



SPONSOR: Rep. Stone & Sen. Blevins

HOUSE OF REPRESENTATIVES

143rd GENERAL ASSEMBLY

HOUSE BILL NO. 538

AN ACT TO AMEND TITLE 18 OF THE DELAWARE CODE RELATING TO WILLS AND TRUSTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1  
2 Section 1. Amend § 7501, Title 18, Delaware Code, by deleting such section in its entirety and substituting in lieu thereof  
3 the following:

4 “§ 7501. Short title.

5 This Chapter may be cited as the Delaware Life Settlements Act.”.

6 Section 2. Amend § 7502, Title 18, Delaware Code, by deleting such section in its entirety and substituting in lieu thereof  
7 the following:

8 “§ 7502. Definitions.

9 As used in this Chapter:

10 (1) ADVERTISING. Any written, electronic, or printed communication or any communication by means of recorded  
11 telephone messages or transmitted on radio, television, the Internet, or similar communications media, including film strips, motion  
12 pictures, and videos, published, disseminated, circulated, or placed directly before the public in this state, for the purpose of creating  
13 an interest in or inducing a person to sell, assign, devise, bequest or transfer the death benefit or ownership of a policy pursuant to a  
14 life settlement contract.

15 (2) BUSINESS OF LIFE SETTLEMENTS. An activity involved in, but not limited to, the offering, solicitation,  
16 negotiation, procurement, effectuation, purchasing, investing, financing, monitoring, tracking, underwriting, selling, transferring,  
17 assigning, pledging, or hypothecating of life settlement contracts.

18 (3) CHRONICALLY ILL includes any of the following:

19 (a) Being unable to perform at least two (2) activities of daily living including, but not limited  
20 to, eating, toileting, transferring, bathing, dressing or continence.

21 (b) Requiring substantial supervision to protect the individual from threats to health and

safety due to severe cognitive impairment.

(c) Having a level of disability similar to that described in paragraph (a) as determined by the Secretary of the U.S. Department of Health and Human Services.

(4) COMMISSIONER. The Commissioner of Insurance.

(5)(a) FINANCING ENTITY. An underwriter, placement agent, lender, purchaser of securities, purchaser of a policy or certificate from a life settlement provider, credit enhancer, or an entity that has a direct ownership in a policy 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 or purchase of one (1) or more purchased policies.

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

(b) Financing entity does not include a non-accredited investor.

(6) FRAUDULENT LIFE SETTLEMENT ACT. Any of the following:

(a) An act or omission committed by a person who, knowingly or 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:

(i) Presenting, causing to be presented or preparing with knowledge or belief that it will be presented to or by a life settlement provider, financing entity, insurer, insurance producer or another person, false material information, or concealing material information, as part of, in support of or concerning a fact material to any of the following:

A. An application for the issuance of a life settlement contract or policy.

B. The underwriting of a life settlement contract or policy.

C. A claim for payment or benefit pursuant to a life settlement contract or policy.

D. Premiums paid on a policy.

E. Payments and changes in ownership or beneficiary made in accordance with the terms of a life settlement contract or policy.

F. The reinstatement or conversion of a policy.

G. In the solicitation, offer, effectuation or sale of a life settlement contract or policy.

H. The issuance of written evidence of life settlement contract or insurance.

I. A financing transaction.

(ii) Employing any device, scheme or artifice to defraud related to purchased policies.

51 (b) In the furtherance of a fraud or to prevent the detection of a fraud a person commits or permits its employees or its  
52 agents to do any of the following:

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

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

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

58 (iv) File with the Commissioner or the chief insurance regulatory official of another jurisdiction a document  
59 containing false information or otherwise conceals information about a material fact from the Commissioner.

60 (c) Embezzlement, theft, misappropriation or conversion of monies, funds, premiums, credits or other property of a  
61 life settlement provider, life insurance producer, insurer, insured, seller, policy owner, or another person engaged in the business of  
62 life settlements or insurance.

63 (d) Recklessly entering into, negotiating, otherwise dealing in a life settlement contract or life insurance policy, the  
64 subject of which is a policy that was obtained by presenting false information concerning a fact material to the policy, or by  
65 concealing, for the purpose of misleading another, information concerning a fact material to the policy, where a person or persons  
66 intended to defraud the insurance company that issued the policy, a life settlement provider or seller. 'Recklessly' means engaging in  
67 the conduct in conscious and clearly unjustifiable disregard of a substantial likelihood of the existence of the relevant facts or risks,  
68 this disregard involving a gross deviation from acceptable standards of conduct.

69 (e) Facilitating, directly or indirectly, the change of state of ownership of a policy or the state of residency of a seller  
70 to avoid the provisions of this Act;

71 (f) Attempting to commit, assist, aid or abet in the commission of, or conspiracy to commit the acts or omissions  
72 specified in this subdivision.

73 (7) LIFE INSURANCE PRODUCER. A person licensed as a resident or nonresident insurance producer pursuant to  
74 Chapter 17 of this Title, who has received qualification for life insurance coverage or a life line of coverage pursuant to § 1707 of  
75 this Title.

76 (8) LIFE SETTLEMENT CONTRACT. A written agreement between a seller and a life settlement provider  
77 establishing the terms under which compensation or anything of value is paid, which compensation or value is less than the  
78 expected death benefit of the policy, in return for the seller's assignment, transfer, sale, devise or bequest of the death benefit or  
79 ownership of any portion of the policy. It includes any agreement under which the insured or seller, or their designee, receives or is

to receive consideration in exchange for the designation of or consent to assignment or transfer for the ownership or beneficiary interest in a policy regardless of the date that the consideration is provided to such person or the transfer or assignment occurs. A life settlement contract also includes any premium financing transaction or agreement collateral thereto entered into on or before the second policy anniversary, other than a conversion or other policy that is not subject to a contestable period, under which an insured or seller is either (i) provided a guarantee of a policy's life settlement value, or (ii) receives funds which 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 following are not life settlement contracts: (i) a policy loan by the insurer pursuant to the policy terms; (ii) an insurance policy issued by a licensed insurer; and (iii) a loan by a licensed lending institution [NOTE: or a 'lending institution' where the state does not require such licensing] which uses the value of the policy as collateral for the loan but does not provide funds which 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.

(9) LIFE SETTLEMENT PROVIDER. A person, other than a seller, that, in this State, from this State or with a resident of this State, enters into or effectuates a life settlement contract. Life settlement provider does not include any of the following:

- (a) A bank, savings bank, savings and loan association, credit union, or other licensed lending institution that takes an assignment of a policy as collateral for a loan.
- (b) The issuer of a policy providing accelerated benefits pursuant to the policy.
- (c) An authorized or eligible insurer that provides stop loss coverage to a life settlement provider, financing entity, special purpose entity or related provider trust.
- (d) A natural person who enters into or effectuates no more than one (1) agreement in a calendar year for the transfer of policies for any value less than the expected death benefit.
- (e) A financing entity.
- (f) A special purpose entity.
- (g) A related provider trust.
- (h) A qualified institutional buyer as defined in Rule 144A of the Federal Securities Act of 1933, as amended, and who purchases a purchased policy from a life settlement provider.

(10) PERSON. A natural person or a legal entity including, but not limited to, an individual, partnership, limited liability company, association, trust or corporation.

108 (11) POLICY. An individual or group policy, group certificate, contract or arrangement of life insurance affecting the  
109 rights of a resident of this State or bearing a reasonable relation to this State, regardless of whether delivered or issued for delivery  
110 in this State.

111 (12) PURCHASED POLICY. A policy that has been acquired by a life settlement provider pursuant to a life  
112 settlement contract.

113 (13) RELATED PROVIDER TRUST. A titling trust or other trust established by a licensed life settlement provider or  
114 a financing entity for the sole purpose of holding the ownership or beneficial interest in purchased policies in connection with a  
115 financing transaction. The trust shall have a written agreement with the licensed life settlement provider under which the licensed  
116 life settlement provider is responsible for ensuring compliance with all statutory and regulatory requirements and under which the  
117 trust agrees to make all records and files related to life settlement transactions available to the Commissioner as if those records and  
118 files were maintained directly by the licensed life settlement provider.

