemed to meet the licensing requirements of
22 this section and shall be permitted to operate as a broker.

23 (d) Not later than 10 days from the first day of
24 operating as a broker, a life insurance producer shall notify
25 the commissioner that he or she is acting as a broker on a
26 form prescribed by the commissioner, and shall pay any
27 applicable fee to be determined by the commissioner.

1 Notification shall include an acknowledgement by the life
2 insurance producer that he or she will operate as a broker in
3 accordance with this act.

4 (e) An insurer that issued a policy that is the
5 subject of a life settlement contract shall not be responsible
6 for any act or omission of a broker or provider or purchaser
7 arising out of or in connection with the life settlement
8 transaction, unless the insurer receives compensation for the
9 placement of a life settlement contract from the provider or
10 purchaser or broker in connection with the life settlement
11 contract.

12 (f) A person licensed as an attorney, certified
13 public accountant, or financial planner accredited by a
14 nationally recognized accreditation agency who is retained to
15 represent the owner and whose compensation is not paid
16 directly or indirectly by the provider or purchaser may
17 negotiate life settlement contracts on behalf of the owner
18 without having to obtain a license as a broker.

19 (g) A license may be renewed on the first day of
20 July upon payment of the periodic renewal fee. As specified by
21 subsection (b), the renewal fee for a provider shall not
22 exceed a reasonable fee. Failure to pay the fee within the
23 terms prescribed shall result in the automatic revocation of
24 the license.

25 (h) The term of a provider license shall be equal to
26 the term of a domestic stock life insurance company and the

1 term of a broker license shall be equal to the term of an
2 insurance producer license.

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

15 (j) A license issued to a partnership, corporation,
16 or other entity authorizes all members, officers, and
17 designated employees to act as a licensee under the license if
18 those persons are named in the application and any supplements
19 to the application.

20 (k) Upon the filing of an application and the
21 payment of the license fee, the commissioner shall make an
22 investigation of each applicant and may issue a license if the
23 commissioner finds that the applicant has met all the
24 following criteria:

25 (1) If a provider, has provided a detailed plan of
26 operation.

1 (2) Is competent and trustworthy and intends to
2 transact its business in good faith.

3 (3) Has a good business reputation and has had
4 experience, training, or education so as to be qualified in
5 the business for which the license is applied.

6 (4) If the applicant is a legal entity, is formed or
7 organized pursuant to the laws of this state, is a foreign
8 legal entity authorized to transact business in this state, or
9 provides a certificate of good standing from the state of its
10 domicile.

11 (5) Has provided to the commissioner an anti-fraud
12 plan that meets the requirements of Section 13 and includes
13 all of the following:

14 a. A description of the procedures for detecting and
15 investigating possible fraudulent acts and procedures for
16 resolving material inconsistencies between medical records and
17 insurance applications.

18 b. A description of the procedures for reporting
19 fraudulent insurance acts to the commissioner.

20 c. A description of the plan for anti-fraud
21 education and training of its underwriters and other
22 personnel.

23 d. A written description or chart outlining the
24 arrangement of the anti-fraud personnel who are responsible
25 for the investigation and reporting of possible fraudulent
26 insurance acts and investigating unresolved material

1 inconsistencies between medical records and insurance
2 applications.

3 (l) The commissioner shall not issue any license to
4 any nonresident applicant unless a written designation of an
5 agent for service of process is filed and maintained with the
6 commissioner or unless the applicant has filed with the
7 commissioner the applicant's written irrevocable consent that
8 any action against the applicant may be commenced against the
9 applicant by service of process on the commissioner.

10 (m) Each licensee shall file with the commissioner
11 on or before the first day of March of each year an annual
12 statement containing such information as the commissioner by
13 rule may prescribe.

14 (n) A provider may not use any person to perform the
15 functions of a broker unless the person holds a current, valid
16 license as a broker.

17 (o) A broker may not use any person to perform the
18 functions of a provider unless such person holds a current
19 valid license as a provider.

20 (p) A provider or broker shall provide to the
21 commissioner new or revised information about officers, 10
22 percent or more stockholders, partners, directors, members, or
23 designated employees within 30 days of the change.

24 (q) An individual licensed as a broker, other than a
25 life insurance producer operating as a broker, shall complete
26 on a biennial basis 15 hours of training related to life
27 settlements and life settlement transactions, as required by

1 the commissioner. Any person failing to meet the requirements
2 of this subsection shall be subject to the penalties imposed
3 by the commissioner.

4 Section 4. (a) The commissioner may suspend, revoke,
5 or refuse to renew the license of any licensee if the
6 commissioner finds that any of the following has occurred:

7 (1) There was any material misrepresentation in the
8 application for the license.

9 (2) The licensee or any officer, partner, member, or
10 director has been guilty of fraudulent or dishonest practices,
11 is subject to a final administrative action, or is otherwise
12 shown to be untrustworthy or incompetent to act as a licensee.

13 (3) The provider demonstrates a pattern of
14 unreasonably withholding payments to policy owners.

15 (4) The licensee no longer meets the requirements
16 for initial licensure.

17 (5) The licensee or any officer, partner, member, or
18 director has been convicted of a felony or of any misdemeanor
19 of which criminal fraud is an element or the licensee has
20 pleaded guilty or nolo contendere with respect to any felony
21 or any misdemeanor of which criminal fraud or moral turpitude
22 is an element, regardless of whether a judgment of conviction
23 has been entered by the court.

24 (6) The provider has entered into any life
25 settlement contract using a form that has not been approved
26 pursuant to this act.

1 (7) The provider has failed to honor contractual
2 obligations set out in a life settlement contract.

3 (8) The provider has assigned, transferred, or
4 pledged a settled policy to a person other than a provider
5 licensed in this state, a purchaser, an accredited investor,
6 or qualified institutional buyer as defined, respectively, in
7 Regulation D, Rule 501 or Rule 144A of the Federal Securities
8 Act of 1933, as amended, financing entity, special purpose
9 entity, or related provider trust.

10 (9) The licensee or any officer, partner, member, or
11 key management personnel has violated this act.

12 (b) Before the commissioner denies a license
13 application or suspends, revokes, or refuses to renew the
14 license of any licensee under this act, the commissioner shall
15 conduct a hearing in accordance with the Administrative
16 Procedure Act.

