Sixty-first
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1284

Introduced by

Representatives Keiser, Wald

Senator Klein

A BILL for an Act to create and enact chapter 26.1-33.4 of the North Dakota Century Code, relating to the national conference of insurance legislators Life Settlements Model Act; to amend and reenact subsection 21 of section 10-04-02 of the North Dakota Century Code, relating to the definition of the term viatical settlement contract; to repeal chapter 26.1-33.3 of the North Dakota Century Code, relating to viatical settlement contracts; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 21 of section 10-04-02 of the North Dakota Century Code is amended and reenacted as follows:

21. "Viatical settlement contract" means an agreement for the purchase, sale, assignment, transfer, devise, or bequest of 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. "Viatical settlement contract" does not include:
    a. The assignment, transfer, sale, devise, or bequest of a death benefit, life insurance policy, or certificate of insurance by the viator to the viatical settlement provider pursuant to chapter ~~26.1-33.3~~ 26.1-33.4;
    b. The assignment of a life insurance policy to a bank or depository institution; or
    c. The exercise of accelerated benefits pursuant to the terms of a life insurance policy issued in accordance with the insurance laws of this state.

SECTION 2. Chapter 26.1-33.4 of the North Dakota Century Code is created and enacted as follows:

26.1-33.4-01. Definitions. As used in this chapter, unless the context requires otherwise:

1. "Advertisement" means any written, electronic, or printed communication or any communication by means of recorded telephone messages or transmitted on radio; television; the internet; or similar communications media, including filmstrips, motion pictures, and videos; published, disseminated, circulated, or placed before the public, directly or indirectly, for the purpose of creating an interest in or inducing a person to purchase or sell, assign, devise, bequest, or transfer the death benefit or ownership of a life insurance policy or an interest in a life insurance policy pursuant to a life settlement contract.

2. "Broker" means an individual who, on behalf of an owner and for a fee, commission, or other valuable consideration, offers or attempts to negotiate life settlement contracts between an owner and providers. A broker represents only the owner and owes a fiduciary duty to the owner to act according to the owner's instructions, and in the best interest of the owner, notwithstanding the manner in which the broker is compensated. The term does not include an attorney, certified public accountant, or financial planner retained in the type of practice customarily performed in that individual's professional capacity to represent the owner whose compensation is not paid directly or indirectly by the provider or any other person, except the owner.

3. "Business of life settlements" includes an activity involved in offering to enter, soliciting, negotiating, procuring, effectuating, monitoring, or tracking of life settlement contracts.

4. "Chronically ill" means:

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

   b. Requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment; or

   c. Having a level of disability similar to that described in subdivision a as determined by the United States secretary of health and human services.

5. "Financing entity" means an underwriter, a placement agent, a lender, a purchaser of securities, a purchaser of a policy or certificate from a provider, a credit enhancer, or any entity that has a direct ownership in a policy or certificate that is

the subject of a life settlement contract, but whose principal activity related to the transaction is providing funds to effect the life settlement contract or purchase of one or more polices, and who has an agreement in writing with one or more providers to finance the acquisition of life settlements contracts. The term does not include a nonaccredited investor or purchaser.

6. "Financing transaction" means a transaction in which a licensed provider obtains financing from a financing entity, including any secured or unsecured financing, any securitization transaction, or any securities offering which either is registered or exempt from registration under federal and state securities law.

7. "Fraudulent life settlement act" includes:

a. Any act or omission committed by any person that, knowingly and with intent to defraud, for the purpose of depriving another of property or for pecuniary gain, commits or permits the person's employees or agents to engage in acts, including:

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

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

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

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

(d) Premiums paid on an insurance policy;

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

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

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

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

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

(j) Enter into any practice or plan which involves stranger-originated life insurance;

(2) Failing to disclose to the insurer where the request for such disclosure has been asked for by the insurer that the prospective insured has undergone a life expectancy evaluation by any individual or entity other than the insurer or the insurer's authorized representatives in connection with the issuance of the policy.

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

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

b. In the furtherance of a fraud or to prevent the detection of a fraud, any person commits or permits the person's employees or agents to:

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

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

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

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

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

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

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

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

8. "Insured" means the individual covered under the policy being considered for sale in a life settlement contract.

9. "Life expectancy" means the arithmetic mean of the number of months the insured under the life insurance policy to be settled can be expected to live as determined by a life expectancy company considering medical records and appropriate experiential data.

10. "Life insurance producer" means any person licensed in this state as a resident or nonresident insurance producer that has received qualification or authority for life insurance coverage or a life line of coverage pursuant to chapter 26.1-26.