119 (14) SELLER. The owner of a policy, who enters or seeks to enter into a life settlement contract. For the purposes of  
120 this Act, a seller is not limited to an owner of a policy insuring the life of an individual with a terminal or chronic illness or  
121 condition except where specifically addressed. If there is more than one (1) seller on a single policy and the sellers are residents of  
122 different states, the transaction shall be governed by the law of the state in which the seller having the largest percentage ownership  
123 resides or, if the sellers hold equal ownership, the state of residence of one (1) owner agreed upon in writing by all owners. Seller  
124 does not include any of the following:

- 125 (a) A licensee as provided by this Act, including a life insurance producer.
- 126 (b) A qualified institutional buyer as defined Rule 144A of the Federal Securities Act of 1933, as amended.
- 127 (c) A financing entity.
- 128 (d) A special purpose entity.
- 129 (e) A related provider trust.

130 (15) SPECIAL PURPOSE ENTITY. A corporation, partnership, trust, limited liability company or other similar entity  
131 formed only to provide either, directly or indirectly, access to institutional capital markets for a financing entity or for a licensed life  
132 settlement provider.

133 (16) TERMINALLY ILL. Having an illness or sickness that reasonably is expected to result in death in 24 months or  
134 less.”.

135 Section 3. Amend § 7503, Title 18, Delaware Code, by deleting such section in its entirety and substituting in lieu thereof  
136 the following:

“§ 7503. License requirements.

(a) No person shall act on behalf of a seller or otherwise negotiate, as defined in Chapter 17 of this Title, life settlement contracts on behalf of a seller with one (1) or more life settlement providers unless the person is a life insurance producer and has been licensed as a resident producer with qualification for life insurance coverage or a life line of coverage in his or her home state for at least one (1) year.

(1) Not later than 30 days from the first day of negotiating a life settlement contract on behalf of a seller, the life insurance producer shall notify the Commissioner of the activity on a form prescribed by the Commissioner and shall pay any applicable fees to be determined by the Commissioner. Notification must include an acknowledgment by the life insurance producer that he or she will operate in accordance with this act.

(2) Irrespective of the manner in which the life insurance producer is compensated, a life insurance producer is deemed to represent only the seller, and not the insurer or the life settlement provider, and owes a fiduciary duty to the seller to act according to the seller's instructions and in the best interests of the seller.

(3) Notwithstanding subsection (a), 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 seller, whose compensation is not paid directly or indirectly by the life settlement provider may negotiate life settlement contracts without having to obtain a license as a life insurance producer.

(4) A person may not operate as a life settlement provider without first obtaining a life settlement provider license from the chief insurance regulatory official of the state of residence of the seller.

(b) Application for a life settlement provider license must be made to the Commissioner by the applicant on a form prescribed by the Commissioner and an application must be accompanied by the fees to be determined by the Commissioner. Applications for license under this Section must be approved or denied by the Commissioner within 60 calendar days following receipt of a completed application by the Commissioner. The Commissioner shall notify applicants that the application is complete. Applications for such license shall be deemed approved after such time.

(c) A license may be renewed from year to year on the anniversary date upon payment of the annual renewal fees to be determined by the Commissioner. Failure to pay the fees by the renewal date results in expiration of the license.

(d) The applicant for a life settlement provider license shall provide information on forms prescribed by the Commissioner. The Commissioner has authority, at any time, to require the applicant to fully disclose the identity of all stockholders, partners, officers, members, and employees, except stockholders owning fewer than ten percent of the shares of an applicant whose shares are publicly traded, and the Commissioner may refuse to issue a license in the name of a legal entity if not

166 satisfied that any officer, employee, stockholder, partner or member of it who may materially influence the applicant's conduct  
167 meets the standards of this Act.

168 (e) A license issued to a legal entity authorizes all partners, officers, members and designated employees to act as life  
169 settlement providers, as applicable, under the license and all those persons must be named in the application and any supplements to  
170 the application.

171 (f) Upon the filing of an application and the payment of the license fee, the Commissioner shall make an  
172 investigation of each applicant for a license as a life settlement provider and issue a license if the Commissioner finds that the  
173 applicant meets all of the following:

174 (1) Has provided a detailed plan of operation.

175 (2) Is competent and trustworthy and intends to act in good faith in the capacity involved by the license for  
176 which he or she has applied.

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

179 (4) If a legal entity, provides a certificate of good standing from the state of its domicile.

180 (5) Has demonstrated financial accountability as evidenced by either surety bond issued by an authorized  
181 corporate surety or a deposit of cash, certificates of deposit or securities or any combination thereof in the amount of  
182 \$100,000. The Commissioner shall accept, as evidence of financial responsibility, proof that financial instruments in  
183 accordance with these requirements have been filed with one (1) or more states where the applicant is licensed as a life  
184 settlement provider.

185 (6) Has provided an anti-fraud plan that meets the requirements of this Act.

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

190 (h) A life settlement provider shall provide to the Commissioner new or revised information about officers, ten (10)  
191 percent or more stockholders, partners, directors, members or designated employees within 30 days of the change.”.

192 Section 4. Amend Title 18 of the Delaware Code by adding a new § 7503.1 which shall read as follows:

193 “§ 7503.1 Refusal to Issue, Suspension, Revocation or Refusal to Renewal of License.

194 (a) The Commissioner may refuse to issue, suspend, revoke or refuse to renew the license of a life settlement  
195 provider if the Commissioner finds any of the following:

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

197 (2) The licensee or any officer, partner, member or key management personnel has been convicted of  
198 fraudulent or dishonest practices, is subject to a final administrative action, or is otherwise shown to be untrustworthy or  
199 incompetent.

200 (3) The licensee demonstrates a pattern of unreasonable payments to sellers.

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

204 (5) The licensee utilizes any life settlement contract form, or other form required to be approved pursuant to  
205 this Act, that has not been approved pursuant to this Act.

206 (6) The licensee has failed to honor contractual obligations set out in a life settlement contract.

207 (7) The licensee no longer meets the requirements for initial licensure.

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

212 (9) The applicant or licensee or any officer, partner, member or key management personnel or any life producer  
213 has violated a provision of this Act.

214 (b) The Commissioner may suspend, revoke or refuse to renew the license of a life insurance producer if the  
215 Commissioner finds that such life insurance producer:

216 (1) Has violated the provisions of this Act;

217 (2) Has received a fee, commission or other valuable consideration for his or her services with respect to life  
218 settlement transactions that involved unlicensed life settlement providers or life insurance producers negotiating life  
219 settlement contracts who have not complied with Section 3 of this Act; or

220 (3) Deals in bad faith with sellers.

221 (c) If the Commissioner denies a license application or suspends, revokes or refuses to renew the license of a life  
222 settlement provider or suspends, revokes or refuses to renew a license of a life insurance producer pursuant to this Act, the



223 Commissioner shall conduct a hearing in accordance with, except as otherwise provided in this Chapter, the State Administrative  
224 Procedures Act (Chapter 101 of Title 29) applies to and governs all administrative actions taken by the Bureau.”.

225 Section 5. Amend § 7504, Title 18, Delaware Code by deleting such section in its entirety and substituting in lieu thereof  
226 the following:

227 “§ 7504 Approval of viatical settlements contracts and disclosure statements.

228 A person may not use a life settlement contract form or provide to a seller a disclosure statement form in this State unless  
229 filed with and approved by the Commissioner. Any settlement contract form or disclosure form filed with the Commissioner shall  
230 be deemed approved if it has not been disapproved within 60 days of the filing. The Commissioner shall disapprove a life settlement  
231 contract form or disclosure statement form if, in the Commissioner's opinion, the contract or provisions contained in it are  
232 unreasonable, contrary to the interests of the public or otherwise misleading or unfair to the seller.”.

