

Hall of the House of Representatives
87th General Assembly - Regular Session, 2009
Amendment Form

Subtitle of House Bill No. 2113

"TO ENACT THE LIFE SETTLEMENTS ACT BASED UPON THE MODEL LEGISLATION
OF THE NATIONAL CONFERENCE OF INSURANCE LEGISLATORS AND TO REPEAL
THE VIATICAL SETTLEMENTS ACT, ARKANSAS CODE § 23-81- 601 ET SEQ."

Amendment No. 1 to House Bill No. 2113.

Amend House Bill No. 2113 as originally introduced:

Delete everything after the enacting clause and substitute the following:

“SECTION 1. Arkansas Code Title 23, Chapter 81 is amended to add an additional subchapter to read as follows:

23-81-801. Short title.

This subchapter shall be known and may be cited as the "Life Settlements Act".

23-81-802. Definitions.

As used in this subchapter:

(1) "Advertisement" means any written, electronic, or printed communication or any communication by means of recorded telephone messages or transmissions on radio, television, the Internet, or similar communications media, including film strips, motion pictures, and videos, published, disseminated, circulated, or placed before the public, directly or indirectly, to create an interest in or to induce a person to purchase or sell, assign, devise, bequest, or transfer the death benefit or ownership of a life insurance policy or an interest in a life insurance policy pursuant to a life settlement contract;

(2)(A) "Broker" means a person who on behalf of an owner and for a fee, commission, or other valuable consideration offers or attempts to negotiate life settlement contracts between an owner and providers.

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

(C) "Broker" does not include an attorney, certified public accountant, or financial planner retained in the type of practice customarily performed in his or her professional capacity to represent the owner whose compensation is not paid directly or indirectly by the provider or any other person except the owner;



(3) "Business of life settlements" means an activity involved in, but not limited to, offering to enter into, soliciting, negotiating, procuring, effectuating, monitoring, or tracking life settlement contracts;

(4) "Chronically ill" means:

(A) Being unable to perform at least two (2) activities of daily living such as eating, toileting, transferring, bathing, dressing, or continence;

(B) Requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment; or

(C) Having a level of disability similar to that described in subdivision (4)(A) of this section as determined by regulations of the United States Secretary of Health and Human Services if adopted by rule of the Insurance Commissioner;

(5)(A) "Financing entity" means an underwriter, placement agent, lender, purchaser of securities, purchaser of a policy or certificate from a provider, credit enhancer, or any entity that has a direct ownership in a policy or certificate that is the subject of a life settlement contract, but:

(i) Whose principal activity related to the transaction is providing funds to effect the life settlement contract or purchase of one (1) or more policies; and

(ii) Has an agreement in writing with one (1) or more providers to finance the acquisition of life settlement contracts.

(B) "Financing entity" does not include a nonaccredited investor or purchaser;

(6) "Financing transaction" means a transaction in which a licensed provider obtains financing from a financing entity, including without limitation any secured or unsecured financing, any securitization transaction, or any securities offering that either is registered or exempt from registration under federal and state securities law;

(7) "Fraudulent life settlement act" includes:

(A) Acts or omissions committed by a person who knowingly and with intent to defraud for the purpose of depriving another of property or for pecuniary gain commits or permits its employees or its agents to engage in acts, including without limitation:

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

(a) An application for the issuance of a life settlement contract or insurance policy;

(b) The underwriting of a life settlement contract or insurance policy;

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

(d) Premiums paid on an insurance policy;

(e) Payments and changes in ownership or beneficiary made in accordance with the terms of a life settlement contract or insurance policy;

(f) The reinstatement or conversion of an

insurance policy;

(g) The solicitation, offer to enter into, or effectuation of a life settlement contract, or insurance policy;

(h) The issuance of written evidence of life settlement contracts or insurance;

(i) Any application for or the existence of or any payments related to a loan secured directly or indirectly by any interest in a life insurance policy; or

(j) Entering into any practice or plan that involves stranger-originated life insurance;

(ii) Failing to disclose to the insurer when the request for such disclosure has been asked for by the insurer that the prospective insured has undergone a life expectancy evaluation by any person or entity other than the insurer or its authorized representatives in connection with the issuance of the policy;

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

(iv) In the solicitation, application, or issuance of a life insurance policy, employing any device, scheme, or artifice in violation of state insurable interest laws; and

(B) In the furtherance of a fraud or to prevent the detection of a fraud any person commits or permits its employees or its agents to:

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

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

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

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

(v) Engage in embezzlement, theft, misappropriation, or conversion of moneys, funds, premiums, credits, or other property of a provider, insurer, insured, owner, insurance, policy owner, or any other person engaged in the business of life settlements or insurance;

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

(vii) Attempt to commit, assist, aid, or abet in the commission of or conspiracy to commit the acts or omissions specified in this subdivision; or

(viii) Misrepresent the state of residence of an owner to be a state or jurisdiction that does not have a law substantially similar to this subchapter for the purpose of evading or avoiding the

provisions of this subchapter;

(8) "Insured" means the person covered under the policy being considered for sale in a life settlement contract;

(9) "Life expectancy" means the arithmetic mean of the number of months the insured under the life insurance policy to be settled can be expected to live considering medical records and appropriate experiential data;

(10) "Life insurance producer" means any person licensed in this state as a resident or nonresident insurance producer who has received qualification or authority for life insurance coverage or a life line of coverage pursuant to § 23-64-507(a)(1);

(11)(A) "Life settlement contract" means a written agreement entered into between a provider and an owner, establishing the terms under which compensation or any thing of value will be paid, which compensation or thing of value is less than the expected death benefit of the insurance policy or certificate, in return for the owner's assignment, transfer, sale, devise, or bequest of the death benefit or any portion of an insurance policy or certificate of insurance for compensation, provided, however, that the minimum value for a life settlement contract shall be greater than a cash surrender value or accelerated death benefit available at the time of an application for a life settlement contract.

(B) "Life settlement contract" also includes the transfer for compensation or value of ownership or beneficial interest in a trust or other entity that owns such policy if the trust or other entity was formed or availed of for the principal purpose of acquiring one (1) or more life insurance contracts, which life insurance contract insures the life of a person residing in this state.

(C) "Life settlement contract" also includes a premium finance loan made for a policy on or before the date of issuance of the policy when:

(i) The loan proceeds are not used solely to pay premiums for the policy and any costs or expenses incurred by the lender or the borrower in connection with the financing;

(ii) The owner receives on the date of the premium finance loan a guarantee of the future life settlement value of the policy;
or

(iii) The owner agrees on the date of the premium finance loan to sell the policy or any portion of its death benefit on any date following the issuance of the policy.

(D) "Life settlement contract" does not include:

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

(ii) A premium finance loan, as defined herein, or any loan made by a bank or other licensed financial institution, provided that neither default on such loan nor the transfer of the policy in connection with such default is pursuant to an agreement or understanding with any other person for the purpose of evading regulation under this subchapter;

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

(iv) An agreement in which all the parties:
(a) Are closely related to the insured by blood or law; or
(b) Have a lawful substantial economic interest in the continued life, health, and bodily safety of the person insured or are trusts established primarily for the benefit of such parties;
(v) Any designation, consent, or agreement by an insured who is an employee of an employer in connection with the purchase by the employer or trust established by the employer of life insurance on the life of the employee;
(vi) A bona fide business succession planning arrangement:
(a) Between one (1) or more shareholders in a corporation or between a corporation and one (1) or more of its shareholders or one (1) or more trusts established by its shareholders;
(b) Between one (1) or more partners in a partnership or between a partnership and one (1) or more of its partners or one (1) or more trust established by its partners; or
(c) Between one (1) or more members in a limited liability company or between a limited liability company and one (1) or more of its members or one (1) or more trust established by its members; or
(vii) An agreement entered into by a service recipient, or a trust established by the service recipient, and a service provider, or a trust established by the service provider, who performs significant services for the service recipient's trade or business;
(12) "Net death benefit" means the amount of the life insurance policy or certificate to be settled less any outstanding debts or liens;
(13)(A) "Owner" means the owner of a life insurance policy or a certificate holder under a group policy, with or without a terminal illness, who enters or seeks to enter into a life settlement contract.
(B) "Owner" is not limited to an owner of a life insurance policy or a certificate holder under a group policy that insures the life of an individual with a terminal or chronic illness or condition except when specifically addressed.
(C) "Owner" does not include:
(i) Any provider or other licensee under this subchapter;
(ii) A qualified institutional buyer as defined in Rule 144A of the Federal Securities Act of 1933, as amended;
(iii) A financing entity;
(iv) A special purpose entity; or
(v) A related provider trust;
(14) "Patient identifying information" means an insured's address, telephone number, facsimile number, electronic mail address, photograph or likeness, employer, employment status, social security number, or any other information that is likely to lead to the identification of the insured;
(15) "Person" means any natural person or legal entity, including without limitation a partnership, limited liability company, association, trust, or corporation;
(16) "Policy" means an individual or group policy, group

certificate, contract, or arrangement of life insurance owned by a resident of this state, regardless of whether delivered or issued for delivery in this state;

(17) "Premium finance loan" means a loan made primarily for the purposes of making premium payments on a life insurance policy, which loan is secured by an interest in such life insurance policy;

(18)(A) "Provider" means a person other than an owner who enters into or effectuates a life settlement contract with an owner.

(B) "Provider" does not include:

(i) Any bank, savings bank, savings and loan association, or credit union;

(ii) A licensed lending institution or creditor or secured party pursuant to a premium finance loan agreement which takes an assignment of a life insurance policy or certificate issued pursuant to a group life insurance policy as collateral for a loan;

(iii) The insurer of a life insurance policy or rider to the extent it provides accelerated death benefits or cash surrender value under the insurance code or rules of the commissioner;

(iv) Any natural person who enters into or effectuates no more than one (1) agreement in a calendar year for the transfer of a life insurance policy or certificate issued pursuant to a group life insurance policy, for compensation or anything of value less than the expected death benefit payable under the policy;

(v) A purchaser;

(vi) Any authorized or eligible insurer that provides stop loss coverage to a provider, purchaser, financing entity, special purpose entity, or related provider trust;

(vii) A financing entity;

(viii) A special purpose entity;

(ix) A related provider trust;

(x) A broker; or

(xi) An accredited investor or qualified institutional buyer as defined in respectively in Regulation D, Rule 501 or Rule 144A of the Federal Securities Act of 1933, as amended, who purchases a life settlement policy from a provider;

(19) "Purchased policy" means a policy or group certificate that has been acquired by a provider pursuant to a life settlement contract;

(20) "Purchaser" means a person who pays compensation or anything of value as consideration for a beneficial interest in a trust which is vested with, or for the assignment, transfer, or sale of, an ownership or other interest in a life insurance policy or a certificate issued pursuant to a group life insurance policy which has been the subject of a life settlement contract;

(21)(A) "Related provider trust" means a titling trust or other trust established by a licensed provider or a financing entity for the sole purpose of holding the ownership or beneficial interest in purchased policies in connection with a financing transaction.

(B) In order to qualify as a related provider trust, the trust must have a written agreement with the licensed provider under which the licensed provider is responsible for ensuring compliance with all statutory and regulatory requirements and under which the trust agrees to make all records and files relating to life settlement transactions available

to the department of insurance as if those records and files were maintained directly by the licensed provider;

(22) "Settled policy" means a life insurance policy or certificate that has been acquired by a provider pursuant to a life settlement contract;

(23) "Special purpose entity" means a corporation, partnership, trust, limited liability company, or other legal entity formed solely to provide either directly or indirectly access to institutional capital markets:

(A) For a financing entity or provider; or

(B) In connection with a transaction in which:

(i) The securities in the special purpose entity are acquired by the owner or by a "qualified institutional buyer" as defined in Rule 144 promulgated under the Federal Securities Act of 1933, as amended; or

(ii) The securities pay a fixed rate of return commensurate with established asset-backed institutional capital markets;

(24)(A) "Stranger-originated life insurance" is a practice or plan to initiate a life insurance policy for the benefit of a third party investor who, at the time of policy origination, has no insurable interest in the insured.

(B) Stranger-originated life insurance practices include without limitation to cases in which life insurance is purchased with resources or guarantees from or through a person or entity that at the time of policy inception could not lawfully initiate the policy himself or itself, and in which at the time of inception there is an arrangement or agreement, whether verbal or written, to directly or indirectly transfer the ownership of the policy, the policy benefits, or the policy and the policy benefits to a third party.

(C) Trusts that are created to give the appearance of insurable interest and are used to initiate policies for investors violate insurable interest laws and the prohibition against wagering on life.

(D) Stranger-originated life insurance arrangements do not include those practices set forth in subdivision (11)(D) of this section; and

(25) "Terminally ill" means having an illness or sickness that can reasonably be expected to result in death in twenty-four (24) months or less.

23-81-803. Licensing requirements.

