

CHAPTER NO. 699

SENATE BILL NO. 3089

By Dixon

Substituted for: House Bill No. 3016

By Bowers

AN ACT To amend Tennessee Code Annotated, Title 48, Chapter 2, Part 1 and Title 56, relative to Life Settlements.

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

SECTION 1. This act shall be known as "The Life Settlements Act".

SECTION 2. Tennessee Code Annotated, Section 48-2-102(12), is hereby amended by adding "a life settlement contract, as defined in Title 56, or any fractional or pooled interest in a life insurance policy or life settlement contract" between the comma (,) and the language "certificate of interest or participation in any profit-sharing agreement".

SECTION 3. Tennessee Code Annotated, Title 56, is amended by adding the following new sections as a new chapter entitled "Life Settlements".

SECTION 4. Definition of terms. As used in this chapter, unless the context otherwise requires:

(1) "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 person that may be a party to a life settlement contract and that has a direct ownership in a policy or certificate that is the subject of a life settlement contract but whose sole activity related to the transaction is providing funds to effect the life settlement and who has an agreement in writing with a licensed life settlement provider to act as a participant in a financing transaction.

(2) "Financing transaction" means a transaction in which a licensed life settlement provider or a financing entity obtains financing for life settlement contracts, life policies or interests therein including, without limitation, any secured or unsecured financing, any securitization transaction or any securities offering either registered or exempt from registration under federal and state securities law, or any direct purchase of interests in a policy or certificate, if the financing transaction complies with federal and state securities law.

(3) "Person" means any natural or artificial entity, including but not limited to, an individual, partnership, limited liability company, association, trust, or corporation.

(4) (A) "Life settlement representative" means a person who is an authorized agent of a licensed life settlement provider or life settlement broker, as applicable, who acts or aids in any manner in the solicitation of a life settlement. Life settlement representative shall not include:

(i) An attorney, an accountant, a financial planner or any person exercising a power of attorney granted by an owner; or

(ii) Any person who is retained to represent an owner and whose compensation is paid by or at the direction of the owner regardless of whether the life settlement is consummated.

(B) A life settlement representative is deemed to represent only the life settlement provider or life settlement broker.

(5) "Life settlement broker" means a person who on behalf of an owner and for a fee, commission or other valuable consideration offers or attempts to negotiate life settlements between an owner and one or more life settlement providers. Irrespective of the manner in which the life settlement broker is compensated, a life settlement broker is deemed to represent only the owner and owes a fiduciary duty to the owner to act according to the owner's instructions and in the best interest of the owner. The term does not include an attorney, accountant or financial planner retained to represent the owner whose compensation is paid directly by or at the direction of the owner.

(6) "Life settlement contract" means a written agreement entered into between a life settlement provider and an owner. The agreement shall establish the terms under which the life settlement provider will pay compensation or anything of value, which compensation or value is less than the expected death benefit of the insurance policy or certificate, in return for the owner's assignment, transfer, sale, devise or bequest of the death benefit or ownership of all or a portion of the insurance policy or certificate of insurance to the life settlement provider. A life settlement contract includes a contract for a loan or other financial transaction secured primarily by an individual or group life insurance policy, other than a loan by a life insurance company pursuant to the terms of the life insurance contract, or a loan secured by the cash value of a policy. A life settlement contract also includes written agreements commonly referred to as viatical settlement contracts and senior settlement contracts.

(7) "Life settlement provider" means a person, other than an owner, who enters into a life settlement contract. Life settlement provider also means a person who obtains financing from a financing entity for the purchase, acquisition, transfer or other assignment of one or more life settlement contracts, policies which have been subjected to life settlements or interests therein, or otherwise sells, assigns, transfers, pledges, hypothecates or otherwise disposes of one or more life settlement contracts, life policies or interests therein. Life settlement provider does not include:

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

(B) The issuer of a life insurance policy providing accelerated benefits;
or

(C) A natural person who enters into 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.

(8) "Owner" means the owner of a life insurance policy or a certificate holder under a group policy insuring the life of an individual in which the owner has a bona fide insurable interest and the right to assign, transfer, sell, devise or bequest the benefits of the life insurance policy, and who enters, or seeks to enter, into a life settlement contract.

(9) "Life policy" means a life insurance policy or certificate that has been acquired by a life settlement provider pursuant to a life settlement contract.

SECTION 5. License Requirements.

(a) A person shall not operate as a life settlement provider, life settlement representative or life settlement broker from, into or within this state without first having obtained an appropriate license from the Commissioner of Commerce and Insurance.

(b) Application for a life settlement provider, life settlement representative or life settlement broker license shall be made to the Commissioner of Commerce and Insurance by the applicant on a form prescribed by the Commissioner of Commerce and Insurance, and these applications shall be accompanied by the fees specified in Section 5(e).

(c) Licenses may be renewed from year to year on the anniversary date upon payment of the annual renewal fees specified in Section 5(j). Failure to pay the fees by the renewal date results in expiration of the license.