233 Section 6. Amend § 7505, Title 18, Delaware Code, by deleting such section in its entirety and substituting in lieu thereof  
234 the following:

235 “§ 7505. Reporting requirements and confidentiality.

236 (a) Each life settlement provider shall file with the Commissioner by March first of each year an annual statement  
237 containing information as the Commissioner prescribes by rule. This information is limited to only those transactions where the  
238 seller is a resident of this State and does not include individual transaction data regarding the business of life settlements or data  
239 which compromises the privacy of personal, financial and health information of the seller or insured.

240 (b) Except as otherwise allowed or required by law, a life settlement provider, life insurance producer, information  
241 bureau, rating agency or company, or another person with actual knowledge of a seller or insured's identity, may not disclose that  
242 identity as a seller or insured or the seller's or insured's financial or medical information to another person unless the disclosure is  
243 one or more of the following:

244 (1) Necessary to effect a life settlement contract between the seller and a life settlement provider and the  
245 seller or insured or both, as may be required, have provided prior written consent to the disclosure.

246 (2) Provided in response to an investigation or examination by the Commissioner or another governmental  
247 officer or agency.

248 (3) A term of or condition to the transfer of a policy by one (1) life settlement provider to another life  
249 settlement provider.

(4) Necessary to permit a financing entity, related provider trust, or special purpose entity to finance the purchase of policies by a life settlement provider and the seller and insured have provided prior written consent to the disclosure.

(5) Necessary to allow the life settlement provider or their authorized representatives to make contacts for the purpose of determining health status.

(6) Required to purchase stop loss coverage.”.

Section 7. Amend § 7506, Title 18, Delaware Code, by deleting such section in its entirety and substituting in lieu thereof the following:

“§ 7506. Examination.

(a)(1) The Commissioner may conduct an examination pursuant to this Act of a licensee as often as the Commissioner in his or her sole discretion deems appropriate.

(2) For purposes of completing an examination of a licensee pursuant to this Act, the Commissioner may examine or investigate any person, or the business of any person, insofar as the examination or investigation is, in the sole discretion of the Commissioner, necessary or material to the examination of the licensee.

(3) In lieu of an examination pursuant to this Act of any foreign or alien licensee licensed in this State, the Commissioner may, at the Commissioner's discretion, 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)(1) A person required to be licensed by this Act shall for five years retain copies of all of the following:

a. Proposed, offered or executed contracts, underwriting documents, policy forms and applications from the date of the proposal, offer or execution of the contract, whichever is later.

b. All checks, drafts or other evidence and documentation related to the payment, transfer, deposit or release of funds from the date of the transaction.

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

(2) This Section does not relieve a person of the obligation to produce these documents to the 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.

278 (c)(1) Upon determining that an examination should be conducted, the Commissioner shall issue an examination  
279 warrant appointing one (1) or more examiners to perform the examination and instructing them as to the scope of the examination.  
280 In conducting the examination, the examiner shall observe those guidelines and procedures set forth in the Examiners' Handbook  
281 adopted by the National Association of Insurance Commissioners. The Commissioner may also employ such other guidelines or  
282 procedures as the Commissioner may deem appropriate.

283 (2) Every licensee or person from whom information is sought, its officers, directors and agents shall provide to the  
284 examiners timely, convenient and free access at all reasonable hours at its offices to all books, records, accounts, papers,  
285 documents, assets and computer or other recordings relating to the property, assets, business and affairs of the licensee being  
286 examined. The officers, directors, employees and agents of the licensee or person shall facilitate the examination and aid in the  
287 examination so far as it is in their power to do so. The refusal of a licensee, by its officers, directors, employees or agents, to submit  
288 to examination or to comply with any reasonable written request of the Commissioner shall be grounds for suspension or refusal of,  
289 or non-renewal of any license or authority held by the licensee to engage in the life settlement business or other business subject to  
290 the Commissioner's jurisdiction. Any proceedings for suspension, revocation or refusal of any license or authority shall be  
291 conducted in accordance with except as otherwise provided in this Chapter, the State Administrative Procedures Act (Chapter 101  
292 of Title 29) applies to and governs all administrative actions taken by the Bureau.

293 (3) The Commissioner shall have the power to issue subpoenas, to administer oaths and to examine under oath any  
294 person as to any matter pertinent to the examination. Upon the failure or refusal of a person to obey a subpoena, the Commissioner  
295 may petition a court of competent jurisdiction, and upon proper showing, the court may enter an order compelling the witness to  
296 appear and testify or produce documentary evidence. Failure to obey the court order shall be punishable as contempt of court.

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

300 (5) Nothing contained in this Act shall be construed to limit the Commissioner's authority to terminate or suspend an  
301 examination in order to pursue other legal or regulatory action pursuant to the insurance laws of this State. Findings of fact and  
302 conclusions made pursuant to any examination shall be prima facie evidence in any legal or regulatory action.

303 (6) The Commissioner may withhold from public inspection any examination or investigation report for so long as he  
304 or she deems necessary to protect the person examined from unwarranted injury or to be in the public interest. Nothing contained in  
305 this Act shall be construed to limit the Commissioner's authority to use and, if appropriate, to make public any final examination  
306 report, any examiner or licensee work papers or other documents, or any other information discovered or developed during the

307 course of any examination in the furtherance of any legal or regulatory action which the Commissioner, in his or her sole discretion,  
308 may deem appropriate.

309 (7) The licensee shall pay the charges incurred in the examination, including the expenses of the Commissioner or his  
310 or her designee and the expenses and compensation of the Commissioner's examiners and assistants in accordance with § 322 of  
311 this Title. If a licensee feels the fees assessed are unreasonable in relation to the examination performed, the licensee may appeal the  
312 assessments and request a hearing in accordance with Chapter 3 of this Title. If no hearing is requested, or if after hearing and any  
313 appeal the licensee refuses or fails to pay, the Commissioner or his or her designee shall promptly institute a civil action to recover  
314 the expenses of examination against a licensee.

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

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

324 (3) Within 30 days of the end of the period allowed for the receipt of written submissions or rebuttals the  
325 Commissioner shall fully consider and review the report, together with any written submissions or rebuttals and any  
326 relevant portions of the examiner's work papers and enter an order doing one (1) of the following:

327 a. Adopting the examination report as filed or with modification or corrections. If the examination  
328 report reveals that the company is operating in violation of any law, rule, or prior order of the Commissioner, the  
329 Commissioner may order the company to take any action the Commissioner considers necessary and appropriate  
330 to cure the violation.

331 b. Rejecting the examination report with directions to the examiners to reopen the examination for  
332 purposes of obtaining additional data, documentation, or information and refiling.

333 c. Calling for an investigatory hearing with no less than 20 days' notice to the company for  
334 purposes of obtaining additional documentation, data, information and testimony.

335 (4) All orders entered pursuant to this subsection shall be accompanied by findings and conclusions resulting  
336 from the Commissioner's consideration and review of the examination report, relevant examiner work papers, and any  
337 written submissions or rebuttals. Any order issued pursuant to paragraph a. of subdivision (3) shall be considered a final  
338 administrative decision and shall be served upon the company by certified mail, together with a copy of the adopted  
339 examination report. Within 30 days of the issuance of the adopted report the company shall file affidavits executed by each  
340 of its directors stating under oath that they have received a copy of the adopted report and related orders.

341 (5) Hearings conducted pursuant to this section shall be subject to the following requirements:

342 a. Any hearing conducted pursuant to this Section by the Commissioner or the Commissioner's  
343 authorized representative shall be conducted as a non-adversarial confidential investigatory proceeding as  
344 necessary for the resolution of any inconsistencies, discrepancies or disputed issues apparent upon the face of the  
345 filed examination report or raised by or as a result of the Commissioner's review of relevant work papers or by the  
346 written submission or rebuttal of the company. Within 20 days of the conclusion of any hearing, the  
347 Commissioner shall enter an order.