11. "Life settlement contract" means a written agreement entered between a provider and an owner establishing the terms under which compensation or anything of value will be paid, which compensation or thing of value is less than the expected death benefit of the insurance policy or certificate, in return for the owner's assignment, transfer, sale, devise, or bequest of the death benefit or any portion of an insurance policy or certificate of insurance for compensation; provided,

however, that the minimum value for a life settlement contract must be greater than a cash surrender value or accelerated death benefit available at the time of an application for a life settlement contract. The term includes the transfer for compensation or value of ownership or beneficial interest in a trust or other entity that owns such policy if the trust or other entity was formed or availed of for the principal purpose of acquiring one or more life insurance contracts, which life insurance contract insures the life of an individual residing in this state.

a. "Life settlement contract" also includes:

(1) A written agreement for a loan or other lending transaction, secured primarily by an individual or group life insurance policy; or

(2) A premium finance loan made for a policy on or before the date of issuance of the policy when:

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

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

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

b. "Life settlement contract" does not include:

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

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

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

(4) A loan made by a lender that does not violate chapter 26.1-20.1, provided the loan is not described in paragraph 1, and is not otherwise within the definition of life settlement contract;

(5) An agreement where all the parties:

(a) Are closely related to the insured by blood or law; or

(b) Have a lawful substantial economic interest in the continued life, health, and bodily safety of the individual insured, or are trusts established primarily for the benefit of such parties;

(6) Any designation, consent, or agreement by an insured who is an employee of an employer in connection with the purchase by the employer, or trust established by the employer, of life insurance on the life of the employee;

(7) A bona fide business succession planning arrangement:

(a) Between one or more shareholders in a corporation or between a corporation and one or more of the corporation's shareholders or one or more trusts established by the corporation's shareholders;

(b) Between one or more partners in a partnership or between a partnership and one or more of the partnership's partners or one or more trusts established by the partnership's partners; or

(c) Between one or more members in a limited liability company or between a limited liability company and one or more of the limited liability company's members or one or more trusts established by the limited liability company's members;

(8) An agreement entered by a service recipient, or a trust established by the service recipient, and a service provider, or a trust established by the service provider, who performs significant services for the service recipient's trade or business; or

(9) Any other contract, transaction, or arrangement from the definition of life settlement contract that the commissioner determines is not of the type intended to be regulated by this chapter.

12. "Net death benefit" means the amount of the life insurance policy or certificate to be settled less any outstanding debt or lien.

13. "Owner" means the owner of a life insurance policy or a certificate holder under a group policy, with or without a terminal illness, who enters or seeks to enter a life settlement contract. For the purposes of this definition, an owner is not limited to an owner of a life insurance policy or a certificate holder under a group policy that insures the life of an individual with a terminal or chronic illness or condition except where specifically addressed. The term does not include:

    a. Any provider or other licensee under this chapter;

    b. A qualified institutional buyer as defined in rule 144A of the federal Securities Act of 1933, as amended [15 U.S.C. 77a et seq.];

    c. A financing entity;

    d. A special purpose entity; or

    e. A related provider trust.

14. "Patient identifying information" means an insured's address, telephone number, facsimile number, electronic mail address, photograph or likeness, employer, employment status, social security number, or any other information that is likely to lead to the identification of the insured.

15. "Policy" means an individual or group policy, group certificate, contract, or arrangement of life insurance owned by a resident of this state, regardless of whether delivered or issued for delivery in this state.

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

17. "Provider" means a person, other than an owner, that enters or effectuates a life settlement contract with an owner. The term does not include:

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

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

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

d. Any individual who enters or effectuates no more than one agreement in a calendar year for the transfer of a life insurance policy or certificate issued pursuant to a group life insurance policy, for compensation or anything of value less than the expected death benefit payable under the policy;

e. A purchaser;

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

g. A financing entity;

h. A special purpose entity;

i. A related provider trust;

j. A broker; or

k. An accredited investor or qualified institutional buyer as defined respectively in regulation D, rule 501 or rule 144A of the federal Securities Act of 1933, as amended [15 U.S.C. 77a et seq.], that purchases a life settlement policy from a provider.

18. "Purchased policy" means a policy or group certificate that has been acquired by a provider pursuant to a life settlement contract.

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

20. "Related provider trust" means a titling trust or other trust established by a licensed provider or a financing entity for the sole purpose of holding the ownership or beneficial interest in purchased policies in connection with a financing transaction. In order to qualify as a related provider trust, the trust must have a written agreement with the licensed provider under which the licensed provider is responsible for ensuring compliance with all statutory and regulatory requirements

and under which the trust agrees to make all records and files relating to life settlement transactions available to the insurance department as if those records and files were maintained directly by the licensed provider.

21. "Settled policy" means a life insurance policy or certificate that has been acquired by a provider pursuant to a life settlement contract.

22. "Special purpose entity" means an organization formed solely to provide either directly or indirectly access to institutional capital markets for a financing entity or provider; or in connection with a transaction in which the securities in the special purpose entity are acquired by the owner or by a "qualified institutional buyer" as defined in rule 144 promulgated under the federal Securities Act of 1933, as amended [15 U.S.C. 77a et seq.]; or the securities pay a fixed rate of return commensurate with established a set-backed institutional capital markets.