17 Section 5. (a) No person may use any form of life
18 settlement contract in this state unless it has been filed
19 with and approved, if required, by the commissioner in a
20 manner that conforms with the filing procedures and any time
21 restrictions or deeming provisions, if any, for life insurance
22 forms, policies, and contracts.

23 (b) No insurer may, as a condition of responding to
24 a request for verification of coverage or in connection with
25 the transfer of a policy pursuant to a life settlement
26 contract, require that the owner, insured, provider, or broker
27 sign any form, disclosure, consent, waiver, or acknowledgment

1 that has not been expressly approved by the commissioner for
2 use in connection with life settlement contracts in this
3 state.

4 (c) A person may not use a life settlement contract
5 form or provide to an owner a disclosure statement form in
6 this state unless first filed with and approved by the
7 commissioner. The commissioner shall disapprove a life
8 settlement contract form or disclosure statement form if, in
9 the commissioner's opinion, the contract or provisions
10 contained therein fail to meet the requirements of Sections 8,
11 9, 11, and Section 15(b) or are unreasonable, contrary to the
12 interests of the public, or otherwise misleading or unfair to
13 the owner. The commissioner may require the submission of
14 advertising material.

15 Section 6. (a) Each licensed provider shall file
16 with the commissioner on or before March 1 of each year an
17 annual statement containing such information as the
18 commissioner may prescribe by rule. In addition to any other
19 requirements, the annual statement shall specify the total
20 number, aggregate face amount, and life settlement proceeds of
21 policies settled during the immediately preceding calendar
22 year, together with a breakdown of the information by policy
23 issue year for each carrier.

24 (1) Such information shall be limited to only those
25 transactions where the owner is a resident of this state and
26 shall not include individual transaction data regarding the
27 business of life settlements or information that there is a

1 reasonable basis to believe could be used to identify the
2 owner or the insured.

3 (2) Every provider that willfully fails to file an
4 annual statement as required in this section, or willfully
5 fails to reply within 30 days to a written inquiry by the
6 commissioner in connection therewith, in addition to other
7 penalties provided by this act, shall be subject, upon due
8 notice and opportunity to be heard, to a penalty of up to two
9 hundred fifty dollars (\$250) per day of delay, not to exceed
10 twenty-five thousand dollars (\$25,000) in the aggregate, for
11 each failure.

12 (b) Except as otherwise allowed or required by law,
13 a provider, broker, insurance company, insurance producer,
14 information bureau, rating agency or company, or any other
15 person with actual knowledge of an insured's identity, shall
16 not disclose the identity of an insured or information that
17 there is a reasonable basis to believe could be used to
18 identify the insured or the insured's financial or medical
19 information to any other person unless the disclosure concerns
20 any of the following:

21 (1) Is necessary to effect a life settlement
22 contract between the owner and a provider and the owner and
23 insured have provided prior written consent to the disclosure.

24 (2) Is necessary to effectuate the sale of life
25 settlement contracts, or interests therein, as investments,
26 provided the sale is conducted in accordance with applicable
27 state and federal securities law and provided further that the

1 owner and the insured have both provided prior written consent
2 to the disclosure.

3 (3) Is provided in response to an investigation or
4 examination by the commissioner or any other governmental
5 officer or agency or pursuant to Section 13.

6 (4) Is a term or condition to the transfer of a
7 policy by one provider to another provider, in which case the
8 receiving provider shall be required to comply with the
9 confidentiality requirements of subsection (b).

10 (5) Is necessary to allow the provider or broker or
11 their authorized representatives to make contacts for the
12 purpose of determining health status. For the purposes of this
13 section, the term authorized representative shall not include
14 any person who has or may have any financial interest in the
15 settlement contract other than a provider, licensed broker,
16 financing entity, related provider trust, or special purpose
17 entity.

18 (6) Is required to purchase stop loss coverage.

19 (c) Non-public personal information solicited or
20 obtained in connection with a proposed or actual life
21 settlement contract shall be subject to the provisions
22 applicable to financial institutions under the federal Gramm
23 Leach Bliley Act, P.L. 106-102 (1999), 12 USCA §1811, and all
24 other state and federal laws relating to confidentiality of
25 non-public personal information.

26 Section 7. (a) The commissioner, when the
27 commissioner deems it reasonably necessary to protect the

1 interests of the public, may examine the business and affairs
2 of any licensee or applicant for a license. The commissioner
3 may order any licensee or applicant to produce any records,
4 books, files, or other information reasonably necessary to
5 ascertain whether such licensee or applicant is acting or has
6 acted in violation of the law or otherwise contrary to the
7 interests of the public. The expenses incurred in conducting
8 any examination shall be paid by the licensee or applicant.

9 (b) In lieu of an examination under this act of any
10 foreign or alien licensee licensed in this state, the
11 commissioner may accept an examination report on the licensee
12 as prepared by the commissioner for the licensee's state of
13 domicile or port-of-entry state.

14 (c) Names of and individual identification data for
15 all owners and insureds shall be considered private and
16 confidential information and may not be disclosed by the
17 commissioner unless required by law.

18 (d) Records of all consummated transactions and life
19 settlement contracts shall be maintained by the provider for
20 three years after the death of the insured and shall be
21 available to the commissioner for inspection during reasonable
22 business hours.

23 (e) (1) Upon determining that an examination should
24 be conducted, the commissioner shall issue an examination
25 warrant appointing one or more examiners to perform the
26 examination and instructing them as to the scope of the
27 examination. In conducting the examination, the examiner shall

1 use methods common to the examination of any life settlement
2 licensee and should use those guidelines and procedures set
3 forth in an examiners' handbook adopted by a national
4 organization.

5 (2) Every licensee or person from whom information
6 is sought, its officers, directors, and agents shall provide
7 to the examiners timely, convenient, and free access at all
8 reasonable hours at its offices to all books, records,
9 accounts, papers, documents, assets, and computer or other
10 recordings relating to the property, assets, business, and
11 affairs of the licensee being examined. The officers,
12 directors, employees, and agents of the licensee or person
13 shall facilitate the examination and aid in the examination so
14 far as it is in their power to do so. The refusal of a
15 licensee, by its officers, directors, employees, or agents, to
16 submit to examination or to comply with any reasonable written
17 request of the commissioner shall be grounds for suspension or
18 refusal of, or nonrenewal of any license or authority held by,
19 the licensee to engage in the life settlement business or
20 other business subject to the commissioner's jurisdiction. Any
21 proceedings for suspension, revocation, or refusal of any
22 license or authority shall be conducted pursuant to Section
23 27-12-18, Code of Alabama 1975.