348 b. The Commissioner may not appoint an examiner as an authorized representative to conduct the  
349 hearing. The hearing shall proceed expeditiously with discovery by the company limited to the examiner's work  
350 papers that tend to substantiate any assertions set forth in any written submission or rebuttal. The Commissioner  
351 or the Commissioner's representative may issue subpoenas for the attendance of any witnesses or the production  
352 of any documents considered relevant to the investigation whether under the control of the Commissioner, the  
353 company, or other persons. The documents produced shall be included in the record and testimony taken by the  
354 Commissioner or the Commissioner's representative shall be under oath and preserved for the record. Nothing  
355 contained in this Section shall require the Commissioner to disclose any information or records which would  
356 indicate or show the existence or content of any investigation or activity of a criminal justice agency.

357 c. The hearing shall proceed with the Commissioner or the Commissioner's representative posing  
358 questions to the persons subpoenaed. Thereafter, the company and the department may present testimony relevant  
359 to the investigation. Cross-examination may be conducted only by the Commissioner or the Commissioner's  
360 representative. The company and the Commissioner shall be permitted to make closing statements and may be  
361 represented by counsel of their choice.

362 (6) In the event the Commissioner determines that regulatory action is appropriate as a result of an  
363 examination, the Commissioner may initiate any proceedings or actions provided by law.

364 (e)(1) Names and individual identification data for all sellers shall be considered private and confidential information and  
365 shall not be disclosed by the Commissioner, unless required by law.

366 (2)a. Except as otherwise provided in this Act, all examination reports, working papers, recorded information,  
367 documents, and copies thereof produced by, obtained by, or disclosed to the Commissioner or any other person in the course of an  
368 examination made under this Act, or in the course of analysis or investigation by the Commissioner of the financial condition or  
369 market conduct of a licensee, are all of the following:

370 (i) Confidential by law and privileged.

371 (ii) Not subject to Title 29, Delaware Code.

372 (iii) Not subject to subpoena.

373 (iv) Not subject to discovery or admissible in evidence in any private civil action.

374 b. The Commissioner is authorized to use the documents, materials, or other information in the furtherance of any  
375 regulatory or legal action brought as part of the Commissioner's official duties.

376 (3) Documents, materials, or other information, including, but not limited to, all working papers, and copies thereof,  
377 in the possession or control of the National Association of Insurance Commissioners (NAIC) and its affiliates and subsidiaries are  
378 as follows:

379 a. Confidential by law and privileged.

380 b. Not subject to subpoena.

381 c. Not subject to discovery or admissible in evidence in any private civil action if they are:

382 (i) Created, produced, or obtained by or disclosed to the NAIC and its affiliates and subsidiaries in the  
383 course of assisting an examination made under this Act, or assisting a Commissioner in the analysis or investigation of  
384 the financial condition or market conduct of a licensee.

385 (ii) Disclosed to the NAIC and its affiliates and subsidiaries under subdivision (4) by a Commissioner.

386 (4) For the purposes of subdivision (2), 'act' includes the law of another state or jurisdiction that is substantially  
387 similar to this Act.

388 (5) The Commissioner or any person that received the documents, material or other information while acting under  
389 the authority of the Commissioner, including the NAIC and its affiliates and subsidiaries, is permitted to testify in any private civil  
390 action concerning any confidential documents, materials or information subject to subdivision (1).

391 (6) In order to assist in the performance of the Commissioner's duties, the Commissioner may do all of the following:

a. Share documents, materials or other information, including the confidential and privileged documents, materials, or information subject to subdivision (1), with other state, federal, and international regulatory agencies, with the NAIC and its affiliates and subsidiaries, and with state, federal, and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material, communication, or other information.

b. Receive documents, materials, communications or information, including otherwise confidential and privileged documents, materials, or information, from the NAIC and its affiliates and subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information.

c. Enter into agreements governing sharing and use of information consistent with this subsection.

(7) 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 Commissioner under this Section or as a result of sharing as authorized in subdivision (4) of this subsection.

(8) 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.

(9) Nothing contained in this Act shall prevent or be construed as prohibiting the 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 NAIC, so long as such agency or office receiving the report or matters relating thereto agrees in writing to hold it confidential and in a manner consistent with this Act.

(f)(1) An examiner may 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 Act. This Section shall not be construed to automatically preclude an examiner from being any of the following:

- a. A seller.
- b. An insured in a purchased policy.
- c. A beneficiary in an insurance policy that is proposed to be the subject of a life settlement contract.

(2) Notwithstanding the requirements of this clause, 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 provisions of this Act.

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

(h)(1) No cause of action shall 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 the provisions of this Act.

(2) No cause of action shall 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 Act, if the act of communication or delivery was performed in good faith and without fraudulent intent or the intent to deceive. This paragraph does not abrogate or modify in any way any common law or statutory privilege or immunity heretofore enjoyed by any person identified in subdivision (1) of this subsection.

(3) A person identified in subdivision (1) or (2) 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 Act and the party bringing the action was not substantially justified in doing so. 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.

(i) The Commissioner may investigate suspected fraudulent life settlement acts and persons engaged in the business of life settlements.”.

Section 8. Amend § 7507, Title 18, Delaware Code by deleting such section in its entirety and substituting in lieu thereof the following:

“§ 7507. Disclosure.

(a) With each application for a life settlement contract, a life settlement provider or life insurance producer shall provide the seller with at least the following disclosures no later than the time the application for the life settlement contract is signed by all parties. The disclosures must be provided in a separate document that is signed by the seller and the life settlement provider or life insurance producer, and shall provide the following information:



449                   (1)       That there exist possible alternatives to a life settlement contract including any accelerated death benefits  
450 or policy loans offered under the seller's life insurance policy;

451                   (2)       A life settlement producer represents only the seller, and not the insurer or the life settlement provider  
452 and owes a duty to the seller to act according to the seller's instructions and in the best interest of the seller;

453                   (3)       That some or all of the proceeds of the life settlement contract may be taxable under federal income tax  
454 and state franchise and income taxes, and assistance may be sought from a professional tax advisor;

455                   (4)       That proceeds of the life settlement contract may be subject to the claims of creditors;

456                   (5)       That receipt of the proceeds of a life settlement contract may adversely affect the seller's eligibility for  
457 Medicaid or other government benefits or entitlements, and advice may be obtained from the appropriate government  
458 agencies;

459                   (6)       That the seller has the right to rescind a life settlement contract before the earlier of thirty calendar days  
460 after the date upon which the life settlement contract is executed by all parties or for fifteen (15) calendar days after the  
461 receipt of the life settlement proceeds by the seller, as provided in this Act. Rescission, if exercised by the seller, is  
462 effective only if both notice of the rescission is given and repayment of all proceeds and any premiums, loans and loan  
463 interest to the life settlement provider is made within the rescission period. If the insured dies during the rescission period,  
464 the life settlement contract is deemed to have been rescinded, subject to repayment being made to the life settlement  
465 provider within the rescission period of all life settlement proceeds and any premiums, loans and loan interest within sixty  
466 days of the insured's death;

467                   (7)       That funds must be sent to the seller within three (3) business days after the life settlement provider has  
468 received the insurer or group administrator's acknowledgment that ownership of the purchased policy has been transferred  
469 and the beneficiary has been designated;

470                   (8)       That entering into a life settlement contract may cause other rights or benefits, including conversion  
471 rights and waiver of premium benefits that may exist under the policy, to be forfeited by the seller. Assistance may be  
472 sought from a financial adviser;

473                   (9)       That the disclosure to a seller must include distribution of a brochure, approved by the Commissioner,  
474 describing the process of life settlements;

475                   (10)      That the disclosure document must contain the following language: 'All medical, financial, or personal  
476 information solicited or obtained by a life settlement provider, or life insurance producer about an insured, including the  
477 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 seller and the life 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 (2) years';

(11) That the insured may be contacted by either the life settlement provider or its authorized representative for the purpose of determining the insured's health status. This contact is limited to once every three (3) months if the insured has a life expectancy of more than one (1) year, and no more than once each month if the insured has a life expectancy of one year or less.

