

Enrolled
Senate Bill 973

Sponsored by Senator BONAMICI, Representative SCHAUFLEER; Senators DEVLIN, MONNES ANDERSON, MORRISETTE, Representative KENNEMER (at the request of American Council of Life Insurers)

CHAPTER

AN ACT

Relating to life insurance; creating new provisions; amending ORS 646.608, 744.321, 744.323, 744.328, 744.338, 744.341, 744.343, 744.346 and 744.358; and repealing ORS 744.319, 744.348, 744.351 and 744.356.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Sections 2, 5, 11 to 19 and 22 of this 2009 Act are added to and made a part of ORS 744.319 to 744.358.

SECTION 2. As used in ORS 744.319 to 744.358:

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

(2) "Business of life settlements" means an activity involved in, but not limited to, the offering, soliciting, negotiating, procuring, effectuating, purchasing, investing, financing, monitoring, tracking, underwriting, selling, transferring, assigning, pledging, hypothecating or in any other manner acquiring an interest in a life insurance policy by means of a life settlement contract.

(3) "Chronically ill" means:

(a) Being unable to perform at least two activities of daily living, such as eating, toileting, moving around, bathing or dressing;

(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 paragraph (a) of this subsection as determined by the Director of the Department of Consumer and Business Services.

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

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

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

(b) "Financing entity" does not include a nonaccredited investor or a life settlement purchaser.

(5) "Licensee" means a life settlement provider, life settlement broker or life settlement investment agent.

(6) "Life insurance producer" means any person licensed in this state as a resident or nonresident insurance producer who has received qualification or authority under ORS 744.062 or 744.063 to transact life insurance.

(7)(a) "Life settlement broker" means a person, including a life insurance producer, working exclusively on behalf of an owner and for a fee, commission or other valuable consideration, who offers or attempts to negotiate life settlement contracts between an owner and one or more life settlement providers or one or more life settlement brokers. Notwithstanding the manner in which the life settlement broker is compensated, a life settlement broker is deemed to represent only the owner, and not the life insurance producer or the life settlement provider, and owes a fiduciary duty to the owner to act according to the owner's instructions and in the best interest of the owner.

(b) "Life settlement broker" does not include an attorney, a certified public accountant or a financial planner, accredited by a nationally recognized accreditation agency, who is retained to represent the owner and whose compensation is not paid directly or indirectly by the life settlement provider or purchaser.

(8)(a) "Life settlement contract" means a written agreement between an owner and a life settlement provider or any affiliate of the life settlement provider establishing the terms under which compensation or anything of value is or will be paid, which compensation or value is less than the expected death benefits of the policy, in return for the owner's present or future assignment, transfer, sale, devise or bequest of the death benefit or ownership of any portion of the insurance policy or certificate of insurance.

(b) "Life settlement contract" includes the transfer for compensation or value of ownership or beneficial interest in a trust or other entity that owns a life insurance policy or certificate of insurance if the trust or other entity was formed for the principal purpose of acquiring one or more life insurance contracts insuring the life of a person residing in this state.

(c) "Life settlement contract" also includes a premium finance loan made for a life insurance policy by a lender to an owner on, before or after the date of issuance of the policy if:

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

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

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

(A) A policy loan or accelerated death benefit made by the insurer pursuant to the policy's terms;

(B) Loan proceeds that are used solely to pay:

(i) Premiums for the policy; or

(ii) The costs of the loan, including, without limitation, interest, arrangement fees, utilization fees and similar fees, closing costs, legal fees and expenses, trustee fees and expenses and third party collateral provider fees and expenses, including fees payable to letter of credit issuers;

(C) A loan made by a bank or other licensed financial institution in which the lender takes an interest in a life insurance policy solely to secure repayment of a loan or, if there

is a default on the loan and the policy is transferred, the transfer of such a policy by the lender. However, neither the default itself nor the transfer of the policy in connection with a default may occur pursuant to an agreement or understanding with any other person for the purpose of evading regulation under ORS 744.319 to 744.358;

(D) A premium finance loan made by a lender that does not violate the provisions of ORS 746.405 to 746.530, if the premium finance loan is not described in paragraph (c) of this subsection;

(E) An agreement in which all the parties are closely related to the insured by blood or law or have a lawful substantial economic interest in the continued life, health and bodily safety of the person insured, or are trusts established primarily for the benefit of such parties;

(F) 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;

(G) A legitimate business succession planning arrangement:

(i) Between one or more shareholders in a corporation or between a corporation and one or more of its shareholders or one or more trusts established by its shareholders;

(ii) Between one or more partners in a partnership or between a partnership and one or more of its partners or one or more trusts established by its partners; or

(iii) Between one or more members in a limited liability company or between a limited liability company and one or more of its members or one or more trusts established by its members;

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

(I) Any other contract, transaction or arrangement exempted from the definition of life settlement contract by the director based on a determination that the contract, transaction or arrangement is not of the type intended to be regulated by ORS 744.319 to ORS 744.358.

(9) "Life settlement investment agent" means a person who is an appointed or contracted agent of a licensed life settlement provider who solicits or arranges the funding for the purchase of a life settlement by a life settlement purchaser and who is acting on behalf of a life settlement provider.

(10)(a) "Life settlement provider" means a person, other than an owner, that enters into or effectuates a life settlement contract with an owner resident in this state.

(b) "Life settlement provider" does not include:

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

(B) A premium finance company making premium finance loans and exempted by the director from the licensing requirement under ORS 746.405 to 746.530 that takes an assignment of a life insurance policy solely as collateral for a loan;

(C) The issuer of the life insurance policy;

(D) An insurer certified under ORS 731.354 or accredited under ORS 731.511 that provides stop loss coverage or financial guaranty insurance to a life settlement provider, purchaser, financing entity, special purpose entity or related provider trust;

(E) An individual who enters into or effectuates no more than one agreement in a calendar year for the transfer of life insurance policies for any value less than the expected death benefit;

(F) A financing entity;

(G) A special purpose entity;

(H) A related provider trust;

(I) A life settlement purchaser; or

(J) Any other person that the director determines is not the type of person intended to be covered by the definition of “life settlement provider.”

(11) “Life settlement purchase agreement” means a contract or agreement, entered into by a life settlement purchaser and to which the owner is not a party, to purchase a life insurance policy or an interest in a life insurance policy that is entered into for the purpose of deriving an economic benefit.

(12)(a) “Life settlement purchaser” means a person who, to derive an economic benefit:

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

(B) Owns or acquires or is entitled to a beneficial interest in a trust that owns a life settlement contract or is the beneficiary of a life insurance policy that has been or will be the subject of a life settlement contract.

(b) “Life settlement purchaser” does not include:

(A) A licensee under ORS 744.321 or 744.323 or section 5 of this 2009 Act;

(B) An accredited investor or qualified institutional buyer as defined in Rule 501(a) or Rule 144A promulgated under the Federal Securities Act of 1933, as amended;

(C) A financing entity;

(D) A special purpose entity; or

(E) A related provider trust.

(13)(a) “Owner” means the owner of a life insurance policy or a certificate holder under a group policy who resides in this state and enters or seeks to enter into a life settlement contract. For the purposes of ORS 744.319 to 744.358, an owner shall not be limited to an owner of a life insurance policy or a certificate holder under a group policy insuring the life of an individual with a terminal or chronic illness or condition except when specifically addressed. If there is more than one owner on a single policy and the owners are residents of different states, the transaction shall be governed by the law of the state in which the owner having the largest ownership percentage resides or, if the owners hold equal ownership, the state of residence of one owner agreed upon in writing by all the owners.