23. "Stranger-originated life insurance" is a practice or plan to initiate a life insurance policy for the benefit of a third-party investor that at the time of policy origination has no insurable interest in the insured. Stranger-originated life insurance practices include cases in which life insurance is purchased with resources or guarantees from or through a person that at the time of policy inception could not lawfully initiate the policy on its own, and where at the time of inception there is an arrangement or agreement, whether verbal or written, to directly or indirectly transfer the ownership of the policy or the policy benefits or both to a third party. Trusts that are created to give the appearance of insurable interest, and are used to initiate policies for investors, violate insurable interest laws and the prohibition against wagering on life. Stranger-originated life insurance arrangements do not include those practices set forth in subdivision b of subsection 11.

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

26.1-33.4-02. Licensing requirements.

1. A person, wherever located, may not act as a provider or broker with an owner or multiple owners who is a resident of this state without first having obtained a license from the commissioner. If there is more than one owner on a single policy and the owners are residents of different states, the life settlement contract must

be governed by the law of the state in which the owner having the largest percentage ownership resides or, if the owners hold equal ownership, the state of residence of one owner agreed upon in writing by all owners.

2. Application for a provider or broker license must be made to the commissioner by the applicant on a form prescribed by the commissioner, and the application must be accompanied by a fee in an amount established by the commissioner; provided, however, that the license and renewal fees for a provider license must be reasonable and that the license and renewal fees for a broker license may not exceed those established for an insurance producer, as such fees are otherwise provided for in this chapter.

3. A life insurance producer who has been duly licensed as a resident insurance producer with a life line of authority in this state or the producer's home state for at least one year and is licensed as a nonresident producer in this state is deemed to meet the licensing requirements of this section and must be permitted to operate as a broker.

4. Not later than thirty days from the first day of operating as a broker, the life insurance producer shall notify the commissioner that the broker is acting as a broker on a form prescribed by the commissioner, and shall pay any applicable fee to be determined by the commissioner. Notification must include an acknowledgement by the life insurance producer that the broker will operate as a broker in accordance with this chapter.

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

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

7. Licenses may be renewed annually on the anniversary date upon payment of the periodic renewal fee. As specified in subsection 2, the renewal fee for a provider may not exceed a reasonable fee. Failure to pay the fee within the terms prescribed results in the automatic revocation of the license requiring periodic renewal.

8. The term of provider license must be equal to that of a domestic stock life insurance company and the term of a broker license must be equal to that of an insurance producer license. Licenses requiring periodic renewal may be renewed on their anniversary date upon payment of the periodic renewal fee as specified in subsection 2. Failure to pay the fees before the expiration of the renewal date results in expiration of the license.

9. The applicant shall provide such information as the commissioner may require on forms prepared by the commissioner. The commissioner, at any time, may require the applicant to fully disclose the identity of the applicant's stockholders (except stockholders owning fewer than ten percent of the shares of an applicant whose shares are publicly traded), partners, officers, and employees, and the commissioner may refuse to issue the license in the name of any person if not satisfied that any officer, employee, stockholder, or partner thereof who may materially influence the applicant's conduct meets the standards of this chapter.

10. A license issued to a partnership, corporation, or other entity authorizes all members, officers, and designated employees to act as a licensee under the license, if those individuals are named in the application and any supplements to the application.

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

a. If a provider, has provided a detailed plan of operation;

b. Is competent and trustworthy and intends to transact the applicant's business in good faith;

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

d. If the applicant is a legal entity, is formed or organized pursuant to the laws of this state, or is a foreign legal entity authorized to transact business in this state, or provides a certificate of good standing from the state of its domicile; and

e. Has provided to the commissioner an antifraud plan that meets the requirements of section 26.1-33.4-12 and includes:

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

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

(3) A description of the plan for antifraud education and training of the applicant's underwriters and other personnel; and

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

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

13. Each licensee shall file with the commissioner before March first of each year an annual statement containing such information as the commissioner by rule may prescribe.

14. A provider may not use any person to perform the functions of a broker, as provided under this chapter, unless the person holds a current, valid license as a broker, and as provided in this section.

15. A broker may not use any person to perform the functions of a provider as defined in this chapter unless such person holds a current, valid license as a provider and as provided in this section.

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

17. An individual licensed as a broker shall complete on a biennial basis fifteen hours of training related to life settlements and life settlement transactions as required by the commissioner; provided, however, that a life insurance producer who is operating as a broker pursuant to this section is not subject to the requirements of this subsection. Any person failing to meet the requirements of this subsection shall be subject to the penalties imposed by the commissioner.

26.1-33.4-03. License suspension, revocation, or refusal to renew.