24 (3) The commissioner shall issue subpoenas,
25 administer oaths, and examine under oath, any person as to any
26 matter pertinent to the examination. Upon the failure or
27 refusal of a person to obey a subpoena, the commissioner may

1 petition a court of competent jurisdiction, and upon proper
2 showing, the court may enter an order compelling the witness
3 to appear and testify or produce documentary evidence.

4 (4) When making an examination under this act, the
5 commissioner may retain attorneys, appraisers, independent
6 actuaries, independent certified public accountants, or other
7 professionals and specialists as examiners, the reasonable
8 cost of which shall be borne by the licensee that is the
9 subject of the examination.

10 (5) Nothing contained in this act shall be construed
11 to limit the commissioner's authority to terminate or suspend
12 an examination in order to pursue other legal or regulatory
13 action pursuant to the insurance laws of this state. Findings
14 of fact and conclusions made pursuant to any examination shall
15 be prima facie evidence in any legal or regulatory action.

16 (6) Nothing contained in this act shall be construed
17 to limit the commissioner's authority to use and, if
18 appropriate, to make public any final or preliminary
19 examination report, any examiner or licensee work papers or
20 other documents, or any other information discovered or
21 developed during the course of any examination in the
22 furtherance of any legal or regulatory action which the
23 commissioner may deem appropriate.

24 (f) (1) Examination reports shall be comprised of
25 only facts appearing upon the books, from the testimony of its
26 officers or agents or other persons examined concerning its

1 affairs, and such conclusions and recommendations as the
2 examiners find reasonably warranted from the facts.

3 (2) No later than 60 days following completion of
4 the examination, the examiner in charge shall file with the
5 commissioner a verified written report of examination under
6 oath. Upon receipt of the verified report, the commissioner
7 shall transmit the report to the licensee examined, together
8 with a notice that shall afford the licensee examined a
9 reasonable opportunity of not more than 30 days to make a
10 written submission or rebuttal with respect to any matters
11 contained in the examination report and which shall become
12 part of the report or to request a hearing on any matter in
13 dispute.

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

18 (g) (1) Names and individual identification data for
19 all owners, purchasers, and insureds shall be considered
20 private and confidential information and may not be disclosed
21 by the commissioner, unless the disclosure is to another
22 regulator or is required by law.

23 (2) Except as otherwise provided in this act, all
24 examination reports, working papers, recorded information,
25 documents, and copies thereof produced by, obtained by, or
26 disclosed to the commissioner or any other person in the
27 course of an examination made under this act or in the course

1 of analysis or investigation by the commissioner of the
2 financial condition or market conduct of a licensee shall be
3 confidential by law and privileged, shall not be subject to
4 Chapter 25A of Title 36, Code of Alabama 1975, shall not be
5 subject to subpoena, and shall not be subject to discovery or
6 admissible in evidence in any private civil action. The
7 commissioner may use the documents, materials, or other
8 information in the furtherance of any regulatory or legal
9 action brought as part of the commissioner's official duties.
10 The licensee being examined may have access to all documents
11 used to make the report.

12 (h) (1) An examiner may not be appointed by the
13 commissioner if the examiner, either directly or indirectly,
14 has a conflict of interest or is affiliated with the
15 management of or owns a pecuniary interest in any person
16 subject to examination under this act. This section shall not
17 be construed to automatically preclude an examiner from being
18 any of the following:

19 a. An owner.

20 b. An insured in a life settlement contract or
21 insurance policy.

22 c. A beneficiary in an insurance policy that is
23 proposed for a life settlement contract.

24 (2) Notwithstanding the requirements of this
25 subsection, the commissioner may retain from time to time, on
26 an individual basis, qualified actuaries, certified public
27 accountants, or other similar individuals who are

1 independently practicing their professions, even though these
2 persons from time to time may be similarly employed or
3 retained by persons subject to examination under this act.

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

10 (2) No cause of action shall arise, nor shall any
11 liability be imposed against any person for the act of
12 communicating or delivering information or data to the
13 commissioner or the commissioner's authorized representative
14 or examiner pursuant to an examination made under this act, if
15 the act of communication or delivery was performed in good
16 faith and without fraudulent intent or the intent to deceive.
17 This subdivision does not abrogate or modify in any way any
18 common law or statutory privilege or immunity heretofore
19 enjoyed by any person identified in subdivision (1).

20 (3) A person identified in subdivision (1) or (2)
21 shall be entitled to an award of attorney's fees and costs if
22 he or she is the prevailing party in a civil cause of action
23 for libel, slander, or any other relevant tort arising out of
24 activities in carrying out this act and the party bringing the
25 action was not substantially justified in doing so. For
26 purposes of this section, a proceeding is substantially

1 justified if it had a reasonable basis in law or fact at the
2 time that it was initiated.

3 (j) The commissioner may investigate suspected
4 fraudulent life settlement acts and persons engaged in the
5 business of life settlements.

6 (k) The person being examined shall pay the
7 examination expenses, travel expense, and per diem subsistence
8 allowance provided for examiners and incurred by the
9 commissioner's representative or examiners in connection with
10 an examination in accordance with Section 27-2-25, Code of
11 Alabama 1975.

12 Section 8. (a) A broker or provider licensed
13 pursuant to this act may conduct or participate in
14 advertisements within this state. Such advertisements shall
15 comply with all advertising and marketing laws or rules and
16 regulations promulgated by the commissioner that are
17 applicable to life insurers or to brokers and providers
18 licensed pursuant to this act.

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

21 (c) No person or trust shall use the words free, no
22 cost, or words of similar import in the marketing,
23 advertising, soliciting, or otherwise promoting of the
24 purchase of a policy.