(b) “Owner” does not include:

(A) A licensee under ORS 744.321, 744.323 or section 5 of this 2009 Act, including a life insurance producer acting as a life settlement broker under ORS 744.323;

(B) A qualified institutional buyer as defined in Rule 144A promulgated under the Federal Securities Act of 1933, as amended;

(C) A financing entity;

(D) A special purpose entity; or

(E) A related provider trust.

(14) “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.

(15) “Related provider trust” means a trust established by a licensed life settlement provider or a financing entity for the sole purpose of holding the ownership or beneficial interest in purchased policies in connection with a financing transaction.

(16) “Settled policy” means a life insurance policy or certificate that has been acquired by a life settlement provider pursuant to a life settlement contract.

(17) “Special purpose entity” means a corporation, partnership, trust, limited liability company or other similar entity formed solely to provide either direct or indirect access to institutional capital markets:

(a) For a financing entity or licensed life settlement provider;

(b) In connection with a transaction in which the securities in the special purpose entity are acquired by the owner or by qualified institutional buyers as defined in Rule 144 promulgated under the Securities Act of 1933, as amended; or

(c) In connection with a transaction in which the securities pay a fixed rate of return commensurate with established asset-backed institutional capital markets.

(18)(a) “Stranger-originated life insurance” means a practice or a plan to initiate a life insurance policy for the benefit of a third party investor who, at the time of policy origination, has no insurable interest in the insured. Such practices include but are not limited to cases in which life insurance is purchased with resources or guarantees from or through a person or entity who, at the time of policy inception, could not lawfully initiate the policy, and for which, at the time of policy 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 to a third party.

(b) Trusts that are created to give the appearance of insurable interest, and are used to initiate policies for investors, are considered stranger-originated life insurance arrangements.

(c) Stranger-originated life insurance arrangements do not include those practices set forth in subsection (8)(d) of this section.

(19) “Terminally ill” means having an illness or sickness that can reasonably be expected to result in death in 24 months or less.

SECTION 3. ORS 744.321 is amended to read:

744.321. (1) A person shall not act as a life settlement provider unless the person holds a license of life settlement provider issued by the Director of the Department of Consumer and Business Services.

[(2) The term “life settlement provider” does not apply to any of the following:]

[(a) Any bank, savings bank, savings and loan association, credit union or other licensed lending institution that takes an assignment of a life insurance policy as collateral for a loan. The exemption in this paragraph applies only with respect to such an assignment.]

[(b) An insurer issuing a life insurance policy providing accelerated benefits pursuant to ORS 743.154 or pursuant to the laws of the state to which the policy was subject when issued. The exemption in this paragraph applies only with respect to the relationship between the insurer and insured under such a policy.]

[(c) Any individual who enters into not more than one agreement in a calendar year for the transfer of life insurance policies for any value less than the expected death benefit.]

[(3)] (2) A life settlement provider may use the term “viatical settlement provider” to describe the business transacted under the license and may use the term “viatical settlement contract” instead of “life settlement contract.”

(3) A related provider trust must have a written agreement with a licensed life settlement provider under which the licensed life settlement provider is responsible for ensuring compliance with all statutory and regulatory requirements and under which the trust agrees to make all records and files related to life settlement transactions available to the director as if those records and files were maintained directly by the licensed life settlement provider.

SECTION 4. ORS 744.323 is amended to read:

744.323. (1) A person shall not act as a life settlement broker unless the person holds a license of life settlement broker issued by the Director of the Department of Consumer and Business Services.

[(2) The term “life settlement broker” does not apply to an attorney, accountant or financial planner retained to represent the policyholder or certificate holder unless compensation paid to the attorney, accountant or financial planner is paid by the life settlement provider.]

(2) 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 meets the licensing requirements of this section and is permitted to operate as a life settlement broker in this state.

(3) A life settlement broker may use the term “viatical settlement broker” to describe the business transacted under the license and may use the term “viatical settlement contract” instead of “life settlement contract.”

SECTION 5. A person shall not operate as a life settlement investment agent unless the person holds a license of life settlement investment agent issued by the Director of the Department of Consumer and Business Services or the person has obtained the appropriate license from the equivalent chief insurance regulatory official of the state of residence of the life settlement purchaser whom the agent is negotiating with on behalf of a life settlement provider. If there is more than one purchaser of a single policy and the purchasers are residents of different states, the life settlement investment agent must be licensed by the state in which the purchaser having the largest percentage ownership resides or, if the purchasers hold equal ownership, the state of residence of one purchaser agreed upon in writing by all purchasers.

SECTION 6. ORS 744.328 is amended to read:

744.328. (1) If the Director of the Department of Consumer and Business Services determines that an applicant has satisfied all requirements for the license for which application is made, the director shall issue the license to the applicant. The director may issue a license if the director determines that the applicant, as required to be set forth in the application for the license:

(a) Has not engaged in conduct that would authorize the director to refuse to issue a license under ORS 744.338; *[and]*

[(b) Is financially responsible and has a good business reputation.]

(b) Is competent and trustworthy and intends to act in good faith in the capacity specified by the license applied for;

(c) Has demonstrated evidence of financial responsibility in a format prescribed by the director through either a surety bond executed in an amount and in a manner prescribed by the director or a deposit of cash, certificates of deposit or securities or any combination thereof in an amount and manner prescribed by the director. The director shall accept as evidence of financial responsibility proof that financial instruments consistent with the requirements under this paragraph have been filed with at least one state in which the applicant is licensed as a life settlement provider, life settlement broker or life settlement investment agent;

(d) Has a good business reputation and has had experience, training or education so as to be qualified in the business of the licensee;

(e) If a life settlement provider or broker, has provided an anti-fraud plan under section 17 (10) of this 2009 Act; and

(f) If a life settlement provider, has provided a detailed plan of operation in a manner prescribed by the director.

(2) The director may refuse to issue a license in the name of any firm, partnership or corporation if the director is not satisfied that any officer, employee, stockholder or partner thereof who may materially influence the conduct of the applicant meets the standards of this section.

(3) The director may issue a license to a nonresident applicant only if the nonresident applicant files with the director in writing an appointment of the director to be the attorney of the applicant upon whom all legal process in any action or proceeding against the applicant may be served. In the appointment, the applicant shall agree that any lawful process against the applicant that is served upon the director shall be of the same legal force and validity as if served upon the applicant, and that the authority shall continue in force so long as any liability remains outstanding in this state. An appointment under this subsection becomes effective on the date that the director issues the license to the applicant.

(4) If the director denies an application, the director shall so inform the applicant, stating the grounds for the denial.

SECTION 7. ORS 744.338 is amended to read:

744.338. (1) The Director of the Department of Consumer and Business Services may suspend, revoke, refuse to issue or refuse to renew a license of a licensee if the director finds one or more of the following with respect to the licensee or applicant for a license:

(a) Dishonesty, fraud or gross negligence in the conduct of business as a licensee, or the licensee or applicant is otherwise shown to be untrustworthy or incompetent to act as a licensee.

(b) The life settlement provider demonstrates a pattern of unreasonable payments to policyholders or certificate holders.