1. The commissioner may suspend, revoke, or refuse to renew the license of any licensee if the commissioner finds that:

   a. There was any material misrepresentation in the application for the license;

   b. The licensee or any officer, partner, member, or director has been guilty of fraudulent or dishonest practices, is subject to a final administrative action, or is otherwise shown to be untrustworthy or incompetent to act as a licensee;

   c. The provider demonstrates a pattern of unreasonably withholding payments to policyowners;

   d. The licensee no longer meets the requirements for initial licensure;

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

   f. The provider has entered any life settlement contract that has not been approved pursuant to this chapter;

   g. The provider has failed to honor contractual obligations set out in a life settlement contract;

h. The provider has assigned, transferred, or pledged a settled policy to a person other than a provider licensed in this state, a purchaser, an accredited investor or qualified institutional buyer as defined respectively in regulation D, rule 501 or rule 144A of the federal Securities Act of 1933, as amended [15 U.S.C. 77a et seq.], financing entity, special purpose entity, or related provider trust; or

i. The licensee or any officer, partner, member, or key management personnel has violated any of the provisions of this chapter.

2. Before the commissioner denies a license application or suspends, revokes, or refuses to renew the license of any licensee under this chapter, the commissioner shall conduct a hearing.

26.1-33.4-04. Contract requirements.

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

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

3. A person may not use a life settlement contract form or provide to an owner a disclosure statement form in this state unless first filed with and approved by the commissioner. The commissioner shall disapprove a life settlement contract form or disclosure statement form if, in the commissioner's opinion, the contract or provisions contained therein fail to meet the requirements of sections 26.1-33.4-07, 26.1-33.4-08, and 26.1-33.4-10 and subsection 2 of section 26.1-33.4-14 or are unreasonable, contrary to the interests of the public, or otherwise misleading or unfair to the owner. The commissioner may require the submission of advertising material.

26.1-33.4-05. Reporting requirements and privacy.

1. For any policy settled within five years of policy issuance, each provider shall file with the commissioner before March first of each year an annual statement containing such information as the commissioner may prescribe by regulation. In addition to any other requirements, the annual statement must specify the total number, aggregate face amount, and life settlement proceeds of policies settled during the immediately preceding calendar year, together with a breakdown of the information by policy issue year. The annual statement also must include the names of the insurance companies whose policies have been settled and the brokers that have settled said policies.
   a. Such information must be limited to only those transactions where the insured is a resident of this state and may not include individual transaction data regarding the business of life settlements or information that there is a reasonable basis to believe could be used to identify the owner or the insured.
   b. Every provider that willfully fails to file an annual statement as required in this section, or willfully fails to reply within thirty days to a written inquiry by the commissioner in connection therewith, shall, in addition to other penalties provided by this chapter, be subject, upon due notice and opportunity to be heard, to a penalty of up to two hundred fifty dollars per day of delay, not to exceed twenty-five thousand dollars in the aggregate, for each such failure.
2. Except as otherwise allowed or required by law, a provider, broker, insurance company, insurance producer, information bureau, rating agency or company, or any other person with actual knowledge of an insured's identity, may not disclose the identify of an insured or information that there is a reasonable basis to believe could be used to identify the insured or the insured's financial or medical information to any other person unless the disclosure:
   a. Is necessary to effect a life settlement contract between the owner and a provider and the owner and insured have provided prior written consent to the disclosure;
   b. Is necessary to effectuate the sale of life settlement contracts, or interests therein, as investments, provided the sale is conducted in accordance with

applicable state and federal securities law, and provided further that the owner and the insured have both provided prior written consent to the disclosure;

c. Is provided in response to an investigation or examination by the commissioner or any other governmental officer or agency or pursuant to the requirements of section 26.1-33.4-12;

d. Is a term or condition to the transfer of a policy by one provider to another provider, in which case the receiving provider shall comply with the confidentiality requirements of subsection 2 of section 26.1-33.4-05;

e. Is necessary to allow the provider or broker or its authorized representative to make contacts for the purpose of determining health status. For the purposes of this section, the term "authorized representative" does not include any person that has or may have any financial interest in the settlement contract other than a provider, licensed broker, financing entity, related provider trust, or special purpose entity; further, a provider or broker shall require its authorized representative to agree in writing to adhere to the privacy provisions of this chapter; or

f. Is required to purchase stop-loss coverage.

3. Nonpublic personal information solicited or obtained in connection with a proposed or actual life settlement contract is subject to the provisions applicable to financial institutions under the federal Gramm Leach Bliley Act [Pub. L. 106-102] and all other state and federal laws relating to confidentiality of nonpublic personal information.

26.1-33.4-06. Examination.

1. The commissioner, when the commissioner deems it reasonably necessary to protect the interests of the public, may examine the business and affairs of any licensee or applicant for a license. The commissioner may order any licensee or applicant to produce any records, books, files, or other information reasonably necessary to ascertain whether such licensee or applicant is acting or has acted in violation of the law or otherwise contrary to the interests of the public. The

expenses incurred in conducting any examination must be paid by the licensee or applicant.

2. In lieu of an examination under this chapter 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.

3. Names of and individual identification data for all owners and insureds must be considered private and confidential information and may not be disclosed by the commissioner unless required by law.