(a) A person, wherever located, shall not act as a provider or broker with an owner or multiple owners who is a resident of this state without first having obtained a license from the Insurance Commissioner.

(b)(1) Application for a provider or broker license shall be made to the commissioner by the applicant on a form prescribed by the commissioner, and the application shall be accompanied by a fee in an amount established by the commissioner.

(2) However, the license and fees to continue the license for a provider license shall be reasonable, and the license and fees to continue the license for a broker license shall not exceed those established for an insurance producer, as such fees are otherwise provided for by statute or rule of the commissioner.

(c) A life insurance producer who has been licensed as a resident insurance producer with a life line of authority in this state or his or her

home state for at least one (1) year and is licensed as a nonresident producer in this state shall be deemed to meet the licensing requirements of this section and shall be permitted to operate as a broker.

(d)(1) Not later than thirty (30) days from the first day of operating as a broker, the life insurance producer shall notify the commissioner that he or she is acting as a broker on a form prescribed by the commissioner and shall pay any applicable fee to be determined by the commissioner.

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

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

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

(g)(1) Licenses issued under this subchapter may be continued by paying the fees and satisfying the education and other requirements established by rule of the commissioner.

(2) Failure to pay the fee within the terms prescribed shall result in the automatic revocation of the license.

(h)(1) The applicant shall provide such information as the commissioner may require on forms prepared by the commissioner.

(2) The commissioner may require the applicant to fully disclose the identity of its stockholders other than stockholders owning less than ten percent (10%) of the shares of an applicant whose shares are publicly traded, partners, officers, and employees, and the commissioner, in the exercise of the commissioner's sole discretion, may refuse to issue such a license in the name of any person if not satisfied that any officer, employee, stockholder, or partner thereof who may materially influence the applicant's conduct meets the standards of §§ 23-81-801 – 23-81-814.

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

(j) Upon the filing of an application and the payment of the license fee, the commissioner shall make an investigation of each applicant and may issue a license if the commissioner finds that the applicant:

(1) If a provider, has provided a detailed plan of operation;

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

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

(4) If the applicant is a legal entity, is formed or organized pursuant to the laws of this state or is a foreign legal entity authorized to

transact business in this state, or provides a certificate of good standing from the state of its domicile; and

(5) Has provided to the commissioner an antifraud plan that meets the requirements of § 23-81-814 and includes:

(A) A description of the procedures for detecting and investigating possible fraudulent acts and procedures for resolving material inconsistencies between medical records and insurance applications;

(B) A description of the procedures for reporting fraudulent insurance acts to the commissioner;

(C) A description of the plan for antifraud education and training of its underwriters and other personnel; and

(D) A written description or chart outlining the arrangement of the antifraud personnel who are responsible for the investigation and reporting of possible fraudulent insurance acts and investigating unresolved material inconsistencies between medical records and insurance applications.

(k) The commissioner shall not issue any license to any nonresident applicant unless a written designation of an agent for service of process is filed under § 4-20-112 and maintained with the commissioner or unless the applicant has filed with the commissioner the applicant's written irrevocable consent that any action against the applicant may be commenced against the applicant by service of process on the commissioner.

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

(m) A provider shall not use any person to perform the functions of a broker as defined in this subchapter unless the person holds a current, valid license as a broker, and as provided in this section.

(n) A broker shall not use any person to perform the functions of a provider as defined in this subchapter unless the person holds a current, valid license as a provider, and as provided in this section.

(o) A provider or broker shall provide to the commissioner new or revised information about officers, ten percent (10%) or more stockholders, partners, directors, members, or designated employees within thirty (30) days of the change.

(p)(1)(A) An individual licensed as a broker shall complete on a biennial basis a minimum of fifteen (15) hours of training related to life settlements and life settlement transactions, as required by the commissioner.

(B) However, a life insurance producer who is operating as a broker pursuant to this section shall not be subject to the requirements of this subsection.

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

23-81-804. License suspension, revocation, or refusal to renew.

(a) The Insurance Commissioner may suspend, revoke, or refuse to renew the license of any licensee if the commissioner finds that:

(1) There was any material misrepresentation in the application for the license;

(2) The licensee or any officer, partner, member, or director has been guilty of fraudulent or dishonest practices, is subject to a final

administrative action, or is otherwise shown to be untrustworthy or incompetent to act as a licensee;

(3) The provider demonstrates a pattern of unreasonably withholding payments to policy owners;

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

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

(6) The provider has entered into any life settlement contract using a form that has not been approved pursuant to this subchapter;

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

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

(9) The licensee or any officer, partner, member, or key management personnel has violated provisions of this subchapter.

(b) Before the commissioner denies a license application or suspends, revokes, or refuses to renew the license of any licensee under this subchapter, the commissioner shall conduct a hearing in accordance with this state's laws governing administrative hearings under § 23-61-301 et seq. and the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

23-81-805. Contract requirements.

(a) A person shall not use any form of life settlement contract in this state unless it has been filed with and approved, if required, by the Insurance Commissioner in a manner that conforms with the filing procedures and any time restrictions or deeming provisions, if any, for life insurance forms, policies, and contracts.

(b) An insurer shall not as a condition of responding to a request for verification of coverage or in connection with the transfer of a policy pursuant to a life settlement contract require that the owner, insured, provider, or broker sign any form, disclosure, consent, waiver, or acknowledgment that has not been expressly approved by the commissioner for use in connection with life settlement contracts in this state.

(c)(1) A person shall not use a life settlement contract form or provide to an owner a disclosure statement form in this state unless first filed with and approved by the commissioner.

(2) The commissioner shall disapprove a life settlement contract form or disclosure statement form if, in the commissioner's opinion, the contract or provisions contained in the life settlement contract form or disclosure statement form fail to meet the requirements of §§ 23-81-808 – 23-81-811 and 23-81-815(b) or are unreasonable, contrary to the interests of the public, or otherwise misleading or unfair to the owner.

(3) At the commissioner's discretion, the commissioner may

require the submission of advertising material.

23-81-806. Reporting requirements and privacy.

(a)(1)(A) For any policy settled within five (5) years of policy issuance, each provider shall file with the commissioner on or before March 1 of each year an annual statement containing such information as the commissioner may prescribe by rule.

(B) In addition to any other requirements, the annual statement shall specify the total number, aggregate face amount, and life settlement proceeds of policies settled during the immediately preceding calendar year, together with a breakdown of the information by policy issue year.

(C) The annual statement shall also include the names of the insurance companies whose policies have been settled and the brokers that have settled the policies.

(2) The information shall be limited to only those transactions in which the owner is a resident of this state and shall not include individual transaction data regarding the business of life settlements or information that there is a reasonable basis to believe could be used to identify the owner or the insured.

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

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

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

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

(3) Is provided in response to an investigation or examination by the commissioner or any other governmental officer or agency or pursuant to the requirements of § 23-81-813;

(4) Is a term or condition to the transfer of a policy by one (1) provider to another provider, in which case the receiving provider shall be required to comply with the confidentiality requirements of this subsection;

(5)(A) Is necessary to allow the provider or broker or their authorized representatives to make contacts for the purpose of determining health status.

(B) For the purposes of subdivision (b)(5)(A) of this section, "authorized representative" does not include any person who has or may have any financial interest in the settlement contract other than a provider, licensed broker, financing entity, related provider trust, or special purpose entity.

(C) A provider or broker shall require its authorized representative to agree in writing to adhere to the privacy provisions of this subchapter; or

(6) Is required to purchase stop loss coverage.

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

23-81-807. Examination.

(a)(1) When the Insurance Commissioner deems it reasonably necessary to protect the interests of the public, the commissioner may examine the business and affairs of any licensee or applicant for a license.

(2) The commissioner may order any licensee or applicant to produce any records, books, files, or other information reasonably necessary to ascertain whether the licensee or applicant is acting or has acted in violation of the law or otherwise contrary to the interests of the public.

(3) The expenses incurred in conducting any examination shall be paid by the licensee or applicant.

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

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

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

(e) Conduct of examinations.

(1)(A) Upon determining that an examination should be conducted, the commissioner shall issue an examination warrant appointing one (1) or more examiners to perform the examination and instructing them as to the scope of the examination.

(B) In conducting the examination, the examiner shall use methods common to the examination of any life settlement licensee and shall use those guidelines and procedures set forth in an examiner's handbook adopted by a national organization prescribed by rule of the commissioner.

(2)(A) Every licensee or person from whom information is sought, its officers, directors, and agents shall provide to the examiners timely, convenient, and free access at all reasonable hours at its offices to all books, records, accounts, papers, documents, assets, and computer or other recordings relating to the property, assets, business, and affairs of the licensee being examined.

(B) The officers, directors, employees, and agents of the

licensee or person shall facilitate the examination and aid in the examination so far as it is in their power to do so.

(C) The refusal of a licensee or the licensee's officers, directors, employees, or agents to submit to examination or to comply with any reasonable written request of the commissioner shall be grounds for suspension or refusal of or nonrenewal of any license or authority held by the licensee to engage in the life settlement business or other business subject to the commissioner's jurisdiction.

(D) Any proceedings for suspension, revocation, or refusal of any license or authority shall be conducted pursuant to § 23-61-301 et seq. and the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(3)(A) The commissioner may issue subpoenas, administer oaths, and examine under oath any person as to any matter pertinent to the examination.

(B) Upon the failure or refusal of a person to obey a subpoena, the commissioner may petition a court of competent jurisdiction for an order to compel the witness to obey the subpoena, and upon proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence.

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

(5)(A) This subchapter does not limit the commissioner's authority to terminate or suspend an examination in order to pursue other legal or regulatory action pursuant to the insurance laws of this state.

(B) Findings of fact and conclusions made pursuant to any examination shall be prima facie evidence in any legal or regulatory action.

(6) Any information gathered during an examination as provided in this subchapter shall be deemed confidential pursuant to § 23-61-207.

(f) Examination Reports.

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

(2)(A) No later than sixty (60) days following completion of the examination, the examiner in charge shall file with the commissioner a verified written report of examination under oath.

(B) Upon receipt of the verified report, the commissioner shall transmit the report to the licensee that has been examined, together with a notice that shall afford the licensee that has been examined a reasonable opportunity of not more than thirty (30) days to make a written submission or rebuttal with respect to any matters contained in the examination report and which shall become part of the report or to request a hearing on any matter in dispute.

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

(g) Confidentiality of examination information.

(1) Names and individual identification data for all owners, purchasers, and insureds shall be considered private and confidential

information and shall not be disclosed by the commissioner unless the disclosure is to another regulator or is required by law.

(2)(A) Except as otherwise provided in this subchapter all examination reports, working papers, recorded information, documents and copies thereof produced by, obtained by, or disclosed to the commissioner or any other person in the course of an examination made under this subchapter or in the course of analysis or investigation by the commissioner of the financial condition or market conduct of a licensee shall be confidential by law and privileged, shall not be open to inspection to the public, or subject to disclosure under the Freedom of Information Act of 1967, § 25-19-101 et seq., shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action.

(B) The commissioner may use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as part of the commissioner's official duties.

(C) The licensee being examined may have access to all documents used to make the report.

(h) Conflict of interest.

(1) An examiner shall not be appointed by the commissioner if the examiner, either directly or indirectly, has a conflict of interest or is affiliated with the management of or owns a pecuniary interest in any person subject to examination under this subchapter. This subsection does not automatically preclude an examiner from being:

(A) An owner;

(B) An insured in a life settlement contract or insurance policy; or

(C) A beneficiary in an insurance policy that is proposed for a life settlement contract.

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

(i) Immunity from liability.

(1) A cause of action shall not arise nor shall any liability be imposed against the commissioner, the commissioner's authorized representatives, or any examiner appointed by the commissioner for any statements made or conduct performed in good faith while carrying out this subchapter.

(2)(A) A cause of action shall not arise, nor shall any liability be imposed against any person for the act of communicating or delivering information or data to the commissioner or the commissioner's authorized representative or examiner pursuant to an examination made under this subchapter if the act of communication or delivery was performed in good faith and without fraudulent intent or the intent to deceive.

(B) This subsection does not abrogate or modify in any way any common law or statutory privilege or immunity heretofore enjoyed by any person identified in subdivision (i)(1) of this section.

(3)(A) A person identified in subdivision (i)(1) or subdivision (i)(2) of this section is entitled to an award of attorney's fees and costs if he or she is the prevailing party in a civil cause of action for libel,

slander, or any other relevant tort arising out of activities in carrying out the provisions of this subchapter and the party bringing the action was not substantially justified in doing so.

(B) For purposes of this subsection, a proceeding is "substantially justified" if it had a reasonable basis in law or fact at the time that it was initiated.

(j)(1) Investigative authority of the commissioner.

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

(k)(1) Cost of examinations.

(2) Costs of examinations under this subchapter shall be paid to the State Insurance Department to the same extent as examination expenses are imposed on persons pursuant to § 23-61-206.