(c) Falsification by the applicant or licensee of an application for the license or renewal thereof, or misrepresentation or engagement in any other dishonest act in relation to the application.

(d) Conduct resulting in a conviction of a felony under the laws of any state or of the United States, to the extent that such conduct may be considered under ORS 670.280.

(e) Conviction of any crime, an essential element of which is dishonesty or fraud, under the laws of any state or of the United States.

(f) Refusal to renew or cancellation, revocation or suspension of authority to transact insurance or business as a life settlement provider, life settlement broker or similar entity in another state.

(g) Failure to pay a civil penalty imposed by final order of the director or to carry out terms of probation set by the director.

(h) Refusal by a licensee to be examined or to produce accounts, records or files for examination, refusal by any officers to give information with respect to the affairs of the licensee or refusal to perform any other legal obligation as to the examination when required by the director.

(i) Affiliation with or under the same general management or interlocking directorate or ownership as another life settlement provider or life settlement broker or an insurer, any of which unlawfully transacts business in this state.

(j) Failure at any time to meet any qualification for which issuance of the license could have been refused had the failure then existed and been known to the director.

(k) Violation of any rule or order of the director or any provision of the Insurance Code **by a licensee or any officer, partner, member or key management personnel of the licensee.**

(2) The director may suspend or refuse to renew a license immediately and without hearing if the director determines that one or both of the following circumstances exist:

(a) The licensee is insolvent.

(b) The financial condition or business practices of the licensee otherwise pose an imminent threat to the public health, safety or welfare of the residents of this state.

(3) A life settlement provider or life settlement broker holding a license that has not been renewed or has been revoked shall surrender the license to the director at the director's request.

(4) The director may take any other administrative action authorized under the Insurance Code in addition to or in lieu of the actions authorized under this section.

SECTION 8. ORS 744.341 is amended to read:

744.341. (1) A life settlement contract must be in writing. A life settlement provider shall establish in the contract the terms under which the life settlement provider will pay compensation or anything of value in return for the policyholder's or certificate holder's assignment, transfer, sale, devise or bequest of the death benefit or ownership of the insurance policy or certificate to the life settlement provider.

(2) A life settlement provider shall not use a life settlement contract **form or provide to an owner a disclosure statement form** in this state unless the life settlement provider has filed the [contract] form with the Director of the Department of Consumer and Business Services and the director has approved the [contract] form. The director shall disapprove a life settlement contract form if, in the director's opinion, the contract or any provision of the contract is unreasonable, contrary to the interests of the public, [or] otherwise misleading or unfair to the policyholder or certificate holder **or in violation of any of the requirements of ORS 744.319 to 744.358.**

(3) Each life settlement contract entered into in this state must contain a provision enabling the policyholder or certificate holder to rescind the contract not later than the [30th] **60th** day after the date on which the contract is executed by all parties or not later than the [15th] **30th** day after the

policyholder or certificate holder receives the life settlement proceeds, whichever is the lesser period. In order to rescind such a contract, a policyholder or certificate holder who has received the proceeds must return them to the life settlement provider.

SECTION 9. ORS 744.343 is amended to read:

744.343. (1) Each life settlement provider shall file a report for the preceding calendar year with the Director of the Department of Consumer and Business Services on or before March 1 of each year, or within such extension of time therefor as the director may grant. The report shall be in the form and contain such information as the director prescribes and shall be verified as follows:

[1] (a) If the life settlement provider is a corporation, by at least two principal officers of the life settlement provider.

[2] (b) If the life settlement provider is a partnership, by two partners.

[3] (c) If the life settlement provider is neither a corporation nor a partnership, by its president and secretary.

(2) For a policy settled within five years of policy issuance, a life settlement provider shall file with the director on or before March 1 of each year an annual statement containing such information as the director may prescribe by regulation. In addition to any other requirements, the annual statement must specify the total number and 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 must also include the names of the insurance companies whose policies have been settled and the life settlement brokers that have settled the policies. The information must be limited to only those transactions for which the owner is a resident of this state.

(3) Except as otherwise allowed or required by law, a life settlement provider, life settlement broker, life settlement investment agent, 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 fact that the person is insured or the insured's financial or medical information to any other person unless the disclosure:

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

(b) Is necessary to effect a life settlement purchase agreement between the life settlement purchaser and a life settlement provider and the owner and insured have provided prior written consent to the disclosure;

(c) Is provided in response to an investigation or examination by the director or any other governmental officer or agency or pursuant to the requirements of ORS 744.346;

(d) Is a term of or condition to the transfer of a policy by one life settlement provider to another life settlement provider;

(e) Is 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 owner and insured have provided prior written consent to the disclosure;

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

(g) Is required to purchase stop loss coverage or financial guaranty insurance.

SECTION 10. ORS 744.346 is amended to read:

744.346. (1) The Director of the Department of Consumer and Business Services may examine the business and practices of any licensee or applicant for a license when the director determines an examination to be necessary. The director may order a licensee or applicant to produce any records, books, files or other information reasonably necessary to ascertain whether or not the 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 shall be paid by the licensee or applicant.

[(2) A life settlement provider shall maintain records of all transactions of life settlement contracts of the life settlement provider and must make the records available to the director for inspection during reasonable business hours. The records must be maintained for a period of not later than five years from the date of their creation.]

(2)(a) A person required to be licensed under ORS 744.321 and 744.323 shall for five years retain copies of all:

(A) Proposed, offered or executed contracts, purchase agreements, underwriting documents, policy forms and applications from the date of the proposal, offer or execution of the contract or purchase agreement, whichever is later;

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

(C) Other records and documents related to the requirements under ORS 744.319 to 744.358.

(b) This section does not relieve a person of the obligation to produce these documents for the director after the retention period has expired if the person has retained the documents.

(c) 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.

(3) The director at any time may require a licensee to fully disclose the identity of all stockholders, partners, officers and employees.

(4) Names of, and individual identification data for, all policyholders and certificate holders who have entered life settlement contracts with life settlement providers *[shall be]* are confidential as provided in ORS 705.137.

SECTION 11. (1) With an application for a life settlement, a life settlement provider or life settlement broker shall provide the owner 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 owner and the life settlement provider or life settlement broker, and must provide the following information:

(a) There are possible alternatives to life settlement contracts, including any accelerated death benefits or policy loans offered under the owner's life insurance policy.

(b) A life settlement broker represents exclusively the owner, and not the insurer or the life settlement provider, 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.

(c) Some or all of the proceeds of the life settlement may be taxable under federal and state income tax, and assistance should be sought from a professional tax adviser.

(d) Proceeds of the life settlement may be subject to the claims of creditors.

(e) Receipt of proceeds from a life settlement contract may affect the owner's eligibility for public assistance or other government benefits or entitlements, and advice should be obtained from appropriate agencies. Receipt of proceeds from a life settlement contract may reduce the owner's risk of becoming impoverished and becoming dependent on public assistance or other government benefits or entitlements.

(f) The owner has the right to rescind a life settlement contract before the earlier of 60 calendar days after the date upon which the life settlement contract is executed by all parties or 30 calendar days after the life settlement proceeds have been paid to the owner, as provided in section 13 (3) of this 2009 Act. 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 life settlement within the rescission period. If the insured dies during the rescission period, the life settlement contract shall be deemed to have been rescinded, subject to repayment by the owner or the

owner's estate of all life settlement proceeds and any premiums, loans and loan interest of the life settlement within 60 days of the insured's death.