25 Section 9. (a) The provider or broker shall provide
26 in writing, in a separate document that is signed by the

1 owner, all of the following information to the owner no later
2 than the date of application for a life settlement contract:

3 (1) The fact that possible alternatives to life
4 settlement contracts exist, including, but not limited to,
5 accelerated benefits offered by the issuer of the life
6 insurance policy.

7 (2) The fact that some or all of the proceeds of a
8 life settlement contract may be taxable and that assistance
9 should be sought from a professional tax advisor.

10 (3) The fact that the proceeds from a life
11 settlement contract could be subject to the claims of
12 creditors.

13 (4) The fact that receipt of proceeds from a life
14 settlement contract may adversely affect the recipients'
15 eligibility for public assistance or other government benefits
16 or entitlements and that advice should be obtained from the
17 appropriate agencies.

18 (5) The fact that the owner has a right to rescind a
19 life settlement contract within 30 days of the date it is
20 executed by all parties and the owner has received the
21 disclosures contained herein or 15 days from receipt by the
22 owner of the proceeds of the settlement, whichever is sooner.
23 Rescission, if exercised by the owner, is effective only if
24 both notice of the rescission is given and the owner repays
25 all proceeds and any premiums, loans, and loan interest paid
26 on account of the provider within the rescission period. If
27 the insured dies during the rescission period, the contract

1 shall be deemed to have been rescinded subject to repayment by
2 the owner or the owner's estate of all proceeds and any
3 premiums, loans, and loan interest to the provider.

4 (6) The fact that proceeds will be sent to the owner
5 within three business days after the provider has received the
6 insurer's or group administrator's acknowledgement that
7 ownership of the policy or interest in the certificate has
8 been transferred and the beneficiary has been designated in
9 accordance with the terms of the life settlement contract.

10 (7) The fact that entering into a life settlement
11 contract may cause other rights or benefits, including
12 conversion rights and waiver of premium benefits that may
13 exist under the policy or certificate of a group policy, to be
14 forfeited by the owner and that assistance should be sought
15 from a professional financial advisor.

16 (8) The date by which the funds will be available to
17 the owner and the transmitter of the funds.

18 (9) The fact that the commissioner shall require
19 delivery of a buyer's guide or a similar consumer advisory
20 package in the form prescribed by the commissioner to owners
21 during the solicitation process.

22 (10) The disclosure document shall contain the
23 following language:

24 "All medical, financial, or personal information
25 solicited or obtained by a provider or broker about an
26 insured, including the insured's identity or the identity of
27 family members, a spouse, or a significant other may be

1 disclosed as necessary to effect the life settlement contract
2 between the owner and provider. If you are asked to provide
3 this information, you will be asked to consent to the
4 disclosure. The information may be provided to someone who
5 buys the policy or provides funds for the purchase. You may be
6 asked to renew your permission to share information every two
7 years."

8 (11) The fact that the commissioner requires
9 providers and brokers to print separate signed fraud warnings
10 on their applications and on their life settlement contracts
11 as follows:

12 "Any person who knowingly presents false information
13 in an application for insurance or life settlement contract is
14 guilty of a crime and may be subject to fines and confinement
15 in prison."

16 (12) The fact that the insured may be contacted by
17 either the provider or broker or its authorized representative
18 for the purpose of determining the insured's health status or
19 to verify the insured's address. This contact is limited to
20 once every three months if the insured has a life expectancy
21 of more than one year and no more than once per month if the
22 insured has a life expectancy of one year or less.

23 (13) The affiliation, if any, between the provider
24 and the issuer of the insurance policy to be settled.

25 (14) That a broker represents exclusively the owner
26 and not the insurer or the provider or any other person and
27 owes a fiduciary duty to the owner, including a duty to act

1 according to the owner's instructions and in the best interest
2 of the owner.

3 (15) The name, address, and telephone number of the
4 broker.

5 (16) The name, business address, and telephone
6 number of the independent third party escrow agent and the
7 fact that the owner may inspect or receive copies of the
8 relevant escrow or trust agreements or documents.

9 (17) The fact that a change of ownership could in
10 the future limit the insured's ability to purchase future
11 insurance on the insured's life because there is a limit to
12 how much coverage insurers will issue on one life.

13 (b) The written disclosures shall be conspicuously
14 displayed in any life settlement contract furnished to the
15 owner by a provider including any affiliations or contractual
16 arrangements between the provider and the broker.

17 (c) A broker shall provide the owner and the
18 provider with at least the following disclosures no later than
19 the date the life settlement contract is signed by all
20 parties. The disclosures shall be conspicuously displayed in
21 the life settlement contract or in a separate document signed
22 by the owner and provide the following information:

23 (1) The name, business address, and telephone number
24 of the broker.

25 (2) A full, complete, and accurate description of
26 all the offers, counter-offers, acceptances, and rejections
27 relating to the proposed life settlement contract.

1 (3) A written disclosure of any affiliations or
2 contractual arrangements between the broker and any person
3 making an offer in connection with the proposed life
4 settlement contracts.

5 (4) A complete reconciliation of the gross offer or
6 bid by the provider to the net amount of proceeds or value to
7 be received by the owner, the amount of compensation to be
8 paid to the life settlement broker and the name of such life
9 settlement broker. For the purpose of this section, gross
10 offer or bid means the total amount or value offered by the
11 provider for the purchase of one or more life insurance
12 policies, inclusive of commissions and fees.

13 (5) The failure to provide the disclosures or rights
14 described in this section shall be deemed an unfair trade
15 practice pursuant to Section 17.

16 Section 10. (a) In addition to other questions an
17 insurance carrier may lawfully pose to a life insurance
18 applicant, insurance carriers may inquire in the application
19 for insurance whether the proposed owner intends to pay
20 premiums with the assistance of financing from a lender that
21 will use the policy as collateral to support the financing.

22 (b) (1) If the premium finance loan provides funds
23 which can be used for a purpose other than paying for the
24 premiums, costs, and expenses associated with obtaining and
25 maintaining the life insurance policy and loan, the
26 application may be rejected as a violation of Section 13.