23-81-808. Advertising.

(a)(1) A broker, or provider licensed pursuant to this subchapter may conduct or participate in advertisements within this state.

(2) Advertisements shall comply with all advertising and marketing laws or rules promulgated by the Insurance Commissioner that are applicable to life insurers or to brokers and providers licensed pursuant to this subchapter.

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

(c) A person or trust shall not:

(1) Directly or indirectly, market, advertise, or solicit or otherwise promote the purchase of a policy for the sole purpose of or with an emphasis on settling the policy; or

(2) Use the words "free", "no cost", or words of similar import in the marketing, advertising, soliciting, or otherwise promoting of the purchase of a policy.

23-81-809. Disclosures to owners.

(a) The provider or broker shall provide in writing in a separate document that is signed by the owner and provider or broker the following information to the owner no later than the date of the application for a life settlement contract:

(1) The fact that possible alternatives to life settlement contracts exist, including, without limitation accelerated benefits offered by the issuer of the life insurance policy;

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

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

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

(5)(A) The fact that the owner has a right to terminate a life settlement contract within fifteen (15) days of the date it is executed by all parties and the owner has received the disclosures required by this section.

(B) Rescission, if exercised by the owner, is effective only if both notice of the rescission is given and the owner repays all proceeds and any premiums, loans, and loan interest paid on account of the provider within the rescission period.

(C) If the insured dies during the rescission period, the contract shall be deemed to have been rescinded subject to repayment by the owner or the owner's estate of all proceeds and any premiums, loans, and loan interest to the provider;

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

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

(8) The amount and method of calculating the compensation paid or to be paid to the broker, or any other person acting for the owner in connection with the transaction, wherein the term compensation includes anything of value paid or given;

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

(10) The fact that the Insurance Commissioner shall require delivery of a buyer's guide or a similar consumer advisory package in the form prescribed by the commissioner to owners during the solicitation process;

(11) The following language:

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

(12) The fact that the commissioner shall require providers and brokers to print separate signed fraud warnings on their applications and on their life settlement contracts as follows:

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

(13)(A) The fact that the insured may be contacted by either the provider or broker or its authorized representative for the purpose of determining the insured's health status or to verify the insured's address.

(B) This contact is limited to one (1) time every three (3) months if the insured has a life expectancy of more than one (1) year and no more than one (1) time per month if the insured has a life expectancy of one (1) year or less;

(14) The affiliation, if any, between the provider and the issuer of the insurance policy to be settled;

(15) That a broker represents exclusively the owner and not the insurer or the provider or any other person and owes a fiduciary duty to the owner, including a duty to act according to the owner's instructions and in the best interest of the owner;

(16) The name, address, and telephone number of the provider;

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

(18) The fact that a change of ownership could in the future limit the insured's ability to purchase future insurance on the insured's life because there is a limit to how much coverage insurers will issue on one (1) life.

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

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

(1) The name, business address, and telephone number of the broker;

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

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

(4) The name of each broker who receives compensation and the amount of compensation received by that broker. The compensation includes anything of value paid or given to the broker in connection with the life settlement contract;

(5)(A) A complete reconciliation of the gross offer or bid by the provider to the net amount of proceeds or value to be received by the owner.

(B) For the purpose of subdivision (c)(5)(A) of this section, "gross offer or bid" means the total amount or value offered by the provider for the purchase of one (1) or more life insurance policies, inclusive of commissions and fees; and

(6) The failure to provide the disclosures or rights described in this section shall be deemed an Unfair Trade Practice pursuant to § 23-81-817.

23-81-810. Disclosure to insurer.

(a)(1) Without limiting the ability of an insurer from assessing the insurability of a policy applicant and determining whether or not to issue the policy and in addition to other questions an insurance carrier may lawfully pose to a life insurance applicant, insurance carriers may inquire in the application for insurance whether the proposed owner intends to pay premiums with the assistance of financing from a lender that will use the policy as collateral to support the financing.

(2) If as described in § 23-81-802(11) the loan provides funds that can be used for a purpose other than paying for the premiums, costs, and expenses associated with obtaining and maintaining the life insurance policy and loan, the application shall be rejected as a violation of the prohibited practices in § 23-81-813.

(3) If the financing does not violate § 23-81-813 in this manner, the insurance carrier:

(A) May make disclosures, including without limitation to the following, to the applicant and the insured on the application or an amendment to the application to be completed no later than the delivery of the policy:

“If you have entered into a loan arrangement in which the policy is used as collateral and the policy does change ownership at some point in the future in satisfaction of the loan, the following may be true:

1. A change of ownership could lead to a stranger owning an interest in the insured’s life;

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

3. Should there be a change of ownership and you wish to obtain more insurance coverage on the insured’s life in the future, the insured’s higher issue age, a change in health status, and/or other factors may reduce the ability to obtain coverage and/or may result in significantly higher premiums;

4. You should consult a professional advisor, since a change in ownership in satisfaction of the loan may result in tax consequences to the owner, depending on the structure of the loan.”; and

(B) May require certifications, such as the following, from the applicant, the insured, or the applicant and the insured:

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

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

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

23-81-811. General rules.

(a) A provider entering into a life settlement contract with any owner of a policy, when the insured is terminally or chronically ill shall first obtain:

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

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

(b)(1) The insurer shall respond to a request for verification of coverage submitted by a provider, settlement broker, or life insurance

producer not later than thirty (30) calendar days of the date the request is received.

(2) The request for verification of coverage shall be made on a form approved by the Insurance Commissioner.

(3) The insurer shall complete and issue the verification of coverage or indicate in which respects it is unable to respond.

(4) In its response, the insurer shall indicate whether, based on the medical evidence and documents provided, the insurer intends to pursue an investigation at this time regarding the validity of the insurance contract.

(c) Before or at the time of execution of the life settlement contract, the provider shall obtain a witnessed document in which the owner consents to the life settlement contract, represents that the owner has a full and complete understanding of the life settlement contract, that the owner has a full and complete understanding of the benefits of the policy, acknowledges that the owner is entering into the life settlement contract freely and voluntarily, and, for persons with a terminal or chronic illness or condition, acknowledges that the insured has a terminal or chronic illness and that the terminal or chronic illness or condition was diagnosed after the policy was issued.

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

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

(f) If a broker performs those verification of coverage activities required of the provider, the provider is deemed to have fulfilled the requirements of § 23-81-809(a).

(g)(1) Within twenty (20) days after an owner executes the life settlement contract, the provider shall give written notice to the insurer that issued that insurance policy that the policy has become subject to a life settlement contract.

(2) The notice shall be accompanied by the documents required by § 23-81-810 (a)(2).

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

(i)(1) All life settlement contracts entered into in this state shall provide that the owner may rescind the contract on or before fifteen (15) days after the date it is executed by all parties to the life settlement contract.

(2) Rescission, if exercised by the owner, is effective only if both notice of the rescission is given and the owner repays all proceeds and any premiums, loans, and loan interest paid on account of the provider within the rescission period.

(3) If the insured dies during the rescission period, the contract shall be deemed to have been rescinded subject to repayment by the owner or the owner's estate of all proceeds and any premiums, loans, and loan interest to the provider.

(j)(1) Within three (3) business days after receipt from the owner of

documents to effect the transfer of the insurance policy, the provider shall pay the proceeds of the settlement to an escrow or trust account managed by a trustee or escrow agent in a state or federally chartered financial institution pending acknowledgement of the transfer by the issuer of the policy.

(2) The trustee or escrow agent shall transfer the proceeds due to the owner within three (3) business days of acknowledgement of the transfer from the insurer.

(k)(1) Failure to tender the life settlement contract proceeds to the owner by the date disclosed to the owner renders the contract voidable by the owner for lack of consideration until the proceeds are tendered to and accepted by the owner.

(2) A failure to give written notice of the right of rescission hereunder shall toll the right of rescission until thirty (30) days after the written notice of the right of rescission has been given.

(1)(1) Any fee paid by a provider, party, individual, or an owner to a broker in exchange for services provided to the owner pertaining to a life settlement contract shall be computed as a percentage of the offer obtained, not the face value of the policy.

(2) This section does not prohibit a broker from reducing the broker's fee below this percentage if the broker so chooses.

(m) The broker shall disclose to the owner anything of value paid or given to a broker that relates to a life settlement contract.

(n) At any time prior to or at the time of the application for or issuance of a policy or during a two-year period commencing with the date of issuance of the policy, a person shall not enter into a life settlement contract regardless of the date the compensation is to be provided and regardless of the date the assignment, transfer, sale, devise, bequest, or surrender of the policy is to occur. This prohibition does not apply if the owner certifies to the provider that:

(1)(A) The policy was issued upon the owner's exercise of conversion rights arising out of a group or individual policy, provided the total of the time covered under the conversion policy plus the time covered under the prior policy is at least twenty-four (24) months.

(B) The time covered under a group policy shall be calculated without regard to a change in insurance carriers, provided the coverage has been continuous and under the same group sponsorship; or

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

(A) The owner or insured is terminally or chronically ill;

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

(C) The owner's spouse dies;

(D) The owner divorces his or her spouse;

(E) The owner retires from full-time employment;

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

(G) A final order, judgment, or decree is entered by a

court of competent jurisdiction on the application of a creditor of the owner adjudicating the owner bankrupt or insolvent or approving a petition seeking reorganization of the owner or appointing a receiver, trustee, or liquidator to all or a substantial part of the owner's assets.

(3)(A) Copies of the independent evidence required by subdivision (n)(2) of this section shall be submitted to the insurer when the provider submits a request to the insurer for verification of coverage.

(B) The copies shall be accompanied by a letter of attestation from the provider that the copies are true and correct copies of the documents received by the provider.

(C) This section does not prohibit an insurer from exercising its right to contest the validity of any policy.

(4) If the provider submits to the insurer a copy of independent evidence provided in subdivision (n)(2)(A) when the provider submits a request to the insurer to effect the transfer of the policy to the provider, the copy is deemed to establish that the settlement contract satisfies the requirements of this section.

23-81-812. Authority to promulgate rules – Conflict of laws.

(a) The Insurance Commissioner may promulgate rules implementing this subchapter regulating the activities and relationships of providers, brokers, insurers, and their agents, subject to statutory limitations on administrative rulemaking.

(b) Conflict of Laws.

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

(B) The law of the state of the insured shall govern if equal owners fail to agree in writing upon a state of residence for jurisdictional purposes.

(2)(A) A provider from this state who enters into a life settlement contract with an owner who is a resident of another state that has enacted statutes or adopted regulations governing life settlement contracts shall be governed in the effectuation of that life settlement contract by the statutes and regulations of the owner's state of residence.

(B) If the state in which the owner is a resident has not enacted statutes or regulations governing life settlement contracts, the provider shall give the owner notice that neither state regulates the transaction upon which he or she is entering.

(C) For transactions in those states, however, the provider shall maintain all records required if the transactions were executed in the state of residence. The forms used in those states need not be approved by the State Insurance Department.

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

23-81-813. Prohibited practices.

(a) It is unlawful for any person to:

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

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

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

(4) Issue, solicit, market or otherwise promote the purchase of an insurance policy for the purpose of or with an emphasis on settling the policy;

(5)(A) Enter into a premium finance agreement with any person or agency or any person affiliated with the person or agency pursuant to which the person shall receive any proceeds, fees, or other consideration, directly or indirectly, from the policy or owner of the policy or any other person with respect to the premium finance agreement or any settlement contract or other transaction related to the policy that are in addition to the amounts required to pay the principal, interest, and service charges related to policy premiums pursuant to the premium finance agreement or subsequent sale of the agreement.

(B) Any payments, charges, fees, or other amounts in addition to the amounts required to pay the principal, interest, and service charges related to policy premiums paid under the premium finance agreement shall be remitted to the original owner of the policy or to his or her estate if he or she is not living at the time of the determination of the overpayment;

(6) With respect to any settlement contract or insurance policy and a broker, knowingly solicit an offer from, effectuate a life settlement contract with, or make a sale to any provider, financing entity, or related provider trust that is controlling, controlled by, or under common control with the broker;

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

(8)(A) With respect to a provider, enter into a life settlement contract unless the life settlement promotional, advertising, and marketing materials, as may be prescribed by rule, have been filed with the Insurance Commissioner.

(B) Marketing materials shall not expressly reference that the insurance is free for any period of time.

(C) The inclusion of any reference in the marketing materials that would cause an owner to reasonably believe that the insurance is free for any period of time is a violation of this subchapter; or

(9) With respect to any life insurance producer, insurance company, broker, or provider make any statement or representation to the applicant or policyholder in connection with the sale or financing of a life insurance policy to the effect that the insurance is free or without cost to

the policyholder for any period of time unless provided in the policy.

(b) A violation of this section is a fraudulent life settlement act.

23-81-814. Fraud prevention and control.

(a) Fraudulent life settlement act, interference and participation of convicted felons prohibited.