(g) Funds will be sent to the owner within three business days after the life settlement provider has received the insurer or group administrator's written acknowledgment that ownership of the policy or interest in the certificate has been transferred and the beneficiary has been designated.

(h) Entering into a life settlement contract may prevent the owner from qualifying for new life insurance coverage in the future and may cause other rights or benefits, including conversion rights and waiver of premium benefits that may exist under the policy or certificate, to be forfeited by the owner. Assistance should be sought from a financial adviser.

(i) The following language: "All medical, financial or personal information solicited or obtained by a life settlement provider or life settlement broker about an insured, including the insured's identity or the identity of family members, a spouse or a significant other may be disclosed as necessary to effect the life settlement between the owner 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 years."

(j) Following execution of a life contract, the insured may be contacted for the purpose of determining the insured's health status and to confirm the insured's residential or business street address and telephone number, or as otherwise provided in ORS 744.319 to 744.358. This contact is limited to once every three months if the insured has a life expectancy of more than one year, and to no more than once per month if the insured has a life expectancy of one year or less. All such contacts shall be made only by a life settlement provider licensed in the state in which the owner resided at the time of the life settlement, or by the authorized representative of a duly licensed life settlement provider.

(2) Prior to or concurrently with the disclosures required under subsection (1) of this section, the owner shall be given a brochure describing the process of life settlements. The Director of the Department of Consumer and Business Services shall develop and approve a form for the brochure.

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

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

(b) The name, business address and telephone number of the life settlement provider;

(c) Any affiliations or contractual arrangements between the life settlement provider and the life settlement purchaser;

(d) If an insurance policy to be settled 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 settled, information about the possible loss of coverage on the other lives under the policy and the need to consult with the owner's insurance producer or the insurer issuing the policy for advice on the proposed life settlement;

(e) The dollar amount of the current death benefit payable to the life settlement provider under the policy or certificate. If known, disclosure of the availability of any additional guaranteed insurance benefits, the dollar amount of any accidental death and dismemberment benefits under the policy or certificate and the extent to which the owner's interest in those benefits will be transferred as a result of the life settlement contract;

(f) If the funds will be escrowed with an independent third party during the transfer process, 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;

(g) The name, business address and telephone number of the life settlement broker;

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

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

(j) The amount and method of calculating the broker's compensation. Compensation includes anything of value paid or given to a life settlement broker for the placement of a policy; and

(k) When any portion of the life settlement broker's compensation, as described in paragraph (j) of this subsection, is taken from a proposed life settlement offer, disclosure of the total amount of the life settlement offer and the percentage of the life settlement offer comprised by the life settlement broker's compensation.

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

(5) A life settlement provider or its life settlement investment agent shall provide the life settlement purchaser with at least the following disclosures prior to the date the life settlement purchase agreement is signed by all parties. The disclosures must be conspicuously displayed in any life purchase contract or in a separate document signed by the life settlement purchaser and life settlement provider or life settlement investment agent, and must make the following disclosures to the life settlement purchaser:

(a) The purchaser shall receive no returns, such as dividends and interest, until the insured dies and a death claim payment is made.

(b) The actual annual rate of return on a life settlement contract is dependent upon an accurate projection of the insured's life expectancy and the actual date of the insured's death. An annual guaranteed rate of return is not determinable.

(c) The settled life insurance contract should not be considered a liquid purchase since it is impossible to predict the exact timing of its maturity and the funds probably are not available until the death of the insured. There is no established secondary market for resale of these products by the purchaser.

(d) The purchaser may lose all benefits or may receive substantially reduced benefits if the insurer goes out of business during the term of the life investment.

(e) The purchaser is responsible for payment of the insurance premium or other costs related to the policy, if required by the terms of the life purchase agreement. These payments may reduce the purchaser's return. If a party other than the purchaser is responsible for the payment, the name and address of that party also shall be disclosed.

(f)(A) The purchaser is responsible for payment of the insurance premiums or other costs related to the policy.

(B) The amount of the premiums, if applicable.

(g) The name, business address and telephone number of the independent third party providing escrow services and the relationship to the broker.

(h) The amount of any trust fees or other expenses to be charged to the life settlement purchaser.

(i) Whether the purchaser is entitled to a refund of all or part of the purchaser's investment under the settlement contract if the policy is later determined to be null and void.

(j)(A) Group policies may contain limitations or caps in the conversion rights, and additional premiums may have to be paid if the policy is converted.

(B) The name of the party responsible for the payment of the additional premiums.

(C) If a group policy is terminated and replaced by another group policy, there may be no right to convert the original coverage.

(k) The risks associated with policy contestability, including but not limited to the risk that the purchaser will have no claim or only a partial claim to death benefits should the insurer rescind the policy within the contestability period.

(L) Whether the purchaser will be the owner of the policy in addition to being the beneficiary and if the purchaser is the beneficiary only and not also the owner, the special risks associated with that status, including but not limited to the risk that the beneficiary may be changed or the premium may not be paid.

(m) The experience and qualifications of the person who determines the life expectancy of the insured, the information this projection is based on and the relationship of the projection maker to the life settlement provider, if any.

(6) Disclosure to a life settlement purchaser shall include distribution of a brochure describing the process of investment in life settlements, in a form to be developed and approved by the director.

(7) A life settlement provider or its life settlement investment agent shall provide the life settlement purchaser with at least the following disclosures no later than at the time of the assignment, transfer or sale of all or a portion of an insurance policy. The disclosures must be contained in a document signed by the life settlement purchaser and life settlement provider or life settlement investment agent, and must make the following disclosures to the life settlement purchaser:

(a) The life expectancy certifications obtained by the provider in the process of determining the price paid to the owner.

(b) If premium payments or other costs related to the policy have been escrowed, the date when the escrowed funds will be depleted, whether the purchaser is responsible for payment of premiums thereafter and, if so, the amount of the premiums.

(c) Whether or not premium payments or other costs related to the policy have been waived. If waived, whether or not the investor is responsible for payment of the premiums if the insurer that wrote the policy terminates the waiver after purchase, and the amount of those premiums.

(d) The type of policy offered or sold, such as whole life, term life, universal life or a group policy certificate, any additional benefits contained in the policy and the current status of the policy.

(e) If the policy is term insurance, the special risks associated with term insurance, including but not limited to the purchaser's responsibility for additional premiums if the owner continues the term policy at the end of the current term.

(f) If the policy is contestable.

(g) If the insurer that wrote the policy has any additional rights that could negatively affect or extinguish the purchaser's rights under the life settlement contract, what these rights are and under what conditions these rights are activated.

(h) The name and address of the person responsible for monitoring the insured's condition. A description of how often the monitoring of the insured's condition is done, how the date of death is determined and how and when this information is transmitted to the purchaser.

(8) The life settlement purchase agreement is voidable by the purchaser at any time within three days after the disclosures mandated by subsection (7) of this section are received by the purchaser.

SECTION 12. Prior to the initiation of a plan, transaction or series of transactions, a life settlement broker or life settlement provider shall fully disclose to an insurer the plan, transaction or series of transactions to which the life settlement broker or life settlement provider is a party, to originate, renew, continue or finance a life insurance policy with the

insurer for the purpose of engaging in the business of life settlements at anytime prior to, or during the first five years after, issuance of the policy.