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

(1) The affiliation, if any, between the life settlement provider and the issuer of the insurance policy to be acquired pursuant to a life settlement contract.

(2) The name, address, and telephone number of the life settlement provider.

(3) If a policy to be acquired pursuant to a life settlement contract 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 acquired pursuant to a life settlement contract, the seller must be informed of the possible loss of coverage on the other lives under the policy and must be advised to consult with his or her insurance producer or the insurer issuing the policy for advice on the proposed life settlement contract.

(4) The dollar amount of the current death benefit payable to the life settlement provider under the policy. If known, the life settlement provider also shall disclose the availability of additional guaranteed insurance benefits, the dollar amount of accidental death and dismemberment benefits under the policy or certificate, and the life settlement provider's interest in those benefits.

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

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

(d) With respect to each policy issued by an insurance company, the insurance company shall send written notice to the owner of a policy, where the insured person under the policy is age 60 or older or is known to be terminally ill or chronically ill, that a life settlement contract is an available alternative transaction to the owner at the time of each of the following:

- (1) When an insurance company receives from such owner a request to surrender, in whole or in part, a policy.
- (2) When an insurance company receives from such owner a request to receive an accelerated death benefit under a policy.
- (3) When an insurance company receives from such owner a request collaterally to assign a policy as security for a loan.
- (4) When an insurance company sends to such owner a notice of lapse of a policy.
- (5) At any other time that the Commissioner may require by rule or regulation.”.

Section 9. Amend § 7508, Title 18, Delaware Code, by deleting such section in its entirety and substituting in lieu thereof the following:

“§ 7508. General rules.

(a)(1) A life settlement provider entering into a life settlement contract first shall obtain the following:

- a. If the seller is the insured, a written statement from a licensed attending physician that the seller is of sound mind and under no constraint or undue influence to enter into a life settlement contract.
- b. A document in which the insured consents to the release of his or her medical records to a life settlement provider 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.

(2) The insurer shall respond to a request for verification of coverage submitted by a life settlement provider or life insurance producer not later than 30 calendar days of the date the request is received. The request for verification of coverage must be made on a form approved by the Commissioner. The insurer shall complete and issue the verification of coverage or indicate in which respects it is unable to respond. 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 or possible fraud. The insurer shall accept a request for verification of coverage made on a form approved by the commissioner or a form approved for use by a life settlement provider or life insurance producer by the chief regulatory officer of any other state. The insurer shall accept an original or copy of such request and any accompanying authorization, such authorization shall include a duly executed power of attorney granted to the life settlement provider or life insurance producer by the seller related to the life settlement transaction. Failure by the insurer to meet its obligations under this subsection shall be a violation of § 7508.1(b) and § 7510 of this Act.

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

541           (4) If a life insurance producer performs any of these activities required of the life settlement provider, the life  
542 settlement provider is deemed to have fulfilled the requirements of this Section.

543           (b) Medical information solicited or obtained by a licensee is subject to the applicable provisions of state law relating  
544 to confidentiality of medical or protected health information.

545           (c) A life settlement contract entered into in this State shall provide the seller with an unconditional right to rescind  
546 the contract before the earlier of 30 calendar days after the date upon which the life settlement contract is executed by all parties or  
547 fifteen (15) calendar days after the receipt of the life settlement proceeds by the seller. Rescission, if exercised by the seller, is  
548 effective only if both notice of the rescission is given and repayment of all proceeds and any premiums, loans, and loan interest to  
549 the life settlement provider is made within the rescission period. If the insured dies during the rescission period, the life settlement  
550 contract must be deemed to have been rescinded, subject to repayment of all life settlement proceeds and any premiums, loans, and  
551 loan interest to the life settlement provider is made within sixty days of the insured's death.

552           (d) The life settlement provider shall instruct the seller to send the executed documents required to effect the change  
553 in ownership, assignment, or change in beneficiary directly to the independent escrow agent. Within three (3) business days after  
554 the date the escrow agent receives the documents, or from the date the life settlement provider receives the documents, if the seller  
555 erroneously provides the documents directly to the life settlement provider, the life settlement provider shall pay or transfer the  
556 proceeds of the life settlement contract into an escrow or trust account maintained in a state or federally chartered financial  
557 institution whose deposits are insured by the Federal Deposit Insurance Corporation. Upon payment of the life settlement proceeds  
558 into the escrow account, the escrow agent shall deliver the original change in ownership, assignment, or change in beneficiary forms  
559 to the life settlement provider or related provider trust. Upon the escrow agent's receipt of the acknowledgment of the properly  
560 completed transfer of ownership, assignment, or designation of beneficiary from the insurance company, the escrow agent shall pay  
561 the life settlement proceeds to the seller.

562 (e) Failure to tender consideration to the seller for the life settlement contract within the time disclosed pursuant to  
563 this Act renders the life settlement contract voidable by the seller for lack of consideration until the time consideration is tendered to  
564 and accepted by the seller.

565 (f) A contact with the insured, for the purpose of determining the health status of the insured by the life settlement  
566 provider after the life settlement contract has been executed, only may be made by the licensed life settlement provider or its  
567 authorized representatives and is limited to once every three (3) months for insureds with a life expectancy of more than one (1)  
568 year, and not more than once each month for insureds with a life expectancy of one (1) year or less. The life settlement provider  
569 shall explain the procedure for these contacts at the time the life settlement contract is entered into. The limitations provided for in  
570 this subsection do not apply to a contact with an insured for reasons other than determining the insured's health status. A life  
571 settlement provider is responsible for the actions of his or her authorized representatives.”.

572 Section 10. Amend Title 18 of the Delaware Code by adding the following new section to read as  
573 follows:

574 “§ 7508.1. Prohibited Practices

575 (a) It is a violation of this Act for a person to enter into a life settlement contract at any time prior to the application  
576 for or issuance of a policy which is the subject of a life settlement contract or for a two-year period commencing with the date of  
577 issuance of the policy unless the seller certifies to the life settlement provider that one (1) or more of the following conditions have  
578 been met within the two-year period:

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

583 (2)a. The seller submits independent evidence to the life settlement provider that one (1) or more of the  
584 following conditions have been met within the two-year period:

585 (i) The seller or insured is terminally or chronically ill.

586 (ii) A final order, judgment or decree is entered by a court of competent jurisdiction, on the  
587 application of a creditor of the viator, adjudicating the viator bankrupt or insolvent or approving a petition seeking  
588 reorganization of the viator or appointing a receiver, trustee or liquidator to all or a substantial part of the viator's  
589 assets.

b. Copies of the independent evidence described in this subdivision and documents required by this Act must be submitted to the insurer when the life settlement provider submits a request to the insurer for verification of coverage. The copies must be accompanied by a letter of attestation from the life settlement provider that the copies are true and correct copies of the documents received by the life settlement provider.

c. If the life settlement provider submits to the insurer a copy of independent evidence provided for in paragraph a. of this subdivision when the life settlement provider submits a request to the insurer to effect the transfer of the policy to the life settlement provider, the copy is deemed to conclusively establish that the life settlement contract satisfies the requirements of this section and the insurer shall respond timely to the request.

(b) It is unlawful for an insurance company to prohibit, restrict, limit or impair a life insurance producer from lawfully negotiating a life settlement on behalf of a seller, aiding and assisting a seller with a life settlement, or otherwise participating in a life settlement transaction provided for in this Act or to engage in any transaction, act, practice, or course of business or dealing which restricts, limits or impairs in any way the lawful transfer of ownership, change of beneficiary or assignment of a policy to effectuate a life settlement contract.”.

Section 11. Amend Title 18 of the Delaware Code by adding the following new section to read as follows:

“§ 7508.2. Advertising.