(1) A person shall not commit a fraudulent life settlement act.

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

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

(b) Fraud warning required.

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

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

(2) The lack of a statement as required in subdivision (b)(1) of this section does not constitute a defense in any prosecution for a fraudulent life settlement act.

(c) Mandatory reporting of fraudulent life settlement act.

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

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

(d) Immunity from liability.

(1) Civil liability shall not be imposed on and a cause of action shall not arise from a person’s furnishing information concerning suspected, anticipated, or completed fraudulent life settlement acts or suspected or completed fraudulent insurance acts if the information is provided to or received from:

(A) The commissioner or the commissioner’s employees, agents or representatives;

(B) Federal, state, or local law enforcement or regulatory officials or their employees, agents, or representatives;

(C) A person involved in the prevention and detection of fraudulent life settlement acts or that person’s agents, employees, or representatives;

(D) Any regulatory body or its employees, agents, or representatives, overseeing life insurance, life settlements, securities, or investment fraud;

(E) The life insurer that issued the life insurance policy covering the life of the insured; or

(F) The licensee and any agents, employees, or representatives of the licensee.

(2)(A) Subdivision (d)(1) of this section does not apply to statements made with actual malice.

(B) In an action brought against a person for filing a report or furnishing other information concerning a fraudulent life settlement act or a fraudulent insurance act, the party bringing the action shall plead specifically any allegation that subdivision (d)(1) of this section does not apply because the person filing the report or furnishing the information did so with actual malice.

(3)(A) A person identified in subdivision (d)(1) of this section shall be entitled to an award of attorney's fees and costs if he or she is the prevailing party in a civil cause of action for libel, slander, or any other relevant tort arising out of activities in carrying out the provisions of this subchapter and the party bringing the action was not substantially justified in doing so.

(B) For purposes of this section a proceeding is "substantially justified" if it had a reasonable basis in law or fact at the time that it was initiated.

(4) This section does not abrogate or modify common law or statutory privileges or immunities enjoyed by a person described in subdivision (d)(1) of this section.

(e) Confidentiality.

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

(2) Subdivision (e)(1) of this section does not prohibit release by the commissioner of documents and evidence obtained in an investigation of suspected or actual fraudulent life settlement acts:

(A) In administrative or judicial proceedings to enforce laws administered by the commissioner;

(B) To federal, state, or local law enforcement or regulatory agencies, to an organization established for the purpose of detecting and preventing fraudulent life settlement acts, or to the National Association of Insurance Commissioners; or

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

(3) Release of documents and evidence under subdivision (e)(2) of this section does not abrogate or modify the privilege granted in subdivision (e)(1) of this section.

(f) Other law enforcement or regulatory authority.

This subchapter does not:

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

(2) Preempt, supersede, or limit any provision of any state securities law or any rule, order, or notice issued under a state securities law;

(3) Prevent or prohibit a person from disclosing voluntarily

information concerning life settlement fraud to a law enforcement or regulatory agency other than the State Insurance Department; or

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

(g) Life settlement antifraud initiatives.

(1) Providers and brokers shall have in place antifraud initiatives reasonably calculated to detect, prosecute, and prevent fraudulent life settlement acts. At the discretion of the commissioner, the commissioner may order, or a licensee may request and the commissioner may grant, such modifications of the following required initiatives as necessary to ensure an effective antifraud program. The modifications may be more or less restrictive than the required initiatives so long as the modifications may reasonably be expected to accomplish the purpose of this section.

Antifraud initiatives shall include:

(A) Fraud investigators, who may be provider or broker employees or independent contractors; and

(B)(i) An antifraud plan, which shall be submitted to the commissioner.

(ii) The antifraud plan shall include without limitation:

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

(b) A description of the procedures for reporting possible fraudulent life settlement acts to the commissioner;

(c) A description of the plan for antifraud education and training of underwriters and other personnel; and

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

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

23-81-815. Injunctions – Civil remedies – Cease and desist.

(a) In addition to the penalties and other enforcement provisions of this subchapter, if any person violates this subchapter or any rule implementing this subchapter, the Insurance Commissioner may seek an injunction in a court of competent jurisdiction in the county where the person resides or has a principal place of business and may apply for temporary and permanent orders that the commissioner determines necessary to restrain the person from further committing the violation.

(b) Any person damaged by the acts of another person in violation of this subchapter or any rule implementing this subchapter may bring a civil action for damages in a court of competent jurisdiction against the person committing the violation.

(c) The commissioner may issue a cease and desist order upon a person who violates any provision of this section, any rule or order adopted by the

commissioner, or any written agreement entered into with the commissioner, in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(d)(1) When the commissioner finds that such an action presents an immediate danger to the public and requires an immediate final order, he or she may issue an emergency cease and desist order reciting with particularity the facts underlying such findings.

(2) The emergency cease and desist order is effective immediately upon service of a copy of the order on the respondent and remains effective for ninety (90) days. If the State Insurance Department begins nonemergency cease and desist proceedings under subsection (a) of this section, the emergency cease and desist order remains effective, absent an order by an appellate court of competent jurisdiction pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(3) In the event of a willful violation of this subchapter, the trial court may award statutory damages in addition to actual damages in an additional amount up to three (3) times the actual damage award.

(4) The provisions of this subchapter shall not be waived by agreement.

(5) A choice of law provision shall not be utilized to prevent the application of this subchapter to any settlement in which a party to the settlement is a resident of this state.

23-81-816. Penalties.

(a) It is a violation of this subchapter for any person, provider, broker, or any other party related to the business of life settlements to commit a fraudulent life settlement act.

(b) For criminal liability purposes, a person that commits a fraudulent life settlement act is guilty of committing insurance fraud and shall be subject to the penalty provisions under § 23-66-512.

23-81-817. Unfair trade practices.

A violation of §§ 23-81-801 through 23-81-816 shall be considered an unfair trade practice pursuant to § 23-66-206 and shall be subject to the provisions related to hearings and penalties for violations of the Trade Practices Act under §§ 23-66-207 – § 23-66-212.

23-81-818. Effective date.

(a)(1) A provider lawfully transacting business in this state before the effective date of this subchapter may continue to do so pending approval or disapproval of that person's application for a license if the application is filed with the Insurance Commissioner not later than thirty (30) days after publication by the commissioner of an application form and instructions for licensure of providers.

(2) If the publication of the application form and instructions is before the effective date of this subchapter, then the filing of the application shall not be later than thirty (30) days after the effective date of this subchapter.

(3) During the time that the application form and instructions are pending with the commissioner, the applicant may use any form of life settlement contract that has been filed with the commissioner pending approval of the application form and instructions, provided the form and

instructions are otherwise in compliance with the provisions of this subchapter.

(4) Any person transacting business in this state under this subsection shall comply with all other requirements of this subchapter.

(b)(1) A person who has lawfully negotiated life settlement contracts between any owner residing in this state and one (1) or more providers for at least one (1) year immediately before the effective date of this subchapter may continue to do so pending approval or disapproval of that person's application for a license if the application is filed with the commissioner not later than thirty (30) days after publication by the commissioner of an application form and instructions for licensure of brokers.

(2) If the publication of the application form and instructions is before the effective date of this subchapter, then the filing of the application shall not be later than thirty (30) days after the effective date of this subchapter.

(3) Any person transacting business in this state under this subsection shall comply with all other requirements of this subchapter.

SECTION 2. Arkansas Code Title 23, chapter 81, subchapter 6 is repealed.

~~23-81-601. Title.~~

~~This subchapter may be cited as the "Viatical Settlements Act".~~

~~23-81-602. Definitions.~~

~~As used in this subchapter:~~

~~(1)(A) "Advertising" means any written, electronic, or printed communication that is directly or indirectly published, disseminated, circulated, or placed before the public for the purpose of creating an interest in or inducing a person to sell a life insurance policy under a viatical settlement contract.~~

~~(B) "Advertising" includes any communication by means of film strip, motion picture, or video, and any message recorded by telephone or transmitted on radio, television, the Internet, or similar communications media;~~

~~(2) "Business of viatical settlements" means an activity involved in the offering, soliciting, negotiating, procuring, effectuating, purchasing, investing, financing, monitoring, tracking, underwriting, selling, transferring, assigning, pledging, hypothecating, or in any other manner of viatical settlement contracts or purchase agreements;~~

~~(3) "Chronically ill" means:~~

~~(A) Being unable to perform at least two (2) activities of daily living, such as eating, toileting, transferring, bathing, dressing, or continence;~~

~~(B) Requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment; or~~

~~(C) Having a level of disability similar to that described in subdivision (3)(A) of this section, as determined by the Secretary of Health and Human Services;~~

~~(4)(A) "Financing entity" means an underwriter, placement agent, lender, purchaser of securities, purchaser of a policy or certificate from a viatical settlement provider, credit enhancer, or any entity that has a direct ownership in a policy or certificate that is the subject of a viatical~~

~~settlement contract:~~

~~(i) Whose principal activity related to the transaction is providing funds to effect the viatical settlement or purchase of one (1) or more viaticated policies; and~~

~~(ii) Who has an agreement in writing with one (1) or more licensed viatical settlement providers to finance the acquisition of a viatical settlement contract.~~

~~(B) "Financing entity" does not include a nonaccredited investor or viatical settlement purchaser;~~

~~(5) "Fraudulent viatical settlement act" means:~~

~~(A) Acts or omissions committed by any person who, knowingly or with the intent to defraud and for the purpose of depriving another of property or for pecuniary gain, commits or permits its employees or its agents to engage in acts including:~~

~~(i) Presenting, causing to be presented, preparing, or concealing false material information with knowledge or belief that the information will be presented to or by a viatical settlement provider, viatical settlement broker, viatical settlement purchaser, financing entity, insurer, insurance producer, or any other person, as part of, in support of, or concerning a fact material to one (1) or more of the following:~~

~~(a) An application for the issuance of a viatical settlement contract or insurance policy;~~

~~(b) The underwriting of a viatical settlement contract or insurance policy;~~

~~(c) A claim for payment or benefit under a viatical settlement contract or insurance policy;~~

~~(d) Premiums paid on an insurance policy;~~

~~(e) Payments and changes in ownership or beneficiary made under the terms of a viatical settlement contract or insurance policy;~~

~~(f) The reinstatement or conversion of an insurance policy;~~

~~(g) The solicitation, offer, effectuation, or sale of a viatical settlement contract or insurance policy;~~

~~(h) The issuance of written evidence of a viatical settlement contract or insurance policy; or~~

~~(i) A financing transaction; or~~

~~(ii) Employing any device, scheme, or artifice to defraud related to viaticated policies;~~

~~(B) In the furtherance of a fraud or to prevent the detection of a fraud, committing or permitting its employees or its agents to:~~

~~(i) Remove, conceal, alter, destroy, or sequester from the Insurance Commissioner the assets or records of a licensee or other person engaged in the business of viatical settlements;~~

~~(ii) Misrepresent or conceal the financial condition of a licensee, financing entity, insurer, or other person;~~

~~(iii) Transact the business of viatical settlements in violation of laws requiring a license, certificate of authority, or other legal authority for the transaction of the business of viatical settlements; or~~

~~(iv) File with the commissioner or the chief~~

~~insurance regulatory official of another jurisdiction a document containing false information or that otherwise conceals information about a material fact from the commissioner;~~

~~(C) Embezzlement, theft, misappropriation, or conversion of moneys, funds, premiums, credits, or other property of a viatical settlement provider, insurer, insured, viator, insurance policy owner, or any other person engaged in the business of viatical settlements or insurance;~~

~~(D)(i) Recklessly entering into, brokering, or otherwise dealing in a viatical settlement contract, the subject of which is a life insurance policy that was obtained by presenting false information concerning any fact material to the policy or by concealing, for the purpose of misleading another, information concerning any fact material to the policy, when the viator or the viator's agent intended to defraud the policy's issuer.~~

~~(ii) For purposes of this subdivision (5)(D), "recklessly" means engaging in the conduct in conscious and clearly unjustifiable disregard of a substantial likelihood of the existence of the relevant facts or risks, the disregard of which involves a gross deviation from acceptable standards of conduct; or~~

~~(E) Attempting to commit, assisting, aiding, or abetting in the commission of or conspiracy to commit the acts or omissions specified in this subdivision (5);~~

~~(6) "Person" means a natural person or a legal entity including an individual, partnership, limited liability company, association, trust, or corporation;~~

~~(7) "Policy" means an individual or group policy, group certificate, contract, or arrangement of life insurance affecting the rights of a resident of this state or bearing a reasonable relation to this state, regardless of whether delivered or issued for delivery in this state;~~

~~(8)(A) "Related provider trust" means a titling trust or other trust established by a licensed viatical settlement provider or a financing entity for the sole purpose of holding the ownership or beneficial interest in purchased policies in connection with a financing transaction.~~

~~(B) The trust shall have a written agreement with the licensed viatical settlement provider under which:~~