SECTION 13. (1)(a) A life settlement provider entering into a life settlement contract shall first 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 life settlement contract; and

(B) A document in which the insured consents to the release of the insured's medical records to a licensed life settlement provider, life settlement broker and the insurance company that issued the life insurance policy covering the life of the insured.

(b) Within 20 days after a owner executes documents necessary to transfer any rights under an insurance policy or, if the insured is terminally ill, within 20 days after an owner entering any agreement, option, promise or any other form of understanding, expressed or implied, to transfer the policy for value, the life settlement provider shall give written notice to the insurer that issued the insurance policy that the policy has or will become a settled policy. The notice must be accompanied by the documents required by paragraph (c) of this subsection.

(c) The life settlement provider shall deliver a copy of the medical release required under paragraph (a)(B) of this subsection, a copy of the owner's application for the life settlement contract, the notice required under paragraph (b) of this subsection and a request for verification of coverage to the insurer that issued the life policy that is the subject of the life transaction. The Director of the Department of Consumer and Business Services shall develop and approve a form for the request for verification.

(d) The insurer shall respond to a request for verification of coverage submitted on an approved form by a life settlement provider or life settlement broker within 30 calendar days of the date the request is received and shall indicate whether, based on the medical evidence and documents provided, the insurer intends to pursue an investigation at this time regarding the validity of the insurance contract or possible fraud. The insurer shall accept a request for verification of coverage made on a form approved by the director. The insurer shall accept an original or facsimile or electronic copy of such request and any accompanying authorization signed by the owner. Failure by the insurer to meet its obligations under this subsection is a violation of the Insurance Code.

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

(f) If a life settlement broker performs any of the activities required of the life settlement provider, the provider is deemed to have fulfilled the requirements of this section that were performed by the broker.

(2) All medical information solicited or obtained by any licensee is privileged and confidential under ORS 705.137.

(3)(a) All life settlement contracts entered into in this state must provide the owner with an absolute right to rescind the contract before the earlier of 60 calendar days after the date upon which the life settlement contract is executed by all parties or 30 calendar days after the life settlement proceeds have been sent to the owner under subsection (5) of this section.

(b) The life settlement provider may condition rescission upon the owner both giving notice and repaying to the life settlement provider within the rescission period all proceeds

of the settlement and any premiums, loans and loan interest paid by or on behalf of the life settlement provider in connection with or as a consequence of the life settlement.

(c) If the insured dies during the rescission period, the life settlement contract is deemed to have been rescinded, subject to repayment within 60 calendar days of the death of the insured to the life settlement provider or purchaser of all life settlement proceeds and any premiums, loans and loan interest that have been paid by the life settlement provider or purchaser.

(d) In the event of any rescission, if the life settlement provider has paid commissions or other compensation to a life settlement broker in connection with the rescinded transaction, the life settlement broker shall refund all such commissions and compensation to the life settlement provider within five business days following receipt of written demand from the life settlement provider. The demand must be accompanied by either the owner's notice of rescission if rescinded at the election of the owner, or the notice of the death of the insured if rescinded by reason of the death of the insured within the applicable rescission period.

(4) The life settlement purchaser shall have the right to rescind a life settlement contract within three days after the disclosures mandated by section 11 (7) of this 2009 Act are received by the purchaser.

(5)(a) The life settlement provider shall instruct the owner to send the executed documents required to effect the change in ownership, assignment or change in beneficiary directly to an independent escrow agent selected by the provider.

(b) Within three business days after the date the escrow agent receives the document, or from the date the life settlement provider receives the documents, if the owner erroneously provides the documents directly to the provider, the provider shall pay or transfer the proceeds of the life settlement into an escrow or trust account maintained in a state or federally chartered financial institution whose deposits are insured by the Federal Deposit Insurance Corporation.

(c) Upon payment of the settlement proceeds into the escrow account, the escrow agent shall deliver the original change in ownership, assignment or change in beneficiary forms to the life settlement provider or related provider trust or other designated representative of the life settlement provider. Upon the escrow agent's receipt of the acknowledgment of the properly completed transfer of ownership, assignment or designation of beneficiary from the insurance company, the escrow agent shall pay the settlement proceeds to the owner.

(6) Failure to pay the owner the full contract amount for the life settlement contract within the time set forth under subsection (5) of this section renders the life settlement contract voidable by the owner until the time full payment is tendered to and accepted by the owner. Funds are deemed sent by a life settlement provider to a owner as of the date that the escrow agent either releases funds for wire transfer to the owner or places a check for delivery to the owner via the United States Postal Service or another nationally recognized delivery service.

(7)(a) Contacts with the insured for the purpose of determining the health status of the insured by the life settlement provider or life settlement broker after the life settlement has occurred may be made only by the life settlement provider or broker licensed in this state or its authorized representatives and are limited to once every three months for insureds with a life expectancy of more than one year, and to no more than once per month for insureds with a life expectancy of one year or less.

(b) The limitations set forth in this subsection do not apply to any contacts with an insured for reasons other than determining the insured's health status.

SECTION 14. (1) A person may not enter into a life settlement contract at any time prior to the application or issuance of a policy that is the subject of a life settlement contract or within a five-year period commencing with the date of issuance of the insurance policy or certificate. However, this five-year restriction does not apply if the owner certifies to the life

settlement provider that any one or more of the following conditions has been met within the five-year period:

(a) The policy was issued upon the owner's exercise of conversion rights arising out of a group or individual policy if the total of the time covered under the conversion policy plus the time covered under the prior policy is at least 60 months. The time covered under a group policy is calculated without regard to any change in insurance carriers, provided the coverage has been continuous and under the same group sponsorship;

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

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

(B) The owner's spouse dies;

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

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

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

(F) 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; or

(c) The owner enters into a life settlement contract more than two years after the date of issuance of a policy and, with respect to the policy, at all times prior to the date that is two years after policy issuance, the following conditions are met:

(A) Policy premiums have been funded exclusively with unencumbered assets, including an interest in the life insurance policy being financed only to the extent of its net cash surrender value, provided by, or full recourse liability incurred by, the insured or a person closely related to the insured by blood or law or a party having a lawful substantial economic interest in the continued life, health and bodily safety of the person insured, or a trust established primarily for the benefit of such parties;

(B) There is no agreement or understanding with any other person to guarantee any such liability or to purchase or stand ready to purchase the policy, including through an assumption or forgiveness of the loan; and

(C) Neither the insured nor the policy has been evaluated for settlement.

(2) Copies of the independent evidence described in subsection (1)(b) of this section and documents required by section 13 (1) of this 2009 Act must be submitted to the insurer when the life settlement provider or other party entering into a life settlement contract with an owner 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.

(3) If the life settlement provider submits to the insurer a copy of the owner's or insured's certification described in and the documents required by section 13 (1) of this 2009 Act when the provider submits a request to the insurer to effect the transfer of the policy or certificate to the life settlement provider, the copy conclusively establishes that the life settlement contract satisfies the requirements of this section and the insurer shall respond in a timely manner to the request.

(4) An insurer may not, as a condition of responding to a request for verification of coverage or effecting the transfer of a policy pursuant to a life settlement contract, require that the owner, insured, life settlement provider or life settlement broker sign any forms, disclosures, consent or waiver form that has not been expressly approved by the Director of the Department of Consumer and Business Services for use in connection with life settlement contracts in this state.