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

5. a. Upon determining that an examination should be conducted, the commissioner shall issue an examination warrant appointing one or more examiners to perform the examination and instructing the examiners as to the scope of the examination. In conducting the examination, the examiner shall use methods common to the examination of any life settlement licensee and should use those guidelines and procedures set forth in an examiners' handbook adopted by a national organization.

b. Every licensee or person from whom information is sought, its officers, directors, and agents shall provide to the examiners timely, convenient, and free access at all reasonable hours at its offices to all books, records, accounts, papers, documents, assets, and computer or other recordings relating to the property, assets, business, and affairs of the licensee being examined. The officers, directors, employees, and agents of the licensee or person shall facilitate the examination and aid in the examination so far as it is in their power to do so. The refusal of a licensee, by its officers, directors, employees, or agents, to submit to examination or to comply with any reasonable written request of the commissioner is grounds for suspension or refusal of, or nonrenewal of any license or authority held by the licensee to engage in the life settlement business or other business subject to the

commissioner's jurisdiction. Any proceedings for suspension, revocation, or refusal of any license or authority must be conducted pursuant to section 26.1-01-03.1.

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

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

e. This chapter does not limit the commissioner's authority to terminate or suspend an examination in order to pursue other legal or regulatory action pursuant to the insurance laws of this state. Findings of fact and conclusions made pursuant to any examination are prima facie evidence in any legal or regulatory action.

f. This chapter does not limit the commissioner's authority to use and, if appropriate, to make public any final or preliminary examination report, any examiner or licensee workpapers, or other documents, or any other information discovered or developed during the course of any examination in the furtherance of any legal or regulatory action which the commissioner determines appropriate.

6. a. Examination reports must be composed of only facts appearing upon the books, from the testimony of its officers or agents, or other persons examined concerning its affairs, and such conclusions and recommendations as the examiners find reasonably warranted from the facts.

b. No later than sixty days following completion of the examination, the examiner in charge shall file with the commissioner a verified written report of

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

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

7. a. Names and individual identification data for all owners, purchasers, and insureds must be considered private and confidential information and may not be disclosed by the commissioner, unless the disclosure is to another regulator, is required under law, or is allowed under section 26.1-03-19.4.

b. Except as otherwise provided in this chapter, all examination reports, working papers, recorded information, documents, and copies thereof produced by, obtained by, or disclosed to the commissioner or any other person in the course of an examination made under this chapter, or in the course of analysis or investigation by the commissioner of the financial condition or market conduct of a licensee must be confidential by law and privileged, is not subject to the state's open records laws, is not subject to subpoena, and is not subject to discovery or admissible in evidence in any private civil action. The commissioner may use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as part of the commissioner's official duties. The licensee being examined may have access to all documents used to make the report.

8. a. 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 chapter. This section may not be construed to automatically preclude an examiner from being:

(1) An owner;

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

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

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

9. a. No cause of action arises nor may any liability be imposed against the commissioner, the commissioner's authorized representatives, or any examiner appointed by the commissioner for any statements made or conduct performed in good faith while carrying out this chapter.

b. No cause of action arises, nor may 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 chapter, if the act of communication or delivery was performed in good faith and without fraudulent intent or the intent to deceive. This subdivision does not abrogate or modify in any way any common law or statutory privilege or immunity heretofore enjoyed by any person identified in subdivision a.

c. A person identified in subdivision a or b is entitled to an award of attorney's fees and costs if the person 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 chapter 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.

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

11. The commissioner may charge for examinations as provided for under section 26.1-01-07.

26.1-33.4-07. Advertising.

1. A broker or provider licensed pursuant to this chapter may conduct or participate in advertisements within this state. Advertisements must comply with all advertising and marketing laws or rules adopted by the commissioner which are applicable to life insurers or to brokers and providers licensed pursuant to this chapter.
2. Advertisements must be accurate and truthful, and may not be misleading in fact or by implication.
3. A person or trust may not:
   a. Directly or indirectly, market, advertise, solicit, or otherwise promote the purchase of a policy for the sole purpose of or with an emphasis on settling the policy; or
   b. Use the words "free" or "no cost" or words of similar import in the marketing, advertising, soliciting, or otherwise promoting of the purchase of a policy.

26.1-33.4-08. Disclosures to owners.

1. The provider shall provide in writing, in a separate document that is signed by the owner and provider, the following information to the owner no later than the date the life settlement contract is signed by all parties:
   a. The fact that possible alternatives to life settlement contracts exist, including accelerated benefits offered by the issuer of the life insurance policy.
   b. The fact that some or all of the proceeds of a life settlement contract may be taxable and that assistance should be sought from a professional tax adviser.
   c. The fact that the proceeds from a life settlement contract could be subject to the claims of creditors.
   d. The fact that receipt of proceeds from a life settlement contract may adversely affect the recipient's eligibility for public assistance or other government benefits or entitlements and that advice should be obtained from the appropriate agencies.
   e. The fact that the owner has a right to terminate a life settlement contract within fifteen days of the date it is executed by all parties and the owner has

received the disclosures contained herein. Rescission, if exercised by the owner, is effective only if both notice of the rescission is given and the owner repays all proceeds and any premiums, loans, and loan interest paid on account of the provider within the rescission period. If the insured dies during the rescission period, the contract is deemed to have been rescinded subject to repayment by the owner or the owner's estate of all proceeds and any premiums, loans, and loan interest to the provider.