(a) The purpose of this Section is to provide a prospective seller with clear and unambiguous statements in the advertisement of a life settlement contract and to assure the clear, truthful and adequate disclosure of the benefits, risks, limitations, and exclusions of a life settlement contract. This purpose is to be accomplished by the establishment of guidelines and standards of permissible and impermissible conduct in the advertising of a life settlement contract to assure that a product description is presented in a manner that prevents unfair, deceptive or misleading advertising and is conducive to accurate presentation and description of a life settlement contract through the advertising media and material used by a licensee.

(b) This Section applies to an advertising of a life settlement contract or a related product or service intended for dissemination in this State, including Internet advertising viewed by a person located in this State. Where disclosure requirements are established pursuant to federal regulation, this Section must be interpreted so as to minimize or eliminate conflict with federal regulation wherever possible.

(c) Each life settlement licensee shall establish and at all times maintain a system of control over the content, form and method of dissemination of an advertisement of its contracts, products, and services. An advertisement, regardless of by whom written, created, designed or presented, is the responsibility of the licensee, as well as the individual who created or presented the advertisement. A system of control by the licensee must include regular routine notification, at least once a year, to agents and

619 others authorized to disseminate advertisements, of the requirements and procedures for approval before the use of an advertisement  
620 not furnished by the licensee.

621 (d) An advertisement must be truthful and not misleading in fact or by implication. The form and content of an  
622 advertisement of a life settlement contract must be sufficiently complete and clear so as to avoid deception. It may not have the  
623 capacity or tendency to mislead or deceive. Whether an advertisement has the capacity or tendency to mislead or deceive must be  
624 determined by the Commissioner from the overall impression that the advertisement may be reasonably expected to create upon a  
625 person of average education or intelligence within the segment of the public to which it is directed.

626 (e) The information required to be disclosed pursuant to this section may not be minimized, rendered obscure or  
627 presented in an ambiguous fashion or intermingled with the text of the advertisement so as to be confusing or misleading.

628 (1) An advertisement may not omit material information or use words, phrases, statements, references, or  
629 illustrations if the omission or use has the capacity, tendency, or effect of misleading or deceiving the public as to the  
630 nature or extent of any benefit, loss covered or state or federal tax consequence. The fact that the life settlement contract  
631 offered is made available for inspection before consummation of the sale, or an offer is made to refund the payment if the  
632 seller is not satisfied, or that the life settlement contract includes a 'free look' period that satisfies or exceeds legal  
633 requirements, does not remedy misleading statements.

634 (2) An advertisement may not use the name or title of a life insurance company or a life insurance policy  
635 unless the advertisement has been approved by the insurer.

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

638 (4) The words 'free', 'no cost', 'without cost', 'no additional cost', 'at no extra cost' or words of similar import  
639 may not be used with respect to a benefit or service unless true. An advertisement may specify the charge for a benefit or  
640 service or may state that a charge is included in the payment or use other appropriate language.

641 (5)a. Any testimonial, appraisal or analysis used in an advertisement must meet all of the following:

642 (i) Be genuine.

643 (ii) Represent the current opinion of the author.

644 (iii) Be applicable to the life settlement contract, product or service advertised, if any.

645 (iv) Be accurately reproduced with sufficient completeness to avoid misleading or deceiving  
646 prospective sellers as to the nature or scope of any testimonial, appraisal, analysis or endorsement.

b. In using any testimonial, appraisal or analysis, the life settlement licensee makes as its own all the statements contained in them, 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 life settlement provider or related entity as a stockholder, director, officer, employee or otherwise, or receives a benefit, directly or indirectly, other than required union scale wages, that fact must be disclosed prominently in the advertisement.

d. An advertisement may not state or imply that a life 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 licensee is disclosed. If the entity making the endorsement or testimonial is owned, controlled or managed by the licensee or receives payment or other consideration from the licensee for making an endorsement or testimonial, that fact must be disclosed in the advertisement.

e. If an endorsement refers to benefits received under a life settlement contract, all pertinent information must be retained for a period of five (5) years after its use.

(f) An advertisement may not contain statistical information unless it accurately reflects recent and relevant facts.

The source of all statistics used in an advertisement must be identified.

(g) An advertisement may not disparage insurers, life settlement providers, insurance producers, policies, services or methods of marketing.

(h) The name of the life settlement licensee must be identified clearly in all advertisements about the licensee or its life settlement contract, products or services, and if any specific life settlement contract is advertised, the life settlement contract must be identified either by form number or some other appropriate description. If an application is part of the advertisement, the name of the life settlement provider must be shown on the application.

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

(j) An advertisement may 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 appear to be of such a nature that they tend to mislead prospective sellers into believing that the solicitation is in some manner connected with a government program or agency.



676 (k) An advertisement may state that a licensee is licensed in the state where the advertisement appears, provided it  
677 does not exaggerate that fact or suggest or imply that the competing licensee may not be so licensed. The advertisement may ask the  
678 audience to consult the licensee's website or contact that state's department of insurance to find out if that state requires licensing  
679 and, if so, whether the licensee or any other company is licensed.

680 (l) An advertisement may not create the impression that the life settlement provider, its financial condition or status,  
681 the payment of its claims or the merits, desirability or advisability of its life settlement contracts are recommended or endorsed by  
682 any government entity.

683 (m) The name of the actual licensee must be stated in all of its advertisements. An advertisement may not use a trade  
684 name, any group designation, name of any affiliate or controlling entity of the licensee, service mark, slogan, symbol or other  
685 device in a manner that has the capacity or tendency to mislead or deceive as to the true identity of the actual licensee or create the  
686 false impression that an affiliate or controlling entity has any responsibility for the financial obligation of the licensee.

687 (n) An advertisement may not, directly or indirectly, create the impression that any division or agency of the State or  
688 of the United States government endorses, approves or favors any of the following:

- 689 (1) A licensee or its business practices or methods of operation.  
690 (2) The merits, desirability or advisability of a life settlement contract.  
691 (3) Any life settlement contract.  
692 (4) Any policy or life insurance company.

693 (o) If the advertiser emphasizes the speed with which the life settlement contract occurs, the advertising must  
694 disclose the average time frame from completed application to the date of offer and from acceptance of the offer to receipt of the  
695 funds by the seller.

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

698 Section 12. Amend Title 18 of the Delaware Code by adding the following new section to read as follows:

699 "§ 7508.3. Fraud Prevention and Control.

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

701 (2) A person, knowingly or intentionally, may not interfere with the enforcement of the provisions of this Act or  
702 investigations of suspected or actual violations of this Act.

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

705 (b)(1) A life settlement contract and an application for a life settlement contract, regardless of the form of transmission,  
706 must contain the following statement or a substantially similar statement:

707 'Any person who knowingly presents false information in an application for insurance or life settlement contract is guilty  
708 of a crime and, upon conviction, may be subject to fines or confinement in prison, or both.'

709 (2) The lack of a statement as provided for in subdivision (1) does not constitute a defense in any prosecution for a  
710 fraudulent life settlement act.

711 (c)(1) A person engaged in the business of life settlements having knowledge or a reasonable belief that a fraudulent life  
712 settlement act is being, will be, or has been committed shall provide to the Commissioner, and where the policy is the subject of  
713 such suspected fraudulent life settlement act to the insurer that issued the policy, the information required by, and in a manner  
714 prescribed by, the Commissioner.

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

717 (d)(1) A civil liability may not be imposed on and a cause of action may not arise from a person's furnishing information  
718 concerning suspected, anticipated or completed fraudulent life settlement acts, or suspected or completed fraudulent insurance acts,  
719 if the information is provided to or received from the following:

720 a. The Commissioner or the Commissioner's employees, agents or representatives.

721 b. Federal, state or local law enforcement or regulatory officials or their employees, agents or  
722 representatives.

723 c. A person involved in the prevention and detection of fraudulent life settlement acts or that person's  
724 agents, employees or representatives.