(5) Upon receipt of a properly completed request for a change of ownership or beneficiary of a policy, the insurer shall respond in writing within 30 calendar days with written ac-

knowledge confirming that the change has been effected or specifying the reasons why the requested change cannot be processed. The insurer may not unreasonably delay effecting change of ownership or beneficiary and may not otherwise seek to interfere with any life settlement contract lawfully entered into in this state.

SECTION 15. (1) With respect to a life settlement contract or insurance policy, it is unlawful for a life settlement broker to knowingly solicit an offer from, effectuate a life settlement contract with or make a sale to a life settlement provider, financing entity or related provider trust that is controlling, controlled by or under common control with a life settlement broker, unless that relationship is disclosed to the owner.

(2) With respect to a life settlement contract or insurance policy, it is unlawful for a life settlement broker to knowingly enter into a life settlement contract with an owner if, in connection with the life settlement contract, anything of value will be paid to a life settlement broker that is controlling, controlled by or under common control with a life settlement provider, financing entity or related provider trust that is involved in the settlement contract, unless that relationship is disclosed to the owner.

(3) A person may not issue, solicit, market or otherwise promote the purchase of an insurance policy for the purpose of, or with an emphasis on, settling the policy.

(4) A person may not enter into a premium finance arrangement under which the person receives any proceeds, fees or other consideration, directly or indirectly, from the proceeds of the policy, from the owner of the policy or from any other person with respect to the premium finance agreement, the life settlement contract or any other transaction related to the policy that are in addition to the amounts required to pay the principal, interest and service charges related to the policy premiums under the premium finance agreement or subsequent sale of the agreement. 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 the original owner's estate if the original owner is not living at the time of the determination of overpayment.

(5) In the solicitation, application or issuance of a life insurance policy, a person may not employ any device, scheme or artifice in violation of ORS 743.024.

(6) A life settlement provider may not 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 Director of the Department of Consumer and Business Services.

(7) A life insurance producer, insurance company, life settlement broker, life settlement provider or life settlement investment agent may not 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.

(8) A person may not present, cause to be presented or prepare with the knowledge or belief that it will be presented to or by a life settlement provider, life settlement broker, life settlement purchaser, life settlement investment agent, financing entity, insurer, insurance producer or any other person, false material information, or conceal 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, or as a result of a life settlement purchase agreement;

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

(f) The reinstatement or conversion of an insurance policy;
(g) The solicitation, offer, effectuation or sale of a life settlement contract, insurance policy or life settlement purchase agreement;

(h) The issuance of written evidence of a life settlement contract, life settlement purchase agreement or insurance; or

(i) A financing transaction.

(9) A person may not employ any plan, financial structure, device, scheme or artifice to defraud related to settled policies.

(10) A person may not enter into any practice or plan that involves stranger-originated life insurance.

(11) A person may not fail to disclose to the insurer when requested by the insurer that the prospective insured has undergone a life expectancy evaluation by any person or entity other than the insurer or its authorized representatives in connection with the issuance of the policy.

(12) A person may not, and may not permit employees or agents to:

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

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

(c) 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; or

(d) File with the director or the equivalent chief insurance regulatory official of another jurisdiction a document containing false information or otherwise conceal information about a material fact from the director.

(13) A person may not embezzle, steal, misappropriate or convert moneys, funds, premiums, credits or other property of a life settlement provider, insurer, insured, owner, insurance policyowner or any other person engaged in the business of life settlements or insurance.

(14) A person may not recklessly enter into, negotiate, 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, for which the person or the persons intended to defraud the policy's issuer, the life settlement provider or the owner. For the purposes of this subsection, "recklessly" means engaging in conduct in conscious and clearly unjustifiable disregard of a substantial likelihood of the existence of the relevant facts or risks, such disregard involving a gross deviation from acceptable standards of conduct.

(15) A person may not facilitate the change of state of ownership of a policy or certificate or the state of residency of an owner to a state or jurisdiction that does not have a law similar to ORS 744.319 to 744.358 for the express purposes of evading or avoiding the provisions of ORS 744.319 to 744.358.

(16) A person may not attempt to commit, assist, aid or abet in the commission of, or conspire to commit the acts or omissions specified in, this subsection.

(17) A life settlement investment agent shall not have any contact, directly or indirectly, with the owner or insured under the policy or have knowledge of the identity of the owner or insured.

SECTION 16. (1) This section applies to any advertising of life settlement contracts, life purchase agreements or related products or services intended for dissemination in this state, including Internet advertising viewed by persons located in this state. When disclosure requirements are established pursuant to federal regulation, this section is interpreted so as to minimize or eliminate conflict with federal regulation wherever possible.

(2) Every licensee must establish and at all times maintain a system of control over the content, form and method of dissemination of all advertisements of its contracts, products and services. All advertisements, regardless of by whom written, created, designed or presented, is the responsibility of the licensees, as well as the individual who created or presented the advertisement. A system of control must include regular routine notification, at least once a year, to agents and others authorized by the licensee who disseminate advertisements, of the requirements of this section and the requirements adopted by the Director of the Department of Consumer and Business Services in the use of any advertisements not furnished by the licensee.

(3) Advertisements must be truthful and not misleading in fact or by implication. The form and content of an advertisement of a life settlement contract or life settlement purchase agreement must be sufficiently complete and clear so as to avoid deception. It may not have the capacity or tendency to mislead or deceive.

(4) An advertisement may not use the name or title of a life insurance company or a life insurance policy unless the named company or policy-holder consents to the usage in a form prescribed by the director.

(5) An advertisement may not represent that premium payments will not be required to be paid on the life insurance policy that is the subject of a life settlement contract or life settlement purchase agreement in order to maintain that policy, unless that is the fact.

(6) An advertisement may not state or imply that a life settlement contract or life settlement purchase agreement, 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 any payment or other consideration from the licensee for making an endorsement or testimonial, that fact must be disclosed in the advertisement.

(7) When an endorsement refers to benefits received under a life settlement contract or life settlement purchase agreement, all pertinent information must be retained for a period of five years after its use.

(8) 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.

(9) An advertisement may not directly or indirectly create the impression that any division or agency of this state or of the United States government endorses, approves or favors:

(a) Any licensee or its business practices or methods of operation;

(b) The merits, desirability or advisability of any life settlement contract or life settlement purchase agreement;

(c) Any life settlement contract or life settlement purchase agreement; or

(d) Any life insurance policy or life insurance company.

(10) The director may adopt rules to implement this section.

SECTION 17. (1) A person may not knowingly or intentionally interfere with the enforcement of the provisions of ORS 744.319 to 744.358 or investigations of suspected or actual violations of ORS 744.319 to 744.358.

(2) 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.

(3) Life settlements contracts and purchase agreement forms and applications for life settlements, regardless of the form of transmission, must contain the following statement or a substantially similar statement: "Any person who knowingly presents false information in this application is guilty of a crime and may be subject to fines and confinement in prison."

(4) The lack of a statement as required in subsection (3) of this section does not constitute a defense in any investigation or prosecution for an act violating any provision of ORS 744.319 to 744.358.

(5) Any person engaged in the business of life settlements having knowledge or a reasonable suspicion that a fraudulent life settlement act is being, will be or has been committed must provide to the Director of the Department of Consumer and Business Services information as required by, and in a manner prescribed by, the director.

(6) 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 director the information required by, and in a manner prescribed by, the director.