~~(i) The provider is responsible for ensuring compliance with all statutory and regulatory requirements; and~~

~~(ii) The trust agrees to make all records and files related to viatical settlement transactions available to the commissioner as if those records and files were maintained directly by the licensed viatical settlement provider;~~

~~(9) "Special purpose entity" means a corporation, partnership, trust, limited liability company, or other similar entity formed solely to provide either direct or indirect access to institutional capital markets for a financing entity or licensed viatical settlement provider;~~

~~(10) "Terminally ill" means having an illness or sickness that is reasonably expected to result in death in twenty four (24) months or less;~~

~~(11)(A) "Viatical settlement broker" means a person that on behalf of a viator and for a fee, commission, or other valuable consideration offers or attempts to negotiate viatical settlement contracts between a viator and one (1) or more viatical settlement providers.~~

~~(B) Notwithstanding the manner in which the viatical~~

~~settlement broker is compensated, a viatical settlement broker is deemed to represent only the viator and owes a fiduciary duty to the viator to act according to the viator's instructions and in the best interest of the viator.~~

~~(C) "Viatical settlement broker" does not include an attorney, certified public accountant, or a financial planner accredited by a nationally recognized accreditation agency, who is retained to represent the viator and whose compensation is not paid directly or indirectly by the viatical settlement provider or purchaser;~~

~~(12)(A) "Viatical settlement contract" means a written agreement establishing the terms under which compensation or anything of value will be paid, which compensation or value is less than the expected death benefit of the insurance policy or certificate, in return for the viator's assignment, transfer, sale, devise, or bequest of the death benefit or ownership of any portion of the insurance policy or certificate of insurance.~~

~~(B) "Viatical settlement contract" includes a contract for a loan or other financing transaction with a viator under subdivision (12)(A) of this section, other than a loan by a life insurance company under the terms of the life insurance contract or a loan secured by the cash value of a policy.~~

~~(C) "Viatical settlement contract" includes an agreement with a viator to transfer ownership or change the beneficiary designation at a later date, regardless of the date that compensation is paid to the viator;~~

~~(13)(A) "Viatical settlement provider" means a person, other than a viator, that enters into or effectuates a viatical settlement contract.~~

~~(B) "Viatical settlement provider" does not include:~~

~~(i) A bank, savings bank, savings and loan association, credit union, or other licensed lending institution that takes an assignment of a life insurance policy as collateral for a loan;~~

~~(ii) The issuer of a life insurance policy providing accelerated benefits under State Insurance Department Rule 60, "Accelerated Benefits In Life Insurance Policies", and under the contract;~~

~~(iii) An authorized or eligible insurer that provides stop loss coverage to a viatical settlement provider, purchaser, financing entity, special purpose entity, or related provider trust;~~

~~(iv) A natural person who enters into or effectuates no more than one (1) agreement in a calendar year for the transfer of life insurance policies for any value less than the expected death benefit;~~

~~(v) A financing entity;~~

~~(vi) A special purpose entity;~~

~~(vii) A related provider trust;~~

~~(viii) A viatical settlement purchaser; or~~

~~(ix) An accredited investor or qualified institutional buyer as defined respectively in Regulation D, Rule 501 or Rule 144A of the Federal Securities Act of 1933, as amended, who purchases a viaticated policy from a viatical settlement provider;~~

~~(14)(A) "Viatical settlement purchaser" means a person who, for the purpose of deriving an economic benefit:~~

~~(i) Gives a sum of money as consideration for a life insurance policy or an interest in the death benefits of a life insurance policy;~~

~~(ii) Owns or acquires or is entitled to a beneficial interest in a trust that owns a viatical settlement contract; or~~

~~(iii) Is the beneficiary of a life insurance policy that has been or will be the subject of a viatical settlement contract.~~

~~(B) "Viatical settlement purchaser" does not include:~~

~~(i) A licensee under this subchapter;~~

~~(ii) An accredited investor or qualified institutional buyer as defined respectively in Regulation D, Rule 501 or Rule 144A of the Federal Securities Act of 1933, as amended;~~

~~(iii) A financing entity;~~

~~(iv) A special purpose entity; or~~

~~(v) A related provider trust;~~

~~(15) "Viaticated policy" means a life insurance policy or certificate that has been acquired by a viatical settlement provider under a viatical settlement contract; and~~

~~(16)(A) "Viator" means the owner of a life insurance policy or a certificate holder under a group policy who enters or seeks to enter into a viatical settlement contract.~~

~~(B) "Viator" does not include:~~

~~(i) A licensee under this subchapter;~~

~~(ii) An accredited investor or qualified institutional buyer as defined respectively in Regulation D, Rule 501 or Rule 144A of the Federal Securities Act of 1933, as amended;~~

~~(iii) A financing entity;~~

~~(iv) A special purpose entity; or~~

~~(v) A related provider trust.~~

~~23-81-603. License requirements.~~

~~(a)(1) A person who is not licensed by the State Insurance Department to sell life or disability policies in Arkansas shall not operate as a viatical settlement provider or viatical settlement broker unless the person obtains a license from the insurance commissioner of the state of residence of the viator.~~

~~(2)(A) If there is more than one (1) viator on a single policy and the viators are residents of different states, the viatical settlement shall be governed by the law of the state in which the viator having the largest percentage of ownership resides.~~

~~(B) If the viators hold equal ownership, the viatical settlement shall be governed by the law of the state of residence of one (1) viator agreed upon in writing by all viators.~~

~~(b) Application for a viatical settlement provider or viatical settlement broker license shall be made to the Insurance Commissioner by the applicant on a form prescribed by the commissioner, and these applications shall be accompanied by the fees specified in State Insurance Department Rule 57, "Insurance Department Administrative and Regulatory Fees".~~

~~(c)(1) Licenses may be renewed from year to year on the anniversary date upon payment of the annual renewal fees specified in State Insurance Department Rule 57, "Insurance Department Administrative and Regulatory Fees".~~

~~(2) Failure to pay the fees by the renewal date results in expiration of the license.~~

~~(d)(1) The applicant shall provide information on forms required by the commissioner.~~

~~(2) The commissioner may, at any time, require the applicant to fully disclose the identity of all stockholders, partners, officers, members, and employees.~~

~~(3) The commissioner may refuse to issue a license in the name of a legal entity if the commissioner is not satisfied that any officer, employee, stockholder, partner, or member who may materially influence the applicant's conduct meets the standards under this subchapter.~~

~~(e)(1) A license issued under this subchapter to a legal entity authorizes all partners, officers, members, and designated employees to act as viatical settlement providers or viatical settlement brokers.~~

~~(2) Each person under subdivision (e)(1) of this section who is licensed as a viatical settlement provider or viatical settlement broker shall be named in the application and any supplements to the application.~~

~~(f) Upon the filing of an application and the payment of the license fee, the commissioner shall make an investigation of each applicant and issue a license if the commissioner finds that the applicant:~~

~~(1) If a viatical settlement provider, has provided a detailed plan of operation;~~

~~(2) Is competent and trustworthy and intends to act in good faith in the capacity required by the license for which the applicant has applied;~~

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

~~(4) If a legal entity, provides a certificate of good standing from the state of its domicile; and~~

~~(5) If a viatical settlement provider or viatical settlement broker, has provided an antifraud plan that meets the requirements of § 23-81-612(g).~~

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

~~(h) Each viatical settlement provider or viatical settlement broker shall provide to the commissioner new or revised information about officers, ten percent (10%) or more stockholders, partners, directors, members, or designated employees within thirty (30) days of the change.~~

~~23-81-604. License revocation and denial.~~

~~(a) The Insurance Commissioner may suspend, revoke, or refuse to issue or renew the license of a viatical settlement provider or viatical settlement broker if the commissioner finds that:~~

~~(1) The applicant or licensee made a material misrepresentation in the application for the license;~~

~~(2) The licensee or any officer, partner, member, or key management personnel has pleaded guilty or nolo contendere to, or has been found guilty of, fraudulent or dishonest practices and is subject to a final administrative action or is otherwise shown to be untrustworthy or incompetent;~~

~~(3) The viatical settlement provider demonstrates a pattern of unreasonable payments to viators;~~

~~(4) The licensee or any officer, partner, member, or key management personnel has pleaded guilty or nolo contendere to, or has been found guilty of, a felony or to a misdemeanor involving fraud or moral turpitude, regardless of whether a judgment of conviction has been entered by the court;~~

~~(5) The viatical settlement provider has entered into any viatical settlement contract that has not been approved under this subchapter;~~

~~(6) The viatical settlement provider has failed to honor contractual obligations set out in a viatical settlement contract;~~

~~(7) The licensee no longer meets the requirements for initial licensure;~~

~~(8) The viatical settlement provider has assigned, transferred, or pledged a viaticated policy to:~~

~~(A) A person other than a viatical settlement provider licensed in this state;~~

~~(B) A viatical settlement purchaser;~~

~~(C) An accredited investor or qualified institutional buyer as defined respectively in Regulation D, Rule 501 or Rule 144A of the Federal Securities Act of 1933, as amended;~~

~~(D) A financing entity;~~

~~(E) A special purpose entity; or~~

~~(F) A related provider trust; or~~

~~(9) The licensee or any officer, partner, member, or key management personnel has violated any provision of this subchapter.~~

~~(b) If the commissioner denies a license application or suspends, revokes, or refuses to renew the license of a viatical settlement provider or viatical settlement broker, the commissioner shall conduct a hearing under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.~~

~~23-81-605. Approval of viatical settlement contracts and disclosure statements.~~

~~(a) A person shall not use a viatical settlement contract form or provide to a viator a disclosure statement form in this state unless the form has been filed with and approved by the Insurance Commissioner.~~

~~(b)(1) The commissioner shall refuse to approve a viatical settlement contract form or disclosure statement form if the commissioner determines that the form contains provisions that are unreasonable, contrary to the interests of the public, or otherwise misleading or unfair to the viator.~~

~~(2) By rule or regulation, the commissioner may require the submission of advertising material related to the sale of viatical settlement contracts.~~

~~23-81-606. Reporting requirements and privacy.~~

~~(a) Each licensee shall file with the Insurance Commissioner on or before March 1 of each year an annual statement containing such information as the commissioner prescribes by regulation.~~

~~(b) Except as otherwise allowed or required by law, no viatical settlement provider, viatical settlement broker, insurance company, insurance producer, information bureau, rating agency or company, or any other person with actual knowledge of an insured's identity shall disclose to any other person an insured's identity as an insured, or the insured's financial or medical information, unless the disclosure:~~

~~(1) Is necessary to effect a viatical settlement between the viator and a viatical settlement provider, and the viator and insured have provided prior written consent to the disclosure;~~

~~(2) Is provided in response to an investigation or examination by the commissioner or any other governmental officer or agency under § 23-81-612(e);~~

~~(3) Is a term of or condition to the transfer of a policy by one (1) viatical settlement provider to another viatical settlement provider;~~

~~(4) Is necessary to permit a financing entity, related provider trust, or special purpose entity to finance the purchase of policies by a viatical settlement provider and the viator and insured have provided prior written consent to the disclosure;~~

~~(5) Is necessary to allow the viatical settlement provider or viatical settlement broker or their authorized representatives to make contacts for the purpose of determining health status; or~~

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

~~23-81-607. Examination or investigations.~~

~~(a) Authority, Scope, and Scheduling of Examinations.~~

~~(1) The Insurance Commissioner may conduct an examination under this subchapter of a licensee as often as the Insurance Commissioner in his or her sole discretion deems appropriate.~~

~~(2) For purposes of completing an examination of a licensee under this subchapter, the Insurance Commissioner may examine or investigate any person, or the business of any person if necessary or material, in the sole discretion of the Insurance Commissioner to complete the examination of the licensee.~~

~~(3) In lieu of an examination under this subchapter of any foreign or alien licensee licensed in this state, the Insurance Commissioner may accept an examination report on the licensee as prepared by the commissioner for the licensee's state of domicile or port of entry state.~~

~~(b) Record Retention Requirements.~~

~~(1) A person required to be licensed by this subchapter shall for five (5) years retain copies of any:~~

~~(A) Proposed, offered, or executed contract, purchase agreement, underwriting document, policy form, and application from the date of the proposal, offer, or execution of the contract or purchase agreement, whichever is later;~~

~~(B) Check, draft, or other evidence and documentation related to the payment, transfer, deposit, or release of funds from the date of the transaction; and~~

~~(C) Any other record and documents related to the requirements of this subchapter.~~

~~(2) This section does not relieve a person of the obligation to produce these documents to the Insurance Commissioner after the retention period has expired if the person has retained the documents.~~

~~(3) Records required to be retained by this section must be legible and complete and may be retained in paper, photograph, microprocess, magnetic, mechanical, or electronic media or by any process that accurately reproduces or forms a durable medium for the reproduction of a record.~~