1 (2) If the financing does not violate Section 13,
2 the insurer may not reject the life insurance application
3 solely because the premiums will be financed. The insurance
4 carrier may do the following:

5 a. Make disclosures, to the applicant and the
6 insured, either on the application or on an amendment to the
7 application to be completed no later than the delivery of the
8 policy, including but not limited to the following:

9 "If you have entered into a loan arrangement where
10 the policy is used as collateral and the policy does change
11 ownership at some point in the future in satisfaction of the
12 loan, the following may be true:

13 "1. A change of ownership could lead to a stranger
14 owning an interest in the insured's life.

15 "2. A change of ownership could in the future limit
16 your ability to purchase future insurance on the insured's
17 life because there is a limit to how much coverage insurers
18 will issue on one life.

19 "3. Should there be a change of ownership and you
20 wish to obtain more insurance coverage on the insured's life
21 in the future, the insured's higher issue age, a change in
22 health status, or other factors may reduce the ability to
23 obtain coverage or may result in significantly higher
24 premiums, or both.

25 "4. You should consult a professional advisor since
26 a change in ownership in satisfaction of the loan may result

1 in tax consequences to the owner, depending on the structure
2 of the loan."

3 b. Require certifications, such as the following,
4 from the applicant or the insured, or both:

5 "1. I have not entered into any agreement or
6 arrangement providing for the future sale of this life
7 insurance policy.

8 "2. My loan arrangement for this policy provides
9 funds sufficient to pay for some or all of the premiums,
10 costs, and expenses associated with obtaining and maintaining
11 my life insurance policy, but I have not entered into any
12 agreement by which I am to receive consideration in exchange
13 for procuring this policy.

14 "3. The borrower has an insurable interest in the
15 insured."

16 (c) Life insurers shall provide individual life
17 insurance policyholders with a statement informing them that
18 if they are considering making changes in the status of their
19 policy, they should consult with a licensed insurance or
20 financial advisor. Such statement may accompany or be included
21 in notices or mailings otherwise provided to such
22 policyholders.

23 (d) The commissioner shall approve a document to
24 appraise the owner of a policy of his or her rights as an
25 owner of a policy. The document shall be made available at no
26 cost to all insurance companies and life insurance producers

1 and written in lay terms. The document shall advise the
2 consumer:

3 (1) That life insurance is a critical part of a
4 broader financial plan, and that the consumer is encouraged
5 and has a right to seek additional financial advice and
6 opinions.

7 (2) That possible alternatives to the lapse or
8 surrender of a policy exist.

9 (3) Of the definitions of common industry terms
10 including, but not limited to, life settlement.

11 (e) In addition to the information described in
12 subsections (a) and (b) of this section, the document must
13 contain the following statement in large, bold, or otherwise
14 conspicuous typeface calculated to draw the eye: "Life
15 insurance is a critical part of a broader financial plan.
16 There are many options available, and you have the right to
17 shop around and seek advice from different financial advisers
18 in order to find the option best suited to your needs."

19 (f) The document may include brief descriptions of
20 common products available from providers. These products must
21 be discussed in general terms for informative purposes only
22 and not identifiable to any specific provider.

23 (g) The document shall be provided with the notice
24 required in subsection (a) of this section.

25 Section 11. (a) A provider entering into a life
26 settlement contract with any owner of a policy wherein the

1 insured is terminally or chronically ill shall first obtain
2 the following:

3 (1) If the owner is the insured, a written statement
4 from a licensed attending physician that the owner is of sound
5 mind and under no constraint or undue influence to enter into
6 a settlement contract.

7 (2) A document in which the insured consents to the
8 release of his or her medical records to a provider,
9 settlement broker, or insurance producer and, if the policy
10 was issued less than two years from the date of application
11 for a settlement contract, to the insurance company that
12 issued the policy.

13 (b) The insurer shall respond to a request for
14 verification of coverage submitted by a provider, settlement
15 broker, or life insurance producer not later than 30 calendar
16 days of the date the request is received. The request for
17 verification of coverage must be made on a form approved by
18 the commissioner. The insurer shall complete and issue the
19 verification of coverage or indicate in which respects it is
20 unable to respond. In its response, the insurer shall indicate
21 whether, based on the medical evidence and documents provided,
22 the insurer intends to pursue an investigation at this time
23 regarding the validity of the insurance contract.

24 (c) Before or at the time of execution of the
25 settlement contract, the provider shall obtain a witnessed
26 document in which the owner consents to the settlement
27 contract, represents that the owner has a full and complete

1 understanding of the settlement contract, that the owner has a
2 full and complete understanding of the benefits of the policy,
3 acknowledges that the owner is entering into the settlement
4 contract freely and voluntarily, and, for persons with a
5 terminal or chronic illness or condition, acknowledges that
6 the insured has a terminal or chronic illness and that the
7 terminal or chronic illness or condition was diagnosed after
8 the policy was issued.

9 (d) An insurer may not unreasonably delay effecting
10 change of ownership or beneficiary with any life settlement
11 contract lawfully entered into in this state or with a
12 resident of this state.

13 (e) If a settlement broker or life insurance
14 producer performs any of these activities required of the
15 provider, the provider is deemed to have fulfilled the
16 requirements of this section.

17 (f) If a broker performs those verification of
18 coverage activities required of the provider, the provider is
19 deemed to have fulfilled the requirements of subsection (a) of
20 Section 9.

21 (g) Within 20 days after an owner executes a life
22 settlement contract, the provider shall give written notice to
23 the insurer that issued that insurance policy that the policy
24 has become subject to a life settlement contract. The notice
25 shall be accompanied by the documents required by subdivision
26 2 of subsection (a) of Section 10.

1 (h) All medical information solicited or obtained by
2 any licensee shall be subject to the applicable provision of
3 state law relating to confidentiality of medical information,
4 if not otherwise provided in this act.

5 (i) All life settlement contracts entered into in
6 this state shall provide that the owner may rescind the
7 contract on or before 30 days after the date it is executed by
8 all parties thereto and the owner has received all required
9 disclosures, or 15 days from receipt by the owner of the full
10 payment of the proceeds as specified below, whichever is
11 sooner. Rescission, if exercised by the owner, is effective
12 only if both notice of the rescission is given and the owner
13 repays all proceeds and any premiums, loans, and loan interest
14 paid on account of the provider within the rescission period.
15 If the insured dies during the rescission period, the contract
16 shall be deemed to have been rescinded subject to repayment by
17 the owner or the owner's estate of all proceeds and any
18 premiums, loans, and loan interest to the provider.