725 d. The National Association of Insurance Commissioners, National Association of Securities Dealers, the  
726 North American Securities Administrators Association, or their employees, agents, or representatives, or other regulatory  
727 body overseeing life insurance or life settlement contracts.

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

729 (2) Subdivision (1) does not apply to a statement made with actual malice. In an action brought against a person for  
730 filing a report or furnishing other information concerning a fraudulent life settlement act or a fraudulent insurance act, the party  
731 bringing the action shall plead specifically any allegation that subdivision (1) does not apply because the person filing the report or  
732 furnishing the information did so with actual malice.

733 (3) A person identified in subdivision (1) is entitled to an award of attorney's fees and costs if he or she is the  
734 prevailing party in a civil cause of action for libel, slander or another relevant tort arising out of activities in carrying out the  
735 provisions of this Act and the party bringing the action was not substantially justified in doing so. For purposes of this section, a  
736 proceeding is 'substantially justified' if it had a reasonable basis in law or fact at the time that it was initiated.

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

739 (5) Subdivision (1) does not apply to a person's furnishing information concerning his or her own suspected,  
740 anticipated or completed fraudulent life settlement acts or suspected, anticipated or completed fraudulent insurance acts.

741 (e)(1) The documents and evidence provided pursuant to subsection (d) or obtained by the Commissioner in an  
742 investigation of suspected or actual fraudulent life settlement acts are privileged and confidential and are not a public record and are  
743 not subject to discovery or subpoena in a civil or criminal action.

744 (2) Subdivision (1) does not prohibit release by the Commissioner of documents and evidence obtained in an  
745 investigation of suspected or actual fraudulent life settlement acts:

746 a. In administrative or judicial proceedings to enforce laws administered by the Commissioner.

747 b. To federal, state, or local law enforcement or regulatory agencies, to an organization established for the  
748 purpose of detecting and preventing fraudulent life settlement acts or to the National Association of Insurance  
749 Commissioners.

750 c. At the discretion of the Commissioner, to a person in the business of life settlements that is aggrieved by  
751 a fraudulent life settlement act.

752 (3) Release of documents and evidence provided by subdivision (2) does not abrogate or modify the privilege granted  
753 in subdivision (1).

754 (f) This Act does not do any of the following:

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

757 (2) Prevent or prohibit a person from disclosing voluntarily information concerning fraudulent life  
758 settlement acts to a law enforcement or regulatory agency other than the Insurance Department.

759 (3) Limit the powers granted elsewhere by the laws of this State to the Commissioner or an insurance fraud  
760 unit to investigate and examine possible violations of law and to take appropriate action against wrongdoers.

761 (g) A life settlement provider shall adopt anti-fraud initiatives reasonably calculated to detect, assist in the  
762 prosecution of, and prevent, fraudulent life settlement acts. The Commissioner may order or, if a licensee requests, may grant these  
763 modifications of the following required initiatives as necessary to ensure an effective anti-fraud program. The modifications may be  
764 more or less restrictive than the required initiatives so long as the modifications reasonably may be expected to accomplish the  
765 purpose of this section. Anti-fraud initiatives include the following:

766 (1) Fraud investigators, who may be life settlement providers or employees or independent contractors of  
767 those life settlement providers.

768 (2) An anti-fraud plan that is submitted to the Commissioner. The anti-fraud plan must include, but not be  
769 limited to, a description of the following:

770 a. The procedures for detecting and investigating possible fraudulent life settlement acts and  
771 procedures for resolving material inconsistencies between medical records and insurance applications.

772 b. The procedures for reporting possible fraudulent life settlement acts to the Commissioner.

773 c. The plan for anti-fraud education and training of underwriters and other personnel.

774 d. A chart outlining the organizational arrangement of the anti-fraud personnel who are  
775 responsible for the investigation and reporting of possible fraudulent life settlement acts and investigating  
776 unresolved material inconsistencies between medical records and insurance applications.

777 (3) Anti-fraud plans submitted to the Commissioner are privileged and confidential and are not a public  
778 record pursuant to Chapter 100 of Title 29, Delaware Code, and are not subject to discovery or subpoena in a civil or  
779 criminal action."

780 Section 13. Amend Title 18 of the Delaware Code by adding the following new section to read as follows:

781 "§ 7508.4. Injunctions; Civil Remedies; Cease and Desist.

782 (a) In addition to the penalties and other enforcement provisions of this act, if a person violates the provisions of this  
783 act or any regulation implementing this act, the Commissioner may seek an injunction in a court of competent jurisdiction and may  
784 apply for temporary and permanent orders as the Commissioner determines are necessary to restrain the person from committing the  
785 violation.

786 (b) A person damaged by the acts of a person in violation of this Act may bring a civil action against the person  
787 committing the violation in a court of competent jurisdiction.

788 (c) The Commissioner may issue a cease and desist order upon a person that violates any provision of this Act, any  
789 regulation, or order adopted by the Commissioner, or any written agreement entered into with the Commissioner.

790 (d) When the Commissioner finds that an activity in violation of this Act presents an immediate danger to the public  
791 that requires an immediate final order, the Commissioner may issue an emergency cease and desist order reciting with particularity  
792 the facts underlying the findings. The emergency cease and desist order is effective immediately upon service of a copy of the order  
793 on the respondent and remains effective for 90 days. If the Commissioner begins non-emergency cease and desist proceedings, the  
794 emergency cease and desist order remains effective, absent an order by a court of competent jurisdiction.

795 (e) In addition to the penalties and other enforcement provisions of this Act, a person who violates this Act is subject  
796 to civil penalties of up to \$10,000 for each violation. Imposition of civil penalties is pursuant to an order of the Commissioner. The  
797 Commissioner's order may require a person found to be in violation of this Act to make restitution to a person aggrieved by  
798 violations of this Act.

799 (f)(1) A person who violates a provision of this Act, upon conviction, must be ordered to pay restitution to a person  
800 aggrieved by the violation of this act. Restitution must be ordered in addition to a fine or imprisonment, but not in lieu of a fine or  
801 imprisonment.

802 (2) A person who violates a provision of this Act, upon conviction, must be sentenced based on the greater of the  
803 value of property, services or other benefits wrongfully obtained or attempted to be obtained, or the aggregate economic loss  
804 suffered by any person as a result of the violation. A person may be charged with any of the following:

805 a. Theft of a life settlement contract in the first degree if the value of life settlement contract is more than  
806 \$2,500.

807 b. Theft of a life settlement contract in the second degree if the value of life settlement contract is more than  
808 \$500 but not more than \$2,500.

809 c. Theft of a life settlement contract in the third degree if the value of life settlement contract is \$500 or less.

810 (3) A person convicted of a fraudulent life settlement act must be ordered to pay restitution to a person aggrieved by  
811 the fraudulent life settlement act. Restitution must be ordered in addition to a fine or imprisonment but not in lieu of a fine or  
812 imprisonment.

813 (4) In a prosecution provided by this section under subdivision (3), the value of the life settlement contract within a  
814 six-month period may be aggregated and the defendant charged accordingly in applying the provisions of this section. If two (2) or  
815 more offenses are committed by the same person in two (2) or more counties, the accused may be prosecuted in a county in which  
816 one (1) of the offenses was committed for all of the offenses aggregated as provided by this Section. The statute of limitations does  
817 not begin to run until the insurance company or law enforcement agency is aware of the fraud, but the prosecution may not be  
818 commenced later than seven (7) years after the act has occurred."

819           Section 14. Amend § 7509, Title 18, Delaware Code by deleting such section in its entirety and substituting in lieu  
820 thereof the following:

821           "§ 7509. Authority to promulgate regulations.

822           The Commissioner has the authority to do the following:

823           (1)     Promulgate rules implementing this Act.

824           (2)     Establish standards for evaluating reasonableness of payments under a life settlement contract where the insured  
825 under the policy that is the subject of a life settlement contract is terminally ill or chronically ill. This authority includes, but is not  
826 limited to, regulation of discount rates used to determine the amount paid in exchange for assignment, transfer, sale, devise, or  
827 bequest of a benefit under a policy. The payments under life settlement contracts where the insured under the policy that is the  
828 subject of a life settlement contract is not terminally ill or chronically ill shall be an amount greater than the cash surrender value or  
829 accelerated death benefit then available.