(7)(a) No civil liability is imposed on and no cause of action arises from a person's furnishing information concerning suspected, anticipated or completed fraudulent life settlement acts or suspected or completed fraudulent insurance acts, if the information is provided to or received from:

(A) The director or the director's employees, agents or representatives;

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

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

(D) The National Association of Insurance Commissioners, the Financial Industry Regulatory Authority or the North American Securities Administrators Association, or their employees, agents or representatives, or any other regulatory body overseeing life insurance, life settlements, securities or investment fraud; or

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

(b) Paragraph (a) of this subsection shall 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, the party bringing the action must plead specifically any allegation that paragraph (a) of this subsection does not apply because the person filing the report or furnishing the information did so with actual malice.

(c) A person furnishing information as identified in paragraph (a) of this subsection is entitled to an award of attorney 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 ORS 744.319 to 744.358 and the party bringing the action was not substantially justified in doing so. For purposes of this paragraph, a proceeding is "substantially justified" if it had a reasonable basis in law or fact at the time that it was initiated. However, such an award does not apply to a person furnishing information concerning the person's own fraudulent life settlement acts.

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

(8) The documents and evidence obtained by the director in an investigation of suspected or actual fraudulent life settlement acts are privileged and confidential under ORS 705.137.

(9) This section 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) Prevent or prohibit a person from disclosing voluntarily information concerning life settlement fraud to a law enforcement or regulatory agency other than the Department of Consumer and Business Services; or

(c) Limit the powers granted elsewhere by the laws of this state to the director or any other state department or agency to investigate and examine possible violations of law and to take appropriate action against wrongdoers.

(10)(a) Life settlement providers and life settlement brokers must have in place antifraud initiatives reasonably calculated to detect, prosecute and prevent fraudulent life settlement

acts. At the discretion of the director, the director may order, or a licensee may request and the director may grant, such modifications of the required initiatives described in paragraph (b) of this subsection as necessary to ensure an effective antifraud program. The modifications may be more or less restrictive than the required initiatives as long as the modifications may reasonably be expected to accomplish the purpose of this section.

(b) Antifraud initiatives must include:

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

(B) An antifraud plan, which must be submitted to the director. The antifraud plan must include, but is not limited to:

(i) 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;

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

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

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

(c) Antifraud plans submitted to the director are privileged and confidential under ORS 705.137.

SECTION 18. (1) A person who violates any provision of ORS 744.319 to 744.358 is subject to civil penalties under ORS 731.988 and cease and desist orders under ORS 731.252.

(2) If a person violates any provision of ORS 744.319 to 744.358, the Director of the Department of Consumer and Business Services may seek an injunction in a court of competent jurisdiction and may apply for temporary and permanent orders that the director determines are necessary to restrain the person from committing the violation.

(3) A person damaged by the acts of a person in violation of any provision of ORS 744.319 to 744.358 may bring a civil action against the person committing the violation in a court of competent jurisdiction. Nothing in this subsection shall be construed to alter the provisions of ORS 743.168 or 743.171 relating to the period of incontestability of a policy of life insurance.

(4) A violation of any provision of ORS 744.319 to 744.358 attendant to the execution of a life settlement purchase agreement renders the life settlement purchase agreement voidable and subject to rescission by the life settlement purchaser, upon return of the policy received to the life settlement provider. Suit for rescission may be brought in a court of competent jurisdiction or where the alleged violator resides or has a principal place of business or where the alleged violation occurred.

(5) Except for an act under section 15 (8) to (16) of this 2009 Act, the enforcement provisions and penalties of this section do not apply to an owner.

SECTION 19. (1) Violation of section 15 of this 2009 Act, in addition to any applicable prescribed denial, suspension or revocation of any license or civil forfeiture, shall be punishable upon conviction as for the crime of theft under ORS 164.015 to 164.135 or the crime of forgery or related offenses under ORS 165.002 to 165.070.

(2) A person convicted of a violation of section 15 of this 2009 Act may be ordered to pay restitution to persons aggrieved by the violation of section 15 of this 2009 Act. Restitution may be ordered in addition to a fine or imprisonment, but not in lieu of a fine or imprisonment.

(3) Except for an act under section 15 (8) to (16) of this 2009 Act, the penalties of this section shall not apply to an owner.

SECTION 20. ORS 744.358 is amended to read:

744.358. The Director of the Department of Consumer and Business Services may adopt rules for the purpose of carrying out ORS 744.319 to 744.358. In addition:

(1) The director may establish standards for evaluating reasonableness of payments under life settlement contracts **for persons who are terminally ill or chronically ill**. The authority includes but is not limited to regulation of discount rates used to determine the amount paid in exchange for assignment, transfer, sale, devise or bequest of a benefit under a life insurance policy **insuring the life of a person who is terminally ill or chronically ill**. For the purpose of the standards, the director shall consider payments made in regional and national life settlement markets, to the extent such information is available, as well as model standards developed by the National Association of Insurance Commissioners.

[(2) The director may require a bond or an errors and omissions insurance policy of either or both kinds of licensees.]

[(3)] (2) The director may establish trade practice standards by rule for the purpose of regulating advertising and solicitation of life settlement contracts.

(3) The director may adopt rules governing the relationship and responsibilities of both insurers and life settlement providers, life settlement brokers and life settlement investment agents during the settlement of a life insurance policy or certificate.

(4) The director may adopt rules governing disclosure by a life settlement provider or broker to an insured of the tax implications and effect on life insurance capacity of a life settlement.

(5) The director may adopt rules governing the confidentiality of an insured's personal financial or medical information provided to a life settlement broker, life settlement provider or life settlement investment agent.

SECTION 21. ORS 646.608, as amended by section 8, chapter 19, Oregon Laws 2008, and section 5, chapter 31, Oregon Laws 2008, is amended to read:

646.608. (1) A person engages in an unlawful practice when in the course of the person's business, vocation or occupation the person does any of the following:

(a) Passes off real estate, goods or services as those of another.

(b) Causes likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of real estate, goods or services.

(c) Causes likelihood of confusion or of misunderstanding as to affiliation, connection, or association with, or certification by, another.

(d) Uses deceptive representations or designations of geographic origin in connection with real estate, goods or services.

(e) Represents that real estate, goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, quantities or qualities that they do not have or that a person has a sponsorship, approval, status, qualification, affiliation, or connection that the person does not have.

(f) Represents that real estate or goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used or secondhand.

(g) Represents that real estate, goods or services are of a particular standard, quality, or grade, or that real estate or goods are of a particular style or model, if they are of another.

(h) Disparages the real estate, goods, services, property or business of a customer or another by false or misleading representations of fact.

(i) Advertises real estate, goods or services with intent not to provide them as advertised, or with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity.

(j) Makes false or misleading representations of fact concerning the reasons for, existence of, or amounts of price reductions.

(k) Makes false or misleading representations concerning credit availability or the nature of the transaction or obligation incurred.

(L) Makes false or misleading representations relating to commissions or other compensation to be paid in exchange for permitting real estate, goods or services to be used for model or demonstration purposes or in exchange for submitting names of potential customers.

(m) Performs service on or dismantles any goods or real estate when not authorized by the owner or apparent owner thereof.

(n) Solicits potential customers by telephone or door to door as a seller unless the person provides the information required under ORS 646.611.