~~(c) Conduct of Examinations.~~

~~(1)(A) Upon determining that an examination should be conducted,~~

~~the Insurance Commissioner shall issue an examination warrant appointing one (1) or more examiners to perform the examination and instructing them as to the scope of the examination.~~

~~(B) In conducting the examination, the examiner shall observe those guidelines and procedures in the Examiners' Handbook adopted by the National Association of Insurance Commissioners.~~

~~(C) The Insurance Commissioner may also employ other guidelines or procedures as he or she may deem appropriate.~~

~~(2)(A) Each licensee or person from whom information is sought, its officers, directors, and agents, shall provide to the examiners timely, convenient, and free access at all reasonable hours at its offices to all books, records, accounts, papers, documents, assets, and computer or other recordings relating to the property, assets, business, and affairs of the licensee being examined.~~

~~(B) The officers, directors, employees, and agents of the licensee or person shall facilitate the examination and aid in the examination to the extent that it is within their power to do so.~~

~~(C) The refusal of a licensee, by its officers, directors, employees, or agents, to submit to examination or to comply with any reasonable written request of the Insurance Commissioner shall be grounds for suspension, refusal, or nonrenewal of any license or authority held by the licensee to engage in the viatical settlement business or other business subject to the Insurance Commissioner's jurisdiction.~~

~~(D) Any proceedings for the suspension, revocation, or refusal to issue or renew any license or authority shall be conducted under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.~~

~~(3)(A) The Insurance Commissioner shall have the power to issue subpoenas, to administer oaths, and to examine under oath any person as to any matter pertinent to the examination.~~

~~(B) Upon the failure or refusal of a person to obey a subpoena, the Insurance Commissioner may petition a court of competent jurisdiction, and upon proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence.~~

~~(C) The failure to obey the court order shall be punishable as contempt of court.~~

~~(4) When making an examination under this subchapter, the Insurance Commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants, or other professionals and specialists as examiners, the reasonable cost of which shall be paid by the licensee that is the subject of the examination.~~

~~(5)(A) This subchapter does not limit the Insurance Commissioner's authority to terminate or suspend an examination in order to pursue other legal or regulatory action under the insurance laws of this state.~~

~~(B) Findings of fact and conclusions made as the result of any examination shall be prima facie evidence in any legal or regulatory action.~~

~~(6) This subchapter does not limit the Insurance Commissioner's authority to use or to make public any final or preliminary examination report, any examiner or licensee workpapers or other documents, or any other information discovered or developed during the course of any examination in the furtherance of any legal or regulatory action that the Insurance~~

~~Commissioner may deem appropriate.~~

~~(d) Examination Reports.~~

~~(1) Examination reports shall be composed of only facts appearing upon the books, records, or other documents of the licensee, its agents or other persons examined, or as ascertained from the testimony of its officers or agents or other persons examined concerning its affairs, and those conclusions and recommendations as the examiners find reasonably warranted from the facts.~~

~~(2)(A) No later than sixty (60) days following completion of the examination, the examiner in charge shall file with the Insurance Commissioner a verified written report of examination under oath.~~

~~(B) Upon receipt of the verified report, the Insurance Commissioner shall transmit the report to the examinee, with a notice affording the examinee a reasonable opportunity of not more than thirty (30) days from the date the Insurance Commissioner causes the report to be transmitted to make a written submission or rebuttal with respect to any matters contained in the examination report.~~

~~(3) If the Insurance Commissioner determines that regulatory action is appropriate as a result of an examination, he or she may initiate any proceedings or actions provided by law.~~

~~(e) Confidentiality of Examination Information.~~

~~(1) Names and individual identification data for all viators shall be considered private and confidential information and shall not be disclosed by the Insurance Commissioner unless required by law.~~

~~(2)(A)(i) Except as otherwise provided in this subchapter or by the law of another state or jurisdiction that is substantially similar to this subchapter, all examination reports, working papers, recorded information, documents, and copies thereof produced by, obtained by, or disclosed to the Insurance Commissioner or any other person in the course of an examination made under this subchapter, or in the course of analysis or investigation by the Insurance Commissioner of the financial condition or market conduct of a licensee, shall be confidential and privileged.~~

~~(ii) Information under subdivision (e)(2)(A)(i) of this section shall not be subject to disclosure under the Freedom of Information Act of 1967, § 25-19-101 et seq., or §§ 25-15-201—25-15-209 of the Arkansas Administrative Procedure Act, § 25-15-201 et seq., shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action.~~

~~(B) The Insurance Commissioner may use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as part of his or her official duties.~~

~~(3) Documents, materials, or other information, including all working papers and copies thereof, in the possession or control of the National Association of Insurance Commissioners and its affiliates and subsidiaries shall be confidential and privileged, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action if they are:~~

~~(A) Created, produced, or obtained by or disclosed to the association and its affiliates or subsidiaries in the course of assisting an examination made under this subchapter, or assisting a commissioner in the analysis or investigation of the financial condition or market conduct of a licensee; or~~

~~(B) Disclosed to the association and its affiliates or subsidiaries under subdivision (c)(4) of this section by a commissioner.~~

~~(4) Neither the Insurance Commissioner nor any person that received the documents, material, or other information under this section while acting under the authority of the Insurance Commissioner, including the National Association of Insurance Commissioners and its affiliates and subsidiaries, shall be permitted to testify in any private civil action concerning any confidential documents, materials, or information subject to subdivision (c)(1) of this section.~~

~~(5) In order to assist in the performance of the Insurance Commissioner's duties, the Insurance Commissioner:~~

~~(A) May share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to subdivision (c)(1) of this section, with other state, federal, and international regulatory agencies, with the National Association of Insurance Commissioners and its affiliates and subsidiaries, and with state, federal, and international law enforcement authorities, if the recipient of the information agrees to maintain the confidentiality and privileged status of the document, material, communication, or other information;~~

~~(B)(i) May receive documents, materials, communications, or information, including otherwise confidential and privileged documents, materials, or information from the National Association of Insurance Commissioners and its affiliates and subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions.~~

~~(ii) The Insurance Commissioner shall maintain as confidential or privileged any document, material, or information received with notice or with the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information; and~~

~~(C) May enter into agreements governing the sharing and use of information consistent with this subsection.~~

~~(6) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the Insurance Commissioner under this section or as a result of sharing as authorized in subdivision (c)(4) of this section.~~

~~(7) A privilege established under the law of any state or jurisdiction that is substantially similar to the privilege established under this subsection shall be available and enforced in any proceeding in, and in any court of, this state.~~

~~(8) This subchapter does not prohibit the Insurance Commissioner from disclosing the content of an examination report, preliminary examination report or results, or any matter relating thereto, to the commissioner of any other state or country, or to law enforcement officials of this or any other state or agency of the federal government at any time or to the National Association of Insurance Commissioners, if the agency or office receiving the report or matters relating thereto agrees in writing to hold it confidential and in a manner consistent with this subchapter.~~

~~(f) Conflict of Interest.~~

~~(1)(A) An examiner may not be appointed by the Insurance Commissioner if the examiner, either directly or indirectly, has a conflict of interest or is affiliated with the management of or owns a pecuniary~~

~~interest in any person subject to examination under this subchapter.~~

~~(B) However, this section does not automatically preclude an examiner from being:~~

- ~~(i) A viator;~~
- ~~(ii) An insured in a viaticated insurance policy; or~~
- ~~(iii) A beneficiary in an insurance policy that is proposed to be viaticated.~~

~~(2) Notwithstanding subdivision (f)(1) of this section, the Insurance Commissioner may retain from time to time, on an individual basis, qualified actuaries, certified public accountants, or other similar individuals who are independently practicing their professions, even though these persons may from time to time be similarly employed or retained by persons subject to examination under this subchapter.~~

~~(g) Cost of Examinations. Each person or organization examined under this subchapter shall pay to the State Insurance Department those expenses and costs authorized under § 23-61-206.~~

~~(h) Immunity from Liability.~~

~~(1) No cause of action shall arise nor shall any liability be imposed against the Insurance Commissioner, the Insurance Commissioner's authorized representative, or any examiner appointed by the Insurance Commissioner for any statement made or conduct performed in good faith while implementing this subchapter.~~

~~(2)(A) No cause of action shall arise nor shall any liability be imposed against any person for communicating or delivering information or data to the Insurance Commissioner or the Insurance Commissioner's authorized representative, or appointed examiner under an examination made under this subchapter, if the act of communication or delivery was performed in good faith and without fraudulent intent or the intent to deceive.~~

~~(B) This subdivision (h)(2) does not abrogate or modify in any way any common law or statutory privilege or immunity heretofore enjoyed by any person identified in subdivision (h)(1) or (h)(2)(A) of this section.~~

~~(3)(A) A person identified in subdivision (h)(1) or (2) of this section shall be entitled to an award of attorney's fees and costs if he or she is the prevailing party in a civil cause of action for libel, slander, or any other relevant tort arising out of the implementation of this subchapter and the party bringing the action was not substantially justified in doing so.~~

~~(B) For purposes of this subdivision (h)(3), a proceeding is "substantially justified" if it had a reasonable basis in law or fact at the time that it was initiated.~~

~~(i) Investigative Authority of the Commissioner. The Insurance Commissioner may investigate suspected fraudulent viatical settlement acts and persons engaged in the business of viatical settlements.~~

~~23-81-608. Disclosure.~~

~~(a)(1) With each application for a viatical settlement, a viatical settlement provider or viatical settlement broker shall provide the viator with a minimum of the disclosures under subdivision (a)(2) of this section no later than the time the application for the viatical settlement contract is signed by all parties.~~

~~(2) The disclosures shall be provided in a separate document that is signed by the viator and the viatical settlement provider or viatical~~

~~settlement broker and shall inform the viator that:~~

~~(A) There are possible alternatives to viatical settlement contracts, including any accelerated death benefits or policy loans offered under the viator's life insurance policy;~~

~~(B) Some or all of the proceeds of the viatical settlement may be taxable under federal income tax and state franchise and income taxes, and that the viator should seek assistance from a professional tax advisor;~~

~~(C) Proceeds of the viatical settlement could be subject to the claims of creditors;~~

~~(D) Receipt of the proceeds of a viatical settlement may adversely affect the viator's eligibility for Medicaid or other government benefits or entitlements and that the viator should obtain advice from the appropriate government agencies;~~

~~(E)(i) The viator has the right to rescind a viatical settlement contract for fifteen (15) calendar days after the receipt of the viatical settlement proceeds by the viator, as provided in § 23-81-609(e).~~

~~(ii) If the insured dies during the rescission period, the settlement contract shall be deemed to have been rescinded, subject to repayment of all viatical settlement proceeds and any premiums, loans, and loan interest to the viatical settlement provider or purchaser;~~

~~(F) Funds will be sent to the viator within three (3) business days after the viatical settlement provider has received the insurer's or group administrator's acknowledgment that ownership of the policy or interest in the certificate has been transferred and the beneficiary has been designated;~~

~~(G) Entering into a viatical settlement contract may cause other rights or benefits, including conversion rights and waiver of premium benefits that may exist under the policy or certificate, to be forfeited by the viator and that the viator should seek assistance from a financial adviser;~~

~~(H)(i) Disclosure to a viator shall include distribution of a brochure describing the process of viatical settlements.~~

~~(ii) The National Association of Insurance Commissioners' form for the brochure shall be used unless one is developed by the Insurance Commissioner;~~

~~(I) The disclosure document shall contain the following language: "All medical, financial, or personal information solicited or obtained by a viatical settlement provider or viatical settlement broker about an insured, including the insured's identity or the identity of family members, a spouse, or a significant other may be disclosed as necessary to effect the viatical settlement between the viator and the viatical settlement provider. If you are asked to provide this information, you will be asked to consent to the disclosure. The information may be provided to someone who buys the policy or provides funds for the purchase. You may be asked to renew your permission to share information every two years."; and~~

~~(J)(i) The insured may be contacted by either the viatical settlement provider or broker or its authorized representative for the purpose of determining the insured's health status.~~

~~(ii) This contact is limited to one (1) time every three (3) months if the insured has a life expectancy of greater than one (1) year, and no more than one (1) time per month if the insured has a life expectancy of one (1) year or less.~~

~~(b)(1) A viatical settlement provider shall provide the viator with a minimum of the disclosures in subdivision (b)(2) of this section no later than the date the viatical settlement contract is signed by all parties.~~

~~(2) The disclosures shall be conspicuously displayed in the viatical settlement contract or in a separate document signed by the viator and the viatical settlement provider or viatical settlement broker and shall provide the following information:~~

~~(A) The affiliation, if any, between the viatical settlement provider and the issuer of the insurance policy to be viaticated;~~

~~(B) The name, address, and telephone number of the viatical settlement provider;~~

~~(C) If an insurance policy to be viaticated has been issued as a joint policy or involves family riders or any coverage of a life other than the insured under the policy to be viaticated, the viator shall be informed of the possible loss of coverage on the other lives under the policy and shall be advised to consult with his or her insurance producer or the insurer issuing the policy for advice on the proposed viatical settlement;~~