830           (3)     Establish appropriate licensing requirements, fees and standards for continued licensure for a life settlement  
831 provider and a fee for life insurance producers as provided for in § 7510 of this Act.

832           (4)     Adopt rules governing the relationship and responsibilities of an insurer and a life settlement provider, life  
833 insurance producer, and others in the business of life settlements during the period of consideration or effectuation of a life  
834 settlement contract."

835           Section 15. Amend § 7510, Title 18, Delaware Code by deleting such section in its entirety and substituting in lieu  
836 thereof the following:

837           "§ 7510. Unfair trade practices.

838           (a)     It is unlawful for any person licensed under this Act or any entity licensed under this Title, to prohibit, restrict,  
839 limit or impair a licensed life insurance producer from aiding and assisting the owner of a policy with a settlement, or otherwise  
840 participating in a settlement transaction under this Act; or to engage in any transaction, act, practice or course of business or dealing  
841 which restricts, limits or impairs in any way the lawful transfer of ownership, change of beneficiary or assignment of a policy to  
842 effectuate a settlement contract.

843           (b)     A person violating this Act shall be considered to be engaging in an unfair trade practice and may be subject to  
844 the proceedings and penalties set forth in Chapter 23 of this Title."

845           Section 16. Amend Title 18 of the Delaware Code by adding the following new section to read as  
846 follows:

"§ 7511. Nonpreemption of Securities.

Nothing in this Act preempts or otherwise limits the provisions of Title 6, Delaware Code, the Delaware Securities Act or any regulations, orders, policy statements, notices, bulletins or other interpretations issued by or through the Delaware Securities Commission or its designee acting pursuant to the Delaware Securities Act. Compliance with the provisions of this Act does not constitute compliance with any applicable provision of the Delaware Securities Act and any amendments thereto or any regulations, orders, policy statements, notices, bulletins or other interpretations issued by or through the Delaware Securities Commission or its designee acting pursuant to the Delaware Securities Act."

Section 17. Amend §7302, Title 6, Delaware Code by deleting Subsection (a) (17) thereof and substituting in lieu thereof the following and by adding a new Subsection (a) (19) to read as follows:

"§ 7302. Definitions.

(17) 'Security' means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable share; life settlement investment; investment contract, including pyramid promotion which includes any plan or operation for the sale or distribution of property, services or any other thing of value wherein a person for a consideration is offered an opportunity to obtain a benefit which is based in whole or in part on the inducement, by himself or herself or by others, of additional persons to purchase the same or a similar opportunity; voting-trust certificate; certificate of deposit for a security; certificate of interest of participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease; options on commodities; or, in general, any interest or instrument commonly known as a 'security,' or any certificate of interest or participation in, temporary or interim certificate, for, receipt for guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. 'Security' does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay money either in a lump sum or periodically for life or for some other specified period.

(19) "Life Settlement Investment" means the contractual right to receive any portion of the death benefit or ownership of a life insurance policy or certificate, for consideration that is less than the expected death benefit of the life insurance policy or certificate. Life investment does not include:

(1) Any transaction between a viator and a viatical settlement provider as defined by the "Life Settlements Act", Section 7501, et. seq. of Title 18;

(2) Any transfer of ownership or beneficial interest in a life insurance policy from a viatical settlement provider to another viatical settlement provider as defined by the "Life Settlements Act", § 7501, et.seq. of Title 18 or to any legal entity formed solely for the purpose of holding ownership or beneficial interest in a life insurance policy or policies;

876 (3) The *bona fide* assignment of a life insurance policy to a bank, savings bank, savings and loan association, credit  
877 union, or other licensed lending institution as collateral for a loan; or

878 (4) The exercise of accelerated benefits pursuant to the terms of a life insurance policy issued in accordance with  
879 Title 18 of the Delaware Insurance Code.”.

880 Section 18. Amend § 2720, Title 18, Delaware Code by adding the following new sentence to end of the statute thereof:

881 “No insurer shall prohibit the assignment to a life settlement provider of a policy otherwise assignable.”.

882 Section 19. Amend Title 18 of the Delaware Code by adding the following new section to read as follows:

883 “§ 7512. Grandfather Clause.

884 A life settlement provider lawfully transacting business in this State may continue to do so pending approval or  
885 disapproval of the person's application for a license as long as the application is filed with the Commissioner not later than 30 days  
886 after publication by the Commissioner of an application form for licensure of these life settlement providers.”.

887 Section 20. Amend Title 18 of the Delaware Code by adding the following new section to read as  
888 follows:

889 “§ 7513 Limitation of Negotiated Settlements.

890 Notwithstanding the provisions of this Act, a person who has lawfully negotiated life settlement contracts between a seller  
891 and one (1) or more life settlement providers for at least one (1) year immediately prior to the effective date of this Act may  
892 continue to negotiate life settlements in this State for a period of one (1) year from the effective date of this Act, provided that such  
893 person registers with the Commissioner on a form that may be prescribed by the Commissioner. Such registration form shall be  
894 published by the Commissioner not later than 30 days from the effective date of this Act and shall require a person registering to  
895 evidence that he or she has lawfully negotiated life settlement contracts and include an acknowledgment by such person that he or  
896 she will operate in accordance with and comply with this Act.”.

897 Section 21. This Act shall take effect 90 days after its enactment into law.

#### SYNOPSIS

This legislation would amend the current Viatical Settlement Model Act to include Life Settlements.

Section 1 of the Bill renames the Chapter as “The Life Settlement Act”.

Section 2 of the Bill provides definitions for the Act.

Section 3 of the Bill provides licensing requirements for life insurance producers and life settlement providers subject to the Life Settlement Act.

Section 4 of the Bill provides reasons to refuse to issue, suspend, revoke or refuse to renew a license under this Act.

Section 5 of the Bill provides requirements for the approval or disapproval of contracts and disclosure forms used in the business.

Section 6 of the Bill establishes annual reporting requirements and provides guidelines for the confidentiality of the identity, financial and medical information of an individual who desires to sell their policy.

Section 7 of the Bill provides for the examination of a licensee under the Act and establishes the methodology used to



complete an examination and provides a hearing and appeal mechanism for reports that are challenged.

Section 8 of the Bill provides specific requirements for disclosure documents that are to be presented to any seller in a life settlement transaction.

Section 9 of the Bill provides for documentation that would be required to complete a transaction and establishes a right of rescission for the seller and limits contacts with an insured after the transaction is completed.

Section 10 of the Bill establishes limited access for the purchase of a life insurance policy if that policy is less than two (2) years old and places requirements to complete that transaction.

Section 11 of the Bill provides detailed advertising guidelines for the life settlement industry.

Section 12 of the Bill defines a fraudulent life settlement and provides requirements for the reporting and prevention of fraudulent acts.

Section 13 of the Bill provides the Commissioner with the authority to issue injunctions and cease and desist orders for violations of this Act. Also, penalties amounts are provided for specific violations.

Section 14 of the Bill authorizes the Commissioner to promulgate rules to implement the Act.

Section 15 of the Bill defines certain practices as unfair trade practices.

Section 16 of the Bill provides for the nonpreemption of any securities laws that might affect life settlements.

Section 17 of the Bill adds to the viatical or life settlement contracts to the definition of "securities" in the Securities Act and provides a definition for a "life settlement investment".

Section 18 of the Bill makes it a violation for an insurer to prohibit an otherwise assignable insurance policy.

Section 19 of the Bill permits licensees or companies that are currently and lawfully transacting life settlement business in the state to continue to do so pending the application filing and approval process.

Section 20 of the Bill provides for an acknowledgement process for a life settlement company who has negotiated life settlements in the past year to operate.

Section 21 of the Bill provides an effective date.