(o) In a sale, rental or other disposition of real estate, goods or services, gives or offers to give a rebate or discount or otherwise pays or offers to pay value to the customer in consideration of the customer giving to the person the names of prospective purchasers, lessees, or borrowers, or otherwise aiding the person in making a sale, lease, or loan to another person, if earning the rebate, discount or other value is contingent upon occurrence of an event subsequent to the time the customer enters into the transaction.

(p) Makes any false or misleading statement about a prize, contest or promotion used to publicize a product, business or service.

(q) Promises to deliver real estate, goods or services within a certain period of time with intent not to deliver them as promised.

(r) Organizes or induces or attempts to induce membership in a pyramid club.

(s) Makes false or misleading representations of fact concerning the offering price of, or the person's cost for real estate, goods or services.

(t) Concurrent with tender or delivery of any real estate, goods or services fails to disclose any known material defect or material nonconformity.

(u) Engages in any other unfair or deceptive conduct in trade or commerce.

(v) Violates any of the provisions relating to auction sales, auctioneers or auction marts under ORS 698.640, whether in a commercial or noncommercial situation.

(w) Manufactures mercury fever thermometers.

(x) Sells or supplies mercury fever thermometers unless the thermometer is required by federal law, or is:

(A) Prescribed by a person licensed under ORS chapter 677; and

(B) Supplied with instructions on the careful handling of the thermometer to avoid breakage and on the proper cleanup of mercury should breakage occur.

(y) Sells a thermostat that contains mercury unless the thermostat is labeled in a manner to inform the purchaser that mercury is present in the thermostat and that the thermostat may not be disposed of until the mercury is removed, reused, recycled or otherwise managed to ensure that the mercury does not become part of the solid waste stream or wastewater. For purposes of this paragraph, "thermostat" means a device commonly used to sense and, through electrical communication with heating, cooling or ventilation equipment, control room temperature.

(z) Sells or offers for sale a motor vehicle manufactured after January 1, 2006, that contains mercury light switches.

(aa) Violates the provisions of ORS 803.375, 803.385 or 815.410 to 815.430.

(bb) Violates ORS 646A.070 (1).

(cc) Violates any requirement of ORS 646A.030 to 646A.040.

(dd) Violates the provisions of ORS 128.801 to 128.898.

(ee) Violates ORS 646.883 or 646.885.

(ff) Violates any provision of ORS 646A.020.

(gg) Violates ORS 646.569.

(hh) Violates the provisions of ORS 646A.142.

(ii) Violates ORS 646A.360.

(jj) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.

(kk) Violates ORS 646.563.

(LL) Violates ORS 759.690 or any rule adopted pursuant thereto.

(mm) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant thereto.

(nn) Violates ORS 646A.210 or 646A.214.

(oo) Violates any provision of ORS 646A.124 to 646A.134.

(pp) Violates ORS 646A.254.

(qq) Violates ORS 646A.095.

(rr) Violates ORS 822.046.

(ss) Violates ORS 128.001.

(tt) Violates ORS 646.649 (2) to (4).

(uu) Violates ORS 646A.090 (2) to (4).

(vv) Violates ORS 87.686.

(ww) Violates ORS 646.651.

(xx) Violates ORS 646A.362.

(yy) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 646A.054.

(zz) Violates ORS 180.440 (1).

(aaa) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.

(bbb) Violates ORS 87.007 (2) or (3).

(ccc) Violates ORS 92.405 (1), (2) or (3).

(ddd) Engages in an unlawful practice under ORS 646.648.

(eee) Violates ORS 646A.365.

(fff) Violates ORS 98.854 or 98.858 or a rule adopted under ORS 98.864.

(ggg) Sells a gift card in violation of ORS 646A.276.

(hhh) Violates ORS 646A.102, 646A.106 or 646A.108.

(iii) Violates ORS 646A.430 to 646A.450.

(jjj) Violates a provision of ORS 744.319 to 744.358.

[(jjj)] **(kkk)** Violates a provision of sections 2 to 6, chapter 19, Oregon Laws 2008.

[(kkk)] **(LLL)** Violates section 2, chapter 31, Oregon Laws 2008, 30 or more days after a recall notice, warning or declaration described in section 2, chapter 31, Oregon Laws 2008, is issued for the children's product, as defined in section 1, chapter 31, Oregon Laws 2008, that is the subject of the violation.

(2) A representation under subsection (1) of this section or ORS 646.607 may be any manifestation of any assertion by words or conduct, including, but not limited to, a failure to disclose a fact.

(3) In order to prevail in an action or suit under ORS 646.605 to 646.652, a prosecuting attorney need not prove competition between the parties or actual confusion or misunderstanding.

(4) An action or suit may not be brought under subsection (1)(u) of this section unless the Attorney General has first established a rule in accordance with the provisions of ORS chapter 183 declaring the conduct to be unfair or deceptive in trade or commerce.

(5) Notwithstanding any other provision of ORS 646.605 to 646.652, if an action or suit is brought under subsection (1)(zz) of this section by a person other than a prosecuting attorney, relief is limited to an injunction and the prevailing party may be awarded reasonable attorney fees.

SECTION 22. (1) With respect to each policy issued by an insurance company, the insurance company shall provide notice to the owner of an individual life insurance policy when the insured person under such a policy is 60 years of age or older and:

(a) The life insurance company receives notice from such an owner of a request to surrender, in whole or in part, an individual policy;

(b) The life insurance company receives notice from such an owner of a request to receive an accelerated death benefit under an individual policy; or

(c) The life insurance company sends to such an owner all notices of lapse of an individual policy, other than a term policy.

(2)(a) The notice must consist of the following statement in large, bold or otherwise conspicuous typeface calculated to draw the eye: "Life insurance is a critical part of a broader financial plan. There are many options available, and you have the right to shop

around and seek advice from different financial advisers in order to find the option best suited to your needs.”

(b) The communication of the notice must also contain a statement advising the recipient that the recipient may contact the Insurance Division of the Department of Consumer and Business Services for more information, and must include an address or other location or manner by which the recipient may contact the Insurance Division.

(c) The department shall adopt by rule the appropriate address or other location or manner of contact to be included in the required notice.

(3)(a) The Director of the Department of Consumer and Business Services shall make available to the public information designed to educate the consumer about the consumer’s rights as an owner of a life insurance policy. The information must be written in lay terms and must advise the consumer:

(A) That life insurance is a critical part of a broader financial plan, and that the consumer is encouraged, and has a right, to seek additional financial advice and opinions;

(B) That possible alternatives to lapse exist; and

(C) Of the definitions of common industry terms.

(b) The information described in paragraph (a) of this subsection may include brief descriptions of common products available from licensees. These products must be discussed in general terms for informative purposes only, and not be identifiable to any specific licensee.

SECTION 23. ORS 744.319, 744.348, 744.351 and 744.356 are repealed.

SECTION 24. A life settlement provider, life settlement broker or life settlement investment agent transacting business in this state may continue to do so pending approval or disapproval of the provider, broker or investment agent’s application for a license if the application is filed with the Director of the Department of Consumer and Business Services by the effective date of this 2009 Act.

Passed by Senate May 5, 2009

Received by Governor:

Repassed by Senate June 22, 2009

.....M.,....., 2009

Approved:

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Secretary of Senate

.....M.,....., 2009

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President of Senate

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Governor

Passed by House June 10, 2009

Filed in Office of Secretary of State:

Repassed by House June 23, 2009

.....M.,....., 2009

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Speaker of House

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Secretary of State