~~(D)(i) The dollar amount of the current death benefit payable to the viatical settlement provider under the policy or certificate.~~

~~(ii) If known, the viatical settlement provider shall also disclose the availability of any additional guaranteed insurance benefits, the dollar amount of any accidental death and dismemberment benefits under the policy or certificate, and the viatical settlement provider's interest in those benefits; and~~

~~(E) The name, business address, and telephone number of the independent third party escrow agent and the fact that the viator or owner may inspect or receive copies of the relevant escrow, trust agreements, or documents.~~

~~(c) If the provider transfers ownership or changes the beneficiary of the insurance policy, the provider shall communicate the change in ownership or beneficiary to the insured within twenty (20) days after the change.~~

~~23-81-609. General rules.~~

~~(a)(1) If the viator is the insured, a viatical settlement provider entering into a viatical settlement contract shall first obtain:~~

~~(A) A written statement from a licensed attending physician that the viator is of sound mind and under no constraint or undue influence to enter into a viatical settlement contract; and~~

~~(B) A document in which the insured consents to the release of his or her medical records to a viatical settlement provider, viatical settlement broker, and the insurance company that issued the life insurance policy covering the life of the insured.~~

~~(2)(A) Within twenty (20) days after a viator executes documents necessary to transfer any rights under an insurance policy or within twenty (20) days of entering any agreement, option, promise, or any other form of understanding, expressed or implied, to viaticate the policy, the viatical settlement provider shall give written notice to the insurer that issued that insurance policy that the policy has or will become a viaticated policy.~~

~~(B) The notice shall be accompanied by the documents required by subdivision (a)(3) of this section.~~

~~(3)(A) The viatical provider shall deliver a copy of the medical release required under subdivision (a)(1)(B) of this section, a copy of the viator's application for the viatical settlement contract, the notice~~

~~required under subdivision (a)(2) of this section, and a request for verification of coverage to the insurer that issued the life policy that is the subject of the viatical transaction.~~

~~(B) The National Association of Insurance Commissioners' form for verification shall be used unless the Insurance Commissioner adopts different standards for verification.~~

~~(4) The insurer shall respond to a request for verification of coverage submitted on an approved form by a viatical settlement provider within thirty (30) calendar days of the date the request is received and shall indicate whether, based on the medical evidence and documents provided, the insurer intends to pursue an investigation at this time regarding the validity of the insurance contract.~~

~~(5)(A) No later than the time of execution of the viatical settlement contract, the viatical settlement provider shall obtain a witnessed document in which the viator:~~

- ~~(i) Consents to the viatical settlement contract;~~
- ~~(ii) Represents that he or she has a complete understanding of the viatical settlement contract;~~
- ~~(iii) Represents that he or she has a complete understanding of the benefits of the life insurance policy; and~~
- ~~(iv) Acknowledges that he or she is entering into the viatical settlement contract freely and voluntarily.~~

~~(B) If the insured has a terminal or chronic illness or condition, in addition to obtaining the information required under subdivision (5)(A) of this section, the viatical settlement provider shall obtain a witnessed document in which the viator acknowledges that the insured has a terminal or chronic illness and that the terminal or chronic illness or condition was diagnosed after the life insurance policy was issued.~~

~~(6) If a viatical settlement broker performs any of these activities required of the viatical settlement provider, the provider is deemed to have fulfilled the requirements of this section.~~

~~(b) Any medical information solicited or obtained by a licensee shall be subject to the applicable provisions of state law relating to confidentiality of medical information.~~

~~(c)(1) All viatical settlement contracts entered into in this state shall provide the viator with an unconditional right to rescind the contract for at least fifteen (15) calendar days from the receipt of the viatical settlement proceeds.~~

~~(2) If the insured dies during the rescission period, the viatical settlement contract shall be deemed to have been rescinded, subject to repayment to the viatical settlement provider or purchaser of all viatical settlement proceeds, and any premiums, loans, and loan interest that have been paid by the viatical settlement provider or purchaser.~~

~~(d)(1) The viatical settlement provider shall instruct the viator to send the executed documents required to effect a change in ownership, assignment, or change in beneficiary directly to the independent escrow agent.~~

~~(2)(A) Within three (3) business days after the date the escrow agent receives the document, or from the date the viatical settlement provider receives the documents, if the viator erroneously provides the documents directly to the provider, the provider shall pay or transfer the proceeds of the viatical settlement into an escrow or trust account~~

~~maintained in a state or federally chartered financial institution whose deposits are insured by the Federal Deposit Insurance Corporation.~~

~~(B) Upon payment of the settlement proceeds into the escrow account, the escrow agent shall deliver the original change in ownership, assignment, or change in beneficiary forms to the viatical settlement provider or to the related provider trust.~~

~~(C) Upon the escrow agent's receipt of the acknowledgment of the properly completed transfer of ownership, assignment, or change in designation of beneficiary from the insurance company, the escrow agent shall pay the settlement proceeds to the viator.~~

~~(e) Failure to tender consideration to the viator for the viatical settlement contract within the time specified under § 23 81 608(a)(2)(F) renders the viatical settlement contract voidable by the viator for lack of consideration until the time consideration is tendered to and accepted by the viator.~~

~~(f)(1) Contacts with the insured for the purpose of determining the health status of the insured by the viatical settlement provider or viatical settlement broker after the viatical settlement has occurred:~~

~~(A) Shall only be made by the viatical settlement provider or broker licensed in this state or by its authorized representatives; and~~

~~(B) Shall be limited to one (1) time every three (3) months for insureds with a life expectancy of more than one (1) year, and to no more than one (1) time per month for insureds with a life expectancy of one (1) year or less.~~

~~(2) The provider or broker shall explain the procedure for these contacts at the time the viatical settlement contract is entered into.~~

~~(3) The limitations in this subsection shall not apply to any contacts with an insured for reasons other than determining the insured's health status.~~

~~(4) Viatical settlement providers and viatical settlement brokers shall be responsible for the actions of their authorized representatives.~~

~~23 81 610. Prohibited practices.~~

~~(a) It is a violation of this subchapter for any person to enter into a viatical settlement contract within a two-year period commencing with the date of issuance of the insurance policy or certificate unless the viator certifies to the viatical settlement provider that one (1) or more of the following conditions have been met within the two-year period:~~

~~(1) The policy was issued upon the viator's exercise of conversion rights arising out of a group or individual policy if the total of the time covered under the conversion policy plus the time covered under the prior policy is at least twenty-four (24) months.~~

~~(2) The time covered under a group policy shall be calculated without regard to any change in insurance carriers if the coverage has been continuous and under the same group sponsorship;~~

~~(3) The viator is a charitable organization exempt from taxation under 26 U.S.C. § 501 (c)(3);~~

~~(4) The viator is not a natural person, but is a corporation, limited liability company, partnership, or similar entity;~~

~~(5) The viator submits independent evidence to the viatical settlement provider that one (1) or more of the following conditions have~~

~~been met within the two year period:~~

- ~~(A) The viator or insured is terminally or chronically ill;~~
- ~~(B) The viator's spouse dies;~~
- ~~(C) The viator divorces his or her spouse;~~
- ~~(D) The viator retires from full-time employment;~~
- ~~(E) The viator becomes physically or mentally disabled and a physician determines that the disability prevents the viator from maintaining full-time employment;~~
- ~~(F) The viator was the insured's employer at the time the policy or certificate was issued and the employment relationship terminated;~~
- ~~(G) A final order, judgment, or decree is entered by a court of competent jurisdiction, on the application of a creditor of the viator, adjudicating the viator bankrupt or insolvent, or approving a petition seeking reorganization of the viator or appointing a receiver, trustee, or liquidator to all or a substantial part of the viator's assets;~~
- ~~(H) The viator experiences a significant decrease in income that is unexpected and that impairs the viator's reasonable ability to pay the policy premium; or~~
- ~~(I) The viator or insured disposes of his or her ownership interests in a closely held corporation.~~

~~(b)(1) Copies of the independent evidence described in subdivision (a)(5) of this section and documents required by § 23-81-609(a) shall be submitted to the insurer when the viatical settlement provider submits a request to the insurer for verification of coverage.~~

~~(2) The copies shall be accompanied by a letter of attestation from the viatical settlement provider that the copies are true and correct copies of the documents received by the viatical settlement provider.~~

~~(c) If the viatical settlement provider submits to the insurer a copy of the owner's or insured's certification described in subdivision (a)(5) of this section when the provider submits a request to the insurer to transfer the policy or certificate to the viatical settlement provider, the copy shall be deemed to conclusively establish that the viatical settlement contract satisfies the requirements of this section, and the insurer shall timely respond to the request.~~

~~23-81-611. Advertising for viatical settlements.~~

~~(a)(1) This section shall apply to any advertising of viatical settlement contracts, or related products or services intended for dissemination in this state, including Internet advertising viewed by persons located in this state.~~

~~(2) When disclosure requirements are established under federal law or regulation, this section shall be interpreted to minimize or eliminate the conflict whenever possible.~~

~~(b)(1)(A) Every viatical settlement licensee shall establish and at all times maintain a system of control over the content, form, and method of dissemination of all advertisements of its contracts, products, and services.~~

~~(B) A system of control shall include regular routine notification, at least one (1) time a year, to agents and others authorized by the viatical settlement licensee who disseminate advertisements of the requirements and procedures for approval prior to the use of any advertisements not furnished by the viatical settlement licensee.~~

~~(2) All advertisements under this subchapter, regardless of by whom they were written, created, designed, or presented, shall be the responsibility of the viatical settlement licensee as well as the individual who created or presented the advertisement.~~

~~(c)(1) Advertisements shall be truthful and shall not mislead in fact or by implication.~~

~~(2) The form and content of an advertisement of a viatical settlement contract shall be sufficiently complete and clear so as to avoid deception.~~

~~(3)(A) The advertisement shall not have the capacity or tendency to mislead or deceive.~~

~~(B) Whether an advertisement has the capacity or tendency to mislead or deceive shall be determined by the Insurance Commissioner from the overall impression that the advertisement may be reasonably expected to create upon a person of average education or intelligence within the segment of the public to which it is directed.~~

~~(d)(1) The information required to be disclosed under this section shall not be minimized, rendered obscure, or presented in an ambiguous fashion or intermingled with the text of the advertisement so as to be confusing or misleading.~~

~~(2)(A) An advertisement shall not omit material information or use words, phrases, statements, references, or illustrations if the omission or use has the capacity, tendency, or effect of misleading or deceiving viators as to the nature or extent of any benefit, loss covered, premium payable, or state or federal tax effect.~~

~~(B) The fact that the viatical settlement contract offered is made available for inspection before consummation of the sale or an offer is made to refund the payment if the viator is not satisfied or that the viatical settlement contract includes a "free look" period that satisfies or exceeds legal requirements does not remedy misleading statements.~~

~~(3) An advertisement shall not use the name or title of a life insurance company or a life insurance policy unless the advertisement has been approved by the insurer.~~

~~(4) An advertisement shall not state or imply that interest charged on an accelerated death benefit or a policy loan is unfair, inequitable, or is in any manner an incorrect or improper practice.~~

~~(5)(A) The words "free", "no cost", "without cost", "no additional cost", "at no extra cost", or words of similar import shall not be used with respect to any benefit or service unless true.~~

~~(B) An advertisement may specify the charge for a benefit or a service or may state that a charge is included in the payment or use other appropriate language.~~

~~(6)(A) Testimonials, appraisals, or analysis used in advertisements shall be genuine, shall represent the current opinion of the author, shall be applicable to any viatical settlement contract product or service advertised, and shall be accurately reproduced with sufficient completeness to avoid misleading or deceiving prospective viators as to the nature or scope of the testimonials, appraisals, analysis, or endorsement.~~

~~(B) In using testimonials, appraisals, or analysis, the viatical settlement licensee makes as its own all the statements contained therein, and the statements are subject to all the provisions of this section.~~

~~(C) If the individual making a testimonial, appraisal, analysis, or an endorsement has a financial interest in the viatical settlement provider or related entity as a stockholder, director, officer, employee, or otherwise or receives any benefit directly or indirectly other than required union scale wages, that fact shall be prominently disclosed in the advertisement.~~

~~(D)(i) An advertisement shall not state or imply that a viatical settlement contract benefit or service has been approved or endorsed by a group of individuals, society, association, or other organization unless that is the fact and unless any relationship between an organization and the viatical settlement licensee is disclosed.~~

~~(ii) If the entity making the endorsement or testimonial is owned, controlled, or managed by the viatical settlement licensee or receives any payment or other consideration from the viatical settlement licensee for making an endorsement or testimonial, that fact shall be disclosed in the advertisement.~~

~~(E) When an endorsement refers to benefits received under a viatical settlement contract, all pertinent information shall be retained by the viatical settlement licensee for a period of five (5) years after its use.~~