19 (j) Within three business days after receipt from
20 the owner of documents to effect the transfer of the insurance
21 policy, the provider shall pay the proceeds of the settlement
22 to an escrow or trust account managed by a trustee or escrow
23 agent in a state or federally chartered financial institution
24 pending acknowledgement of the transfer by the issuer of the
25 policy. The trustee or escrow agent shall transfer the
26 proceeds due to the owner within three business days of
27 acknowledgement of the transfer from the insurer.

1 (k) Failure to tender the life settlement contract
2 proceeds to the owner by the date disclosed to the owner
3 renders the contract voidable by the owner for lack of
4 consideration until the time the proceeds are tendered to and
5 accepted by the owner. A failure to give written notice of the
6 right of rescission hereunder shall toll the right of
7 rescission until 30 days after the written notice of the right
8 of rescission has been given.

9 (l) Any fee paid by a provider, party, individual,
10 or an owner to a broker in exchange for services provided to
11 the owner pertaining to a life settlement contract shall be
12 computed as a percentage of the offer obtained, not the face
13 value of the policy. Nothing in this section shall be
14 construed as prohibiting a broker from reducing such broker's
15 fee below this percentage if the broker so chooses.

16 (m) The broker shall disclose to the owner any thing
17 of value paid or given to a broker which relate to a life
18 settlement contract.

19 (n) No person at any time prior to, or at the time
20 of, the application for, or issuance of, a policy, or during a
21 two-year period commencing with the date of issuance of the
22 policy, may enter into a life settlement contract regardless
23 of the date the compensation is to be provided and regardless
24 of the date the assignment, transfer, sale, devise, bequest,
25 or surrender of the policy is to occur. This prohibition shall
26 not apply if the owner certifies to the provider that any of
27 the following occurred:

1 (1) The policy was issued upon the owner's exercise
2 of conversion rights arising out of a group or individual
3 policy, provided the total of the time covered under the
4 conversion policy plus the time covered under the prior policy
5 is at least 24 months. The time covered under a group policy
6 must be calculated without regard to a change in insurance
7 carriers, provided the coverage has been continuous and under
8 the same group sponsorship.

9 (2) The owner submits independent evidence to the
10 provider that one or more of the following conditions have
11 been met within the two-year period:

12 a. The owner or insured is terminally or chronically
13 ill.

14 b. The owner or insured disposes of his ownership
15 interests in a closely held corporation, pursuant to the terms
16 of a buyout or other similar agreement in effect at the time
17 the insurance policy was initially issued.

18 c. The owner's spouse dies.

19 d. The owner divorces his or her spouse.

20 e. The owner retires from full-time employment.

21 f. The owner becomes physically or mentally disabled
22 and a physician determines that the disability prevents the
23 owner from maintaining full-time employment.

24 g. A final order, judgment, or decree is entered by
25 a court of competent jurisdiction on the application of a
26 creditor of the owner adjudicating the owner bankrupt or
27 insolvent, or approving a petition seeking reorganization of

1 the owner or appointing a receiver, trustee, or liquidator to
2 all or a substantial part of the owner's assets.

3 (3) Copies of the independent evidence required by
4 subdivision 2 of subsection (n) shall be submitted to the
5 insurer when the provider submits a request to the insurer for
6 verification of coverage. The copies shall be accompanied by a
7 letter of attestation from the provider that the copies are
8 true and correct copies of the documents received by the
9 provider. Nothing in this section shall prohibit an insurer
10 from exercising its right to contest the validity of any
11 policy.

12 (4) If the provider submits to the insurer a copy of
13 independent evidence provided for in paragraph a. of
14 subdivision (2), when the provider submits a request to the
15 insurer to effect the transfer of the policy to the provider,
16 the copy is deemed to establish that the settlement contract
17 satisfies the requirements of this section.

18 Section 12. (a) The commissioner may promulgate
19 rules implementing this act and regulating the activities and
20 relationships of providers, brokers, insurers, and their
21 agents, subject to statutory limitations on administrative
22 rule making.

23 (b) If there is more than one owner on a single
24 policy, and the owners are residents of different states, the
25 life settlement contract shall be governed by the law of the
26 state in which the owner having the largest percentage
27 ownership resides or, if the owners hold equal ownership, the

1 state of residence of one owner agreed upon in writing by all
2 of the owners. The law of the state of the insured shall
3 govern in the event that equal owners fail to agree in writing
4 upon a state of residence for jurisdictional purposes.

5 (c) A provider from this state who enters into a
6 life settlement contract with an owner who is a resident of
7 another state that has enacted statutes or adopted regulations
8 governing life settlement contracts, shall be governed in the
9 effectuation of that life settlement contract by the statutes
10 and regulations of the owner's state of residence. If the
11 state in which the owner is a resident has not enacted
12 statutes or regulations governing life settlement contracts,
13 the provider shall give the owner notice that neither state
14 regulates the transaction upon which he or she is entering.
15 For transactions in those states, however, the provider is to
16 maintain all records required if the transactions were
17 executed in the state of residence. The forms used in those
18 states need not be approved by the department.

19 (d) If there is a conflict in the laws that apply to
20 an owner and a purchaser in any individual transaction, the
21 laws of the state that apply to the owner shall take
22 precedence and the provider shall comply with those laws.

23 Section 13. (a) It is unlawful for any person to do
24 any of the following:

25 (1) Enter into a life settlement contract if such
26 person knows or reasonably should have known that the life

1 insurance policy was obtained by means of a false, deceptive,
2 or misleading application for such policy.

3 (2) Engage in any transaction, practice, or course
4 of business if such person knows or reasonably should have
5 known that the intent was to avoid the notice requirements of
6 this section.

7 (3) Engage in any fraudulent act or practice in
8 connection with any transaction relating to any settlement
9 involving an owner who is a resident of this state.

10 (4) If a provider or broker, directly or indirectly,
11 advertises, solicits, or otherwise promotes the purchase of a
12 new policy for the sole purpose of or with the primary
13 emphasis on settling the policy.