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

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

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

i. The date by which the funds will be available to the owner and the transmitter of the funds.

j. The fact that the commissioner shall require delivery of a buyer's guide or a similar consumer advisory package in the form prescribed by the commissioner to owners during the solicitation process.

k. The disclosure document must contain the following language:

All medical, financial, or personal information solicited or obtained by a provider or broker about an insured, including the insured's identity or the identity of family members, a spouse, or a significant other may be disclosed as necessary to effect the life settlement contract between

the owner and provider. If you are asked to provide this information, you will be asked to consent to the disclosure. The information may be provided to someone who buys the policy or provides funds for the purchase. You may be asked to renew your permission to share information every two years.

l. The fact that the commissioner shall require providers and brokers to print separate signed fraud warnings on their applications and on their life settlement contracts the following statement:

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

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

n. The affiliation, if any, between the provider and the issuer of the insurance policy to be settled.

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

p. The document must include the name, address, and telephone number of the provider.

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

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

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

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

   a. The name, business address, and telephone number of the broker.

   b. A full, complete, and accurate description of all the offers, counteroffers, acceptances, and rejections relating to the proposed life settlement contract.

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

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

   e. A complete reconciliation of the gross offer or bid by the provider to the net amount of proceeds or value to be received by the owner. For the purpose of this section, gross offer or bid means the total amount or value offered by the provider for the purchase of one or more life insurance policies, inclusive of commissions and fees.

   f. The failure to provide the disclosures or rights described in this section is deemed an unfair trade practice pursuant to section 26.1-33.4-16.

26.1-33.4-09. Disclosure to insurer. Without limiting the ability of an insurer from assessing the insurability of a policy applicant and determining whether to issue the policy, and in addition to other questions an insurance carrier may lawfully pose to a life insurance applicant, insurance carriers may inquire in the application for insurance whether the proposed owner intends to pay premiums with the assistance of financing from a lender that will use the policy as collateral to support the financing.

1. If, as described in subsection 11 of section 26.1-33.4-01, the loan provides funds that can be used for a purpose other than paying for the premiums, costs, and expenses associated with obtaining and maintaining the life insurance policy and loan, the application must be rejected as a violation of the prohibited practices in section 26.1-33.4-12.

2. If the financing does not violate section 26.1-33.4-12 in this manner, the insurance carrier:

   a. May make disclosures, such as the following, to the applicant and the insured, either on the application or an amendment to the application to be completed no later than the delivery of the policy: "If you have entered a loan arrangement where the policy is used as collateral, and the policy does change ownership at some point in the future in satisfaction of the loan, the following may be true:

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

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

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

      (4) You should consult a professional adviser, since a change in ownership in satisfaction of the loan may result in tax consequences to the owner, depending on the structure of the loan;" and

   b. May require certifications, such as the following, from the applicant or the insured or both:

      I have entered into any agreement or arrangement providing for the future sale of this life insurance policy;

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

The borrower has an insurable interest in the insured.

26.1-33.4-10. General rules.

1. A provider entering a life settlement contract with any owner of a policy, wherein the insured is terminally or chronically ill, first shall obtain:
   a. If the owner is the insured, a written statement from a licensed attending physician that the owner is of sound mind and under no constraint or undue influence to enter into a settlement contract; and
   b. A document in which the insured consents to the release of the insured's medical records to a provider, settlement broker, or insurance producer and, if the policy was issued less than two years from the date of application for a 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 provider, settlement broker, or life insurance producer not later than thirty calendar days from 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.
3. Before or at the time of execution of the settlement contract, the provider shall obtain a witnessed document in which the owner consents to the settlement contract, represents that the owner has a full and complete understanding of the settlement contract, that the owner has a full and complete understanding of the benefits of the policy, acknowledges that the owner is entering into the settlement contract freely and voluntarily, and, for persons with a terminal or chronic illness or condition, acknowledges that the insured has a terminal or chronic illness and that

the terminal or chronic illness or condition was diagnosed after the policy was issued.

4. The insurer may not unreasonably delay effecting change of ownership or beneficiary with any life settlement contract lawfully entered in this state or with a resident of this state.

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

6. If a broker performs the verification of coverage activities required of the provider, the provider is deemed to have fulfilled the requirements of subsection 1 of section 26.1-33.4-08.

7. Within twenty days after an owner executes the life settlement contract, the provider shall give written notice to the insurer that issued that insurance policy that the policy has become subject to a life settlement contract. The notice must be accompanied by the documents required by subdivision b of subsection 1 of section 26.1-33.4-09.

8. All medical information solicited or obtained by any licensee must be subject to the applicable provision of state law relating to confidentiality of medical information if not otherwise provided in this chapter.