~~(c)(1) An advertisement shall not contain statistical information unless it accurately reflects recent and relevant facts.~~

~~(2) The source of all statistics used in an advertisement shall be identified.~~

~~(f) An advertisement shall not disparage insurers, viatical settlement providers, viatical settlement brokers, insurance producers, policies, services, or methods of marketing.~~

~~(g)(1) The name of the viatical settlement licensee shall be clearly identified in all advertisements about the licensee or its viatical settlement contract, products, or services, and if any specific viatical settlement contract is advertised, the viatical settlement contract shall be identified either by form number or some other appropriate description.~~

~~(2) If an application is part of the advertisement, the name of the viatical settlement provider shall be shown on the application.~~

~~(h) An advertisement shall not use a trade name, group designation, name of the parent company of a viatical settlement licensee, name of a particular division of the viatical settlement licensee, service mark, slogan, symbol, or other device or reference without disclosing the name of the viatical settlement licensee if the advertisement would have the capacity or tendency to mislead or deceive as to the true identity of the viatical settlement licensee or to create the impression that a company other than the viatical settlement licensee would have any responsibility for the financial obligation under a viatical settlement contract.~~

~~(i) An advertisement shall not use any combination of words, symbols, or physical materials that by their content, phraseology, shape, color, or other characteristics are so similar to a combination of words, symbols, or physical materials used by a government program or agency or otherwise would tend to mislead prospective viators into believing that the solicitation is in some manner connected with a government program or agency.~~

~~(j)(1) An advertisement may state that a viatical settlement licensee is licensed in the state where the advertisement appears if it does not exaggerate that fact or suggest or imply that competing viatical settlement~~

~~licensees may not be so licensed.~~

~~(2) The advertisement may request the audience to consult the licensee's website or contact the department of insurance for the licensee's state to find out if the state requires licensing and, if so, whether the viatical settlement provider or viatical settlement broker is licensed.~~

~~(k) An advertisement shall not create the impression that the viatical settlement provider, its financial condition or status, the payment of its claims, or the merits, desirability, or advisability of its viatical settlement contracts are recommended or endorsed by any government entity.~~

~~(1)(1) The name of the actual licensee shall be stated in all of its advertisements.~~

~~(2) An advertisement shall not use a trade name, any group designation, name of any affiliate or controlling entity of the licensee, service mark, slogan, symbol, or other device in a manner that would have the capacity or tendency to mislead or deceive as to the true identity of the actual licensee or create the false impression that an affiliate or controlling entity would have any responsibility for the financial obligation of the licensee.~~

~~(m) An advertisement shall not directly or indirectly create the impression that any division or agency of the State of Arkansas or of the United States Government endorses, approves, or favors:~~

~~(1) Any viatical settlement licensee or its business practices or methods of operation;~~

~~(2) The merits, desirability, or advisability of any viatical settlement contract;~~

~~(3) Any viatical settlement contract; or~~

~~(4) Any life insurance policy or life insurance company.~~

~~(n) If the advertiser emphasizes the speed with which the viatication will occur, the advertising must disclose the average time frame from completed application to the date of offer and from acceptance of the offer to receipt of the funds by the viator.~~

~~(o) If the advertising emphasizes the dollar amounts available to viators, the advertising shall disclose the average purchase price as a percent of face value obtained by viators contracting with the licensee during the past six (6) months.~~

~~23-81-612. Fraud prevention and control.~~

~~(a) Fraudulent Viatical Settlement Acts — Interference and Participation of Felons Prohibited.~~

~~(1) A person shall not commit a fraudulent viatical settlement act.~~

~~(2) A person shall not knowingly or intentionally interfere with the enforcement of the provisions of this subchapter or an investigation of suspected or actual violations of this subchapter.~~

~~(3) A person in the business of viatical settlements shall not knowingly or intentionally permit any person to participate in the business of viatical settlements who has pleaded guilty or nolo contendere to, or has been found guilty of, a felony involving dishonesty or breach of trust.~~

~~(b) Fraud Warning Required.~~

~~(1) Viatical settlement contracts and applications for viatical settlements, regardless of the form of transmission, shall contain the following statement or a substantially similar statement:~~

~~“Any person who knowingly presents false information in an application for insurance or viatical settlement contract is guilty of a crime and may be subject to fines and confinement in prison.”~~

~~(2) The failure to include the statement under subdivision (b)(1) of this section does not constitute a defense in a prosecution for a fraudulent viatical settlement act.~~

~~(c) Mandatory Reporting of Fraudulent Viatical Settlement Acts.~~

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

~~(2) Any other person having knowledge or a reasonable belief that a fraudulent viatical settlement act is being, will be, or has been committed may provide to the commissioner the information required by, and in a manner prescribed by, the commissioner.~~

~~(d) Immunity from Liability.~~

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

~~(A) The commissioner or the commissioner’s employees, agents, or representatives;~~

~~(B) Federal, state, or local law enforcement or regulatory officials or their employees, agents, or representatives;~~

~~(C) A person involved in the prevention and detection of fraudulent viatical settlement acts or that person’s agents, employees, or representatives;~~

~~(D) The National Association of Insurance Commissioners, the National Association of Securities Dealers, the North American Securities Administrators Association, or their employees, agents, or representatives, or other regulatory body overseeing life insurance, viatical settlements, securities, or investment fraud; or~~

~~(E) The life insurer that issued the life insurance policy covering the life of the insured.~~

~~(2)(A) Subdivision (d)(1) of this section shall not apply to statements made with actual malice.~~

~~(B) In an action brought against a person for filing a report or furnishing other information concerning a fraudulent viatical settlement act or a fraudulent insurance act, the party bringing the action shall specifically plead any allegation that subdivision (d)(1) of this section does not apply because the person filing the report or furnishing the information did so with actual malice.~~

~~(3)(A) A person identified in subdivision (d)(1) of this section shall be entitled to an award of attorney’s fees and costs if he or she is the prevailing party in a civil cause of action for libel, slander, or any other relevant tort arising out of activities in implementing this subchapter and the party bringing the action was not substantially justified in doing so.~~

~~(B) For purposes of this subdivision (d)(3), a proceeding is “substantially justified” if it had a reasonable basis in law or fact at~~

~~the time that it was initiated.~~

~~(4) This section does not abrogate or modify common law or statutory privileges or immunities enjoyed by a person described in subdivision (d)(1) of this section.~~

~~(e) Confidentiality.~~

~~(1) The documents and evidence provided under subsection (d) of this section or obtained by the commissioner in an investigation of suspected or actual fraudulent viatical settlement acts shall be privileged and confidential, shall not be a public record, and shall not be subject to discovery or subpoena in a civil or criminal action.~~

~~(2) Subdivision (e)(1) of this section does not prohibit the release by the commissioner of documents and evidence obtained in an investigation of suspected or actual fraudulent viatical settlement acts:~~

~~(A) In administrative or judicial proceedings to enforce laws administered by the commissioner;~~

~~(B) To federal, state, or local law enforcement or regulatory agencies, to an organization established for the purpose of detecting and preventing fraudulent viatical settlement acts, or to the National Association of Insurance Commissioners; or~~

~~(C) At the discretion of the commissioner, to a person in the business of viatical settlements that is aggrieved by a fraudulent viatical settlement act.~~

~~(3) Release of documents and evidence under subdivision (e)(2) of this section does not abrogate or modify the privilege granted in subdivision (e)(1) of this section.~~

~~(f) Other Law Enforcement or Regulatory Authority.~~

~~This subchapter does not:~~

~~(1) Preempt the authority or relieve the duty of other law enforcement or regulatory agencies to investigate, examine, and prosecute suspected violations of law;~~

~~(2) Prevent or prohibit a person from voluntarily disclosing information concerning viatical settlement fraud to a law enforcement or regulatory agency other than the State Insurance Department; or~~

~~(3) Limit the powers granted elsewhere by the laws of this state to the commissioner or an insurance fraud unit to investigate and examine possible violations of law and to take appropriate action.~~

~~(g) Viatical Settlement Antifraud Initiatives.~~

~~(1)(A) Viatical settlement providers and viatical settlement brokers shall have in place antifraud initiatives reasonably calculated to detect, prosecute, and prevent fraudulent viatical settlement acts.~~

~~(B) At the discretion of the commissioner, the commissioner may order, or a licensee may request and the commissioner may grant, modifications of the following required initiatives as necessary to ensure an effective antifraud program.~~

~~(C) The modifications may be more or less restrictive than the required initiatives under subdivision (g)(1) of this section if the modifications may reasonably be expected to accomplish the purpose of this section.~~

~~(2) Antifraud initiatives shall include:~~

~~(A) Fraud investigators, who may be viatical settlement provider or viatical settlement broker employees or independent contractors; and~~

~~(B)(i) An antifraud plan, which shall be submitted to the commissioner.~~

~~(ii) The antifraud plan shall include, but not be limited to:~~

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

~~(b) A description of the procedures for reporting possible fraudulent viatical settlement acts to the commissioner;~~

~~(c) A description of the plan for antifraud education and training of underwriters and other personnel; and~~

~~(d) A description or chart outlining the organizational arrangement of the antifraud personnel who are responsible for the investigation and reporting of possible fraudulent viatical settlement acts and investigating unresolved material inconsistencies between medical records and insurance applications.~~

~~(3) Antifraud plans submitted to the commissioner shall be privileged and confidential, shall not be a public record, and shall not be subject to discovery or subpoena in a civil or criminal action.~~

~~23-81-613. Injunctions — Civil remedies — Cease and desist orders.~~

~~(a) In addition to the penalties and other enforcement provisions of this subchapter, the Insurance Commissioner may seek an injunction in a court of competent jurisdiction and may apply for temporary and permanent orders to restrain the person from committing the violation.~~

~~(b) Any person damaged by the acts of a person violating this subchapter may bring a civil action in a court of competent jurisdiction against the person committing the violation.~~

~~(c) In accordance with §§ 23-66-209 — 23-66-213 of the Trade Practices Act, § 23-66-201 et seq., the commissioner may issue a cease and desist order upon a person that violates any provision of this subchapter, any regulation or order adopted by the commissioner under this subchapter, or any written agreement entered into with the commissioner under this subchapter.~~

~~(d)(1) When the commissioner finds that an activity in violation of this subchapter presents an immediate danger to the public that requires an immediate final order, the commissioner may issue an emergency cease and desist order reciting with particularity the facts underlying the findings.~~

~~(2) The emergency cease and desist order is effective immediately upon service of a copy of the order on the respondent and remains effective for ninety (90) days.~~

~~(3) If the commissioner begins nonemergency cease and desist proceedings, the emergency cease and desist order remains effective, absent a countermanding order by a court of competent jurisdiction under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.~~

~~(e)(1) In addition to the penalties and other enforcement provisions of this subchapter, any person who violates this subchapter is subject to civil penalties under § 23-66-210.~~

~~(2) The commissioner shall impose civil penalties by order under §§ 23-66-209 — 23-66-213 of the Trade Practices Act, § 23-66-201 et seq.~~

~~(3) The commissioner's order may require a person found to be in violation of this subchapter to make restitution to persons aggrieved by violations of this subchapter.~~

~~(f)(1) A person who is found guilty of, or pleads guilty or nolo contendere to, a violation of this subchapter shall be guilty of a Class D felony.~~

~~(2) A person who is found guilty of, or pleads guilty or nolo contendere to, a fraudulent viatical settlement act shall be ordered to pay restitution to persons aggrieved by the violation of the fraudulent viatical settlement act.~~

~~(3) Restitution may be ordered in addition to a fine or imprisonment, but not in lieu of a fine or imprisonment.~~

~~23-81-614. Unfair trade practices.~~

~~A violation of this subchapter shall be considered an unfair trade practice under §§ 23-66-209 — 23-66-213 of the Trade Practices Act, § 23-66-201 et seq., and shall be subject to the penalties contained therein.~~

~~23-81-615. Authority to promulgate regulations.~~

~~The Insurance Commissioner may:~~

~~(1) Promulgate regulations implementing this subchapter;~~

~~(2)(A) Establish standards for evaluating reasonableness of payments under viatical settlement contracts for persons who are terminally or chronically ill.~~

~~(B) This authority includes the regulation of discount rates used to determine the amount paid in exchange for assignment, transfer, sale, devise, or bequest of a benefit under a life insurance policy;~~

~~(3) Establish appropriate licensing requirements, fees, and standards for continued licensure for viatical settlement providers and viatical settlement brokers;~~

~~(4) Require a bond or other mechanism for financial accountability for viatical settlement providers and brokers; and~~

~~(5) Adopt rules governing the relationship and responsibilities of both insurers and viatical settlement providers and viatical settlement brokers during the viatication of a life insurance policy or certificate.”~~

The Amendment was read _____

By: Representative Hawkins
DLP/LHA - 03-17-2009 16:22
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Chief Clerk