14 (5) A person providing premium financing shall not
15 receive any proceeds, fees, or other consideration from the
16 policy or owner of the policy that are in addition to the
17 amounts required to pay principal, interest, and any
18 reasonable costs or expenses incurred by the lender or
19 borrower in connection with the premium finance agreement,
20 except for the event of a default, unless either the default
21 on the loan or transfer of the policy occurs pursuant to an
22 agreement or understanding with any other person for the
23 purpose of evading regulation under this act.

24 (6) With respect to any life settlement contract or
25 insurance policy and a broker, knowingly solicit an offer
26 from, effectuate a life settlement contract with, or make a
27 sale to any provider, financing entity, or related provider

1 trust that is controlling, controlled by, or under common
2 control with such broker unless the relationship is disclosed
3 to the owner.

4 (7) With respect to any life settlement contract or
5 insurance policy and a provider, knowingly enter into a life
6 settlement contract with a owner, if, in connection with such
7 life settlement contract, any thing of value will be paid to a
8 broker that is controlling, controlled by, or under common
9 control with the provider or the financing entity or related
10 provider trust that is involved in the settlement contract
11 unless the relationship is disclosed to the owner.

12 (8) With respect to a provider, enter into a life
13 settlement contract unless the life settlement promotional,
14 advertising, and marketing materials, as may be prescribed by
15 rule, have been filed with the commissioner. In no event shall
16 any marketing materials expressly reference that the insurance
17 is free for any period of time. The inclusion of any reference
18 in the marketing materials that would cause an owner to
19 reasonably believe that the insurance is free for any period
20 of time shall be considered a violation of this act.

21 (9) With respect to any life insurance producer,
22 insurance company, broker, or provider, make any statement or
23 representation to the applicant or policyholder in connection
24 with the sale or financing of a life insurance policy to the
25 effect that the insurance is free or without cost to the
26 policyholder for any period of time unless provided in the
27 policy.

1 (10) An insurer shall not:

2 a. Engage in any transaction, act, or practice that
3 restricts, limits, or impairs the lawful transfer of
4 ownership, change of beneficiary, or assignment of a policy.

5 b. Make any false or misleading statement for the
6 purpose of dissuading an owner or insured from a lawful life
7 settlement contract.

8 Section 14. (a) A person may not do any of the
9 following:

10 (1) Commit a fraudulent life settlement act.

11 (2) Knowingly and intentionally interfere with the
12 enforcement of this act or investigations of suspected or
13 actual violations of this act.

14 (3) Knowingly or intentionally permit any person
15 convicted of a felony involving dishonesty or breach of trust
16 to participate in the business of life settlements.

17 (b) Life settlement contracts and applications for
18 life settlement contracts, regardless of the form of
19 transmission, shall contain the following statement or a
20 substantially similar statement:

21 "Any person who knowingly presents false information
22 in an application for insurance or life settlement contract is
23 guilty of a crime and may be subject to fines and confinement
24 in prison."

25 (c) The lack of a statement as required in
26 subsection (b) of this section does not constitute a defense
27 in any prosecution for a fraudulent life settlement act.

1 (d) Any person engaged in the business of life
2 settlements having knowledge or a reasonable belief that a
3 fraudulent life settlement act is being, will be, or has been
4 committed shall provide to the commissioner the information
5 required by, and in a manner prescribed by, the commissioner.

6 (e) Any other person having knowledge or a
7 reasonable belief that a fraudulent life settlement act is
8 being, will be, or has been committed may provide to the
9 commissioner the information required by, and in a manner
10 prescribed by, the commissioner.

11 (f) No civil liability may be imposed on and no
12 cause of action shall arise from a person's furnishing
13 information concerning suspected, anticipated, or completed
14 fraudulent life settlement acts or suspected or completed
15 fraudulent insurance acts if the information is provided to or
16 received from any of the following:

17 (1) The commissioner or the commissioner's
18 employees, agents, or representatives.

19 (2) Federal, state, or local law enforcement or
20 regulatory officials or their employees, agents, or
21 representatives.

22 (3) A person involved in the prevention and
23 detection of fraudulent life settlement acts or that person's
24 agents, employees, or representatives.

25 (4) Any regulatory body or its employees, agents, or
26 representatives overseeing life insurance, life settlements,
27 securities, or investment fraud.

1 (5) The life insurer that issued the life insurance
2 policy covering the life of the insured.

3 (6) The licensee and any agents, employees, or
4 representatives.

5 (g) Subsection (f) shall not apply to statements
6 made with actual malice. In an action brought against a person
7 for filing a report or furnishing other information concerning
8 a fraudulent life settlement act or a fraudulent insurance
9 act, the party bringing the action shall plead specifically
10 any allegation that subsection (f) does not apply because the
11 person filing the report or furnishing the information did so
12 with actual malice.

13 (h) A person described in subsection (f) shall be
14 entitled to an award of attorney's fees and costs if he or she
15 is the prevailing party in a civil cause of action for libel,
16 slander, or any other relevant tort arising out of activities
17 in carrying out the provisions of this act and the party
18 bringing the action was not substantially justified in doing
19 so. For purposes of this section, a proceeding is
20 substantially justified if it had a reasonable basis in law or
21 fact at the time that it was initiated.

22 (i) This section does not abrogate or modify common
23 law or statutory privileges or immunities enjoyed by a person
24 described in subsection (f).

25 (j) The documents and evidence provided pursuant to
26 subsection (f) or obtained by the commissioner in an
27 investigation of suspected or actual fraudulent life

1 settlement acts shall be privileged and confidential and shall
2 not be a public record and shall not be subject to discovery
3 or subpoena in a civil or criminal action.

4 (k) Subsection (f) does not prohibit release by the
5 commissioner of the following documents and evidence obtained
6 in an investigation of suspected or actual fraudulent life
7 settlement acts:

8 (1) In administrative or judicial proceedings, to
9 enforce laws administered by the commissioner.

10 (2) To federal, state, or local law enforcement or
11 regulatory agencies, to an organization established for the
12 purpose of detecting and preventing fraudulent life settlement
13 acts, or to the National Association of Insurance
14 Commissioners.

15 (3) At the discretion of the commissioner, to a
16 person in the business of life settlements that is aggrieved
17 by a fraudulent life settlement act.

18 (1) Release of documents and evidence under
19 subsection (k) does not abrogate or modify the privilege
20 granted in subsection (f).