9. All life settlement contracts entered in this state must provide that the owner may rescind the contract on or before fifteen days after the date it is executed by all parties thereto. Rescission, if exercised by the owner, is effective only if both notice of the rescission is given and the owner repays all proceeds and any premiums, loans, and loan interest paid on account of the provider within the rescission period. If the insured dies during the rescission period, the contract is deemed to have been rescinded subject to repayment by the owner or the owner's estate of all proceeds and any premiums, loans, and loan interest to the provider.

10. Within three business days after receipt from the owner of documents to effect the transfer of the insurance policy, the provider shall pay the proceeds of the settlement to an escrow or trust account managed by a trustee or escrow agent in a state or federally chartered financial institution pending acknowledgement of the

transfer by the issuer of the policy. The trustee or escrow agent must be required to transfer the proceeds due to the owner within three business days of acknowledgement of the transfer from the insurer.

11. Failure to tender the life settlement contract proceeds to the owner by the date disclosed to the owner renders the contract voidable by the owner for lack of consideration until the time the proceeds are tendered to and accepted by the owner. A failure to give written notice of the right of rescission tolls the right of rescission until thirty days after the written notice of the right of rescission has been given.

12. Any fee paid by a provider, party, individual, or an owner to a broker in exchange for services provided to the owner pertaining to a life settlement contract must be computed as a percentage of the offer obtained, not the face value of the policy. This section does not prohibit a broker from reducing such broker's fee below this percentage if the broker so chooses.

13. The broker shall disclose to the owner anything of value paid or given to a broker which relates to a life settlement contract.

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

a. The policy was issued upon the owner's exercise of conversion rights arising out of a group or individual policy, provided the total of the time covered under the conversion policy plus the time covered under the prior policy is at least twenty-four months. The time covered under a group policy must be calculated without regard to a change in insurance carriers, provided the coverage has been continuous and under the same group sponsorship;

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

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

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

(3) The owner's spouse dies;

(4) The owner divorces the owner's spouse;

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

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

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

c. Copies of the independent evidence required by subdivision b must be submitted to the insurer when the provider submits a request to the insurer for verification of coverage. The copies must be accompanied by a letter of attestation from the provider that the copies are true and correct copies of the documents received by the provider. Nothing in this section prohibits an insurer from exercising its right to contest the validity of any policy; or

d. If the provider submits to the insurer a copy of independent evidence provided for in paragraph 1 of subdivision b when the provider submits a request to the insurer to effect the transfer of the policy to the provider, the copy is deemed to establish that the settlement contract satisfies the requirements of this section.

26.1-33.4-11. Authority to adopt regulations - Conflict of laws.

1. The commissioner may adopt rules implementing this chapter and regulating the activities and relationships of providers, brokers, and insurers and their agents.

2. a. If there is more than one owner on a single policy and the owners are residents of different states, the life settlement contract must be governed by

the law of the state in which the owner having the largest percentage ownership resides, or if the owners hold equal ownership, the state of residence of one owner agreed upon in writing by all of the owners. The law of the state of the insured governs if equal owners fail to agree in writing upon a state of residence for jurisdictional purposes.

b. A provider from this state who enters a life settlement contract with an owner who is a resident of another state that has enacted statutes or adopted regulations governing life settlement contracts is governed in the effectuation of that life settlement contract by the statutes and regulations of the owner's state of residence. If the state in which the owner is a resident has not enacted statutes or regulations governing life settlement contracts, the provider shall give the owner notice that neither state regulates the transaction upon which the owner is entering. For transactions in those states, however, the provider is to maintain all records required if the transactions were executed in the state of residence. The forms used in those states need not be approved by the commissioner.

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

26.1-33.4-12. Prohibited practices.

1. It is unlawful for any person to:

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

b. Engage in any transaction, practice, or course of business if such person knows or reasonably should have known that the intent was to avoid the notice requirements of this chapter;

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

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

e. Enter a premium finance agreement with any person or agency, or any person affiliated with such person or agency, pursuant to which such person shall receive any proceeds, fees, or other consideration, directly or indirectly, from the policy or owner of the policy or any other person with respect to the premium finance agreement or any settlement contract or other transaction related to such policy that are in addition to the amounts required to pay the principal, interest, and service charges related to policy premiums pursuant to the premium finance agreement or subsequent sale of such agreement; provided, further, that any payments, charges, fees, or other amounts in addition to the amounts required to pay the principal, interest, and service charges related to policy premiums paid under the premium finance agreement must be remitted to the original owner of the policy or to the original owner's estate if the original owner is not living at the time of the determination of the overpayment;

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

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

h. With respect to a provider, enter into a life settlement contract unless the life settlement promotional, advertising, and marketing materials, as may be prescribed by regulation, have been filed with the commissioner. In no event may any marketing materials expressly reference that the insurance is "free" for any period of time. The inclusion of any reference in the marketing materials that would cause an owner to reasonably believe that the insurance is free for any period of time must be considered a violation of this chapter; or

i. With respect to any life insurance producer, insurance company, broker, or provider, make any statement or representation to the applicant or policyholder in connection with the sale or financing of a life insurance policy to the effect that the insurance is free or without cost to the policyholder for any period of time unless provided in the policy.

2. A violation of this section is deemed a fraudulent life settlement act.

26.1-33.4-13. Fraud prevention and control.

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

b. A person may not knowingly and intentionally interfere with the enforcement of the provisions of this chapter or investigations of suspected or actual violations of this chapter.

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

2. a. Life settlement contracts and applications for life settlement contracts, regardless of the form of transmission, must contain the following statement or a substantially similar statement:

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

b. The lack of a statement as required in subdivision a does not constitute a defense in any prosecution for a fraudulent life settlement act.

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

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

4. a. Civil liability may not be imposed on and no cause of action may arise from a person's furnishing information concerning suspected, anticipated, or completed fraudulent life settlement acts or suspected or completed fraudulent insurance acts if the information is provided to or received from:

(1) The commissioner or the commissioner's employees, agents, or representatives;

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

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

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

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

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

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

c. A person identified in subdivision a is entitled to an award of attorney's fees and costs if that person 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 chapter and the party bringing the action was not substantially justified in doing so. For purposes of this section, a proceeding is "substantially justified" if the proceeding had a reasonable basis in law or fact at the time the proceeding was initiated.

d. This section does not abrogate or modify common law or statutory privileges or immunities enjoyed by a person described in subdivision a.

5. a. The documents and evidence provided pursuant to subsection 4 or obtained by the commissioner in an investigation of suspected or actual fraudulent life settlement acts is privileged and confidential and may not be a public record and may not be subject to discovery or subpoena in a civil or criminal action.

b. Subdivision a does not prohibit release by the commissioner of documents and evidence obtained in an investigation of suspected or actual fraudulent life settlement acts:

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

(2) To federal, state, or local law enforcement or regulatory agencies, to an organization established for the purpose of detecting and preventing fraudulent life settlement acts, or to the national association of insurance commissioners; or

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

c. Release of documents and evidence under subdivision b does not abrogate or modify the privilege granted in subdivision a.

6. This chapter does not:

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

b. Preempt, supersede, or limit any provision of any state securities law or any rule, order, or notice issued thereunder;

c. Prevent or prohibit a person from disclosing voluntarily information concerning life settlement fraud to a law enforcement or regulatory agency other than the insurance department; or

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

7. a. Providers and brokers shall have in place antifraud initiatives reasonably calculated to detect, prosecute, and prevent fraudulent life settlement acts.

The commissioner may order, or a licensee may request and the commissioner may grant, such modifications of the following required initiatives as necessary to ensure an effective antifraud program. The modifications may be more or less restrictive than the required initiatives so long as the modifications may reasonably be expected to accomplish the purpose of this section. Antifraud initiatives include:

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

(2) An antifraud plan, which must be submitted to the commissioner. The antifraud plan must include:

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

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

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

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

b. Antifraud plans submitted to the commissioner are privileged and confidential and are not a public record and may not be subject to discovery or subpoena in a civil or criminal action.

26.1-33.4-14. Injunctions - Civil remedies - Cease and desist.

1. In addition to the penalties and other enforcement provisions of this chapter, if any person violates this chapter or any rule implementing this chapter, the commissioner may seek an injunction in a court of competent jurisdiction in the county where the person resides or has a principal place of business and may

apply for temporary and permanent orders that the commissioner determines necessary to restrain the person from further committing the violation.

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

3. The commissioner may issue a cease and desist order upon a person that violates any provision of this part, any rule or order adopted by the commissioner, or any written agreement entered into with the commissioner in accordance with chapter 28-32.

4. When the commissioner finds that such an action presents an immediate danger to the public and requires an immediate final order, the commissioner may issue an emergency cease and desist order reciting with particularity the facts underlying such findings. The emergency cease and desist order is effective immediately upon service of a copy of the order on the respondent and remains effective for ninety days. If the commissioner begins nonemergency cease and desist proceedings under subsection 1, the emergency cease and desist order remains effective, absent an order by an appellate court of competent jurisdiction pursuant to chapter 28-32. In the event of a willful violation of this chapter, the trial court may award statutory damages in addition to actual damages in an additional amount up to three times the actual damage award. The provisions of this chapter may not be waived by agreement. A choice of law provision may not be utilized to prevent the application of this chapter to any settlement in which a party to the settlement is a resident of this state.

26.1-33.4-15. Penalties.

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

2. For criminal liability purposes, a person that commits a fraudulent life settlement act is guilty of committing insurance fraud.

3. The commissioner may levy a civil penalty not exceeding fifty thousand dollars per violation and the amount of the claim for each violation upon any person, including

those persons and their employees licensed pursuant to this chapter, who is found to have committed a fraudulent life settlement act or violated any other provision of this chapter.

4. The license of a person licensed under this chapter which commits a fraudulent life settlement act must be revoked.

26.1-33.4-16. Unfair trade practices. A violation of this chapter is considered an unfair trade practice pursuant to state law and subject to the penalties provided by state law.

SECTION 3. REPEAL. Chapter 26.1-33.3 of the North Dakota Century Code is repealed.