21 (m) This act shall not do any of the following:

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

25 (2) Preempt, supersede, or limit any provision of
26 any state securities law or any rule, order, or notice issued
27 thereunder.

1 (3) Prevent or prohibit a person from voluntarily
2 disclosing information concerning life settlement fraud to a
3 law enforcement or regulatory agency other than the Department
4 of Insurance.

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

9 (n) Providers and brokers shall have in place
10 anti-fraud initiatives reasonably calculated to detect,
11 prosecute, and prevent fraudulent life settlement acts. At the
12 discretion of the commissioner, the commissioner may order, or
13 a licensee may request and the commissioner may grant, such
14 modifications of the following required initiatives as
15 necessary to ensure an effective anti-fraud program. The
16 modifications may be more or less restrictive than the
17 required initiatives so long as the modifications may
18 reasonably be expected to accomplish the purpose of this
19 section. Anti-fraud initiatives shall include the following:

20 (1) Fraud investigators who may be provider or
21 broker employees or independent contractors.

22 (2) An anti-fraud plan which shall be submitted to
23 the commissioner. The anti-fraud plan shall include, but not
24 be limited to, the following:

25 a. A description of the procedures for detecting and
26 investigating possible fraudulent life settlement acts and

1 procedures for resolving material inconsistencies between
2 medical records and insurance applications.

3 b. A description of the procedures for reporting
4 possible fraudulent life settlement acts to the commissioner.

5 c. A description of the plan for antifraud education
6 and training of underwriters and other personnel.

7 d. A description or chart outlining the
8 organizational arrangement of the anti-fraud personnel who are
9 responsible for the investigation and reporting of possible
10 fraudulent life settlement acts and investigating unresolved
11 material inconsistencies between medical records and insurance
12 applications.

13 (o) Anti-fraud plans submitted to the commissioner
14 shall be privileged and confidential and shall not be a public
15 record and shall not be subject to discovery or subpoena in a
16 civil or criminal action.

17 Section 15. (a) In addition to the penalties and
18 other enforcement provisions of this act, if any person
19 violates this act or any rule implementing this act, the
20 commissioner may seek an injunction in a court of competent
21 jurisdiction in the county where the person resides or has a
22 principal place of business and may apply for temporary and
23 permanent orders that the commissioner determines necessary to
24 restrain the person from further committing the violation.

25 (b) Any person damaged by the acts of another person
26 in violation of this act or any rule or regulation
27 implementing this act may bring a civil action for damages

1 against the person committing the violation in a court of
2 competent jurisdiction.

3 (c) The commissioner may issue a cease and desist
4 order upon a person who violates any provision of this part,
5 any rule or order adopted by the commissioner, or any written
6 agreement entered into with the commissioner in accordance
7 with the state Administrative Procedures Act.

8 (d) When the commissioner finds that such an action
9 presents an immediate danger to the public and requires an
10 immediate final order, he or she may issue an emergency cease
11 and desist order reciting with particularity the facts
12 underlying such findings. The emergency cease and desist order
13 is effective immediately upon service of a copy of the order
14 on the respondent and remains effective for 90 days. If the
15 department begins non-emergency cease and desist proceedings
16 under subsection (a), the emergency cease and desist order
17 remains effective, absent an order by an appellate court of
18 competent jurisdiction. In the event of a willful violation of
19 this act, the trial court may award statutory damages in
20 addition to actual damages in an additional amount up to three
21 times the actual damage award. The provisions of this act may
22 not be waived by agreement. No choice of law provision may be
23 utilized to prevent the application of this act to any
24 settlement in which a party to the settlement is a resident of
25 this state.

26 Section 16. (a) A person that commits a fraudulent
27 life settlement act is guilty of a Class A misdemeanor and

1 shall be subject to the additional penalties under Section
2 27-7-19, Code of Alabama 1975.

3 (b) The commissioner may levy a civil penalty not
4 exceeding ten thousand dollars (\$10,000) per violation upon
5 any person, including those persons and their employees
6 licensed pursuant to this act, who is found to have committed
7 a fraudulent life settlement act or violated any other
8 provision of this act.

9 (c) The license of a person licensed under this act
10 who commits a fraudulent life settlement act shall be revoked.

11 Section 17. (a) A provider lawfully transacting
12 business in this state prior to the effective date of this act
13 may continue to do so pending approval or disapproval of that
14 person's application for a license as long as the application
15 is filed with the commissioner not later than 30 days after
16 publication by the commissioner of an application form and
17 instructions for licensure of providers. If the publication of
18 the application form and instructions is prior to the
19 effective date of this act, then the filing of the application
20 shall not be later than 30 days after the effective date of
21 this act. During the time that such an application is pending
22 with the commissioner, the applicant may use any form of life
23 settlement contract that has been filed with the commissioner
24 pending approval thereof, provided that such form is otherwise
25 in compliance with the provisions of this act. Any person
26 transacting business in this state under this provision shall

1 be obligated to comply with all other requirements of this
2 act.

3 (b) A person who has lawfully negotiated life
4 settlement contracts between any owner residing in this state
5 and one or more providers for at least one year immediately
6 prior to the effective date of this act may continue to do so
7 pending approval or disapproval of that person's application
8 for a license as long as the application is filed with the
9 commissioner not later than 30 days after publication by the
10 commissioner of an application form and instructions for
11 licensure of brokers. If the publication of the application
12 form and instructions is prior to the effective date of this
13 act, then the filing of the application shall not be later
14 than 30 days after the effective date of this act. Any person
15 transacting business in this state under this provision shall
16 be obligated to comply with all other requirements of this
17 act.

18 Section 18. A violation of this act shall be
19 considered an unfair practice pursuant to Chapter 12 of Title
20 27 of the Code of Alabama 1975.

21 Section 19. Although this bill would have as its
22 purpose or effect the requirement of a new or increased
23 expenditure of local funds, the bill is excluded from further
24 requirements and application under Amendment 621, now
25 appearing as Section 111.05 of the Official Recompilation of
26 the Constitution of Alabama of 1901, as amended, because the

1 bill defines a new crime or amends the definition of an
2 existing crime.

3 Section 20. This act shall become effective on the
4 first day of the third month following its passage and
5 approval by the Governor, or its otherwise becoming law.