(d) The applicant shall provide information on forms required by the Commissioner of Commerce and Insurance. The Commissioner of Commerce and Insurance shall have authority, at any time, to require the applicant to fully disclose the identity of all stockholders, partners, officers, members and employees, and the Commissioner of Commerce and Insurance may, in the exercise of the commissioner's discretion, refuse to issue a license in the name of a legal entity if not satisfied that any officer, employee, stockholder, partner or member thereof who may materially influence the applicant's conduct meets the standards of this act.

(e) Applications for licensure must be accompanied by the following fees:

- (1) viatical settlement provider - five hundred dollars (\$500);
- (2) viatical settlement broker - five hundred dollars (\$500);
- (3) viatical settlement representative - two hundred dollars (\$200).

(f) Upon the filing of an application and the payment of all applicable license fees, the Commissioner of Commerce and Insurance shall make an investigation of each applicant and issue a license if the commissioner finds that the applicant:

- (1) Has provided a detailed plan of operation except in the case of a life settlement representative;

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

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

(4) If not a resident or domiciliary of the state, provides a certificate of good standing from its state of domicile.

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

(h) An applicant or licensee must provide written notice to the Commissioner of Commerce and Insurance within ten (10) business days of a change of business address.

(i) A person may not act as or hold oneself out to be a life settlement representative or life settlement broker unless licensed under this chapter. Any person willfully violating this section is guilty of a Class D felony.

(j) Licenses may be renewed from year to year on the anniversary date upon payment of the following annual renewal fees:

(1) viatical settlement provider - five hundred dollars (\$500);

(2) viatical settlement broker - five hundred dollars (\$500);

(3) viatical settlement representative - one hundred dollars (\$100).

(k) If the Commissioner of Commerce and Insurance finds that an applicant has not fully met the requirements of licensure, the commissioner shall refuse to issue the license and shall promptly notify the applicant in writing, of such denial, stating the grounds therefor.

SECTION 6. License Revocation.

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

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

(2) The licensee, applicant, or any officer, partner, member or key management personnel has engaged in fraudulent or dishonest practices, is

subject to a final administrative action, or is otherwise shown to be untrustworthy or incompetent;

(3) The applicant or licensee demonstrates a pattern of unreasonable payments to owners;

(4) The applicant or licensee has been found guilty of, or has pleaded guilty or *nolo contendere* to, any felony, or to a misdemeanor involving dishonesty, fraud or moral turpitude, regardless of whether a judgment of conviction has been entered by the court;

(5) The applicant or licensee has entered into any life settlement contract that is unreasonable, contrary to the interests of the public, or otherwise misleading or unfair to the owner;

(6) The applicant or licensee has failed to honor contractual obligations set out in a life settlement contract;

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

(8) The applicant or licensee has assigned, transferred or pledged a life policy to a person other than a life settlement provider licensed in this state or a financing entity; or

(9) The applicant or licensee has violated or failed to comply with any provision of this act, any other insurance laws, or any lawful rule or order of the Commissioner of Commerce and Insurance or of a commissioner of another state.

(b) In addition to or in lieu of any denial, suspension, or revocation of a license, the commissioner may assess a civil penalty against any person violating this chapter in an amount not to exceed five thousand dollars (\$5,000) for all violations arising from any single transaction.

(c) Before the Commissioner of Commerce and Insurance may suspend, revoke or refuse to renew the license of a life settlement provider, life settlement broker or life settlement representative, the commissioner shall conduct a hearing in accordance with the Uniform Administrative Procedures Act.

SECTION 7. Life Settlements Contracts and Disclosure Statements. A person shall not use a life settlement contract or provide to an owner a disclosure statement form in this state, which by its provisions is unreasonable, contrary to the interests of the public, or otherwise misleading or unfair to the owner. The Commissioner of Commerce and Insurance may promulgate rules setting forth certain standards for life settlement contracts and disclosure forms, including rules which may require the prior filing and approval of such contracts and forms.

SECTION 8. Reporting Requirements and Confidentiality.

(a) Each life settlement provider and life settlement broker shall file with the Commissioner of Commerce and Insurance on or before March 1 of each year an annual statement containing such information as the commissioner by rule may prescribe.

(b) Except as otherwise allowed or required by law, a life settlement provider, life settlement representative, life settlement broker, insurance company, insurance agent, insurance broker, information bureau, rating agency or company, or any other person with actual knowledge of an owner's or insured's identity, shall not disclose that identity as an owner or insured to any other person unless the disclosure:

(1) 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;

(2) Is provided in response to an investigation by the Commissioner of Commerce and Insurance or any other governmental officer or agency; or

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

SECTION 9. Examination.

(a) The Commissioner of Commerce and Insurance may, when the commissioner deems it reasonably necessary to protect the interests of the public, examine the business and affairs of any life settlement provider, life settlement representative, or life settlement broker. The Commissioner of Commerce and Insurance shall have the authority to order any 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.

(b) Names and individual identification data for all owners and insureds shall be considered private and confidential information and shall not be open for public inspection, notwithstanding the provisions of Title 10, Chapter 7.

(c) Records of all transactions of life settlement contracts shall be maintained by the life settlement provider and shall be available to the Commissioner of Commerce and Insurance for inspection.

SECTION 10. Disclosure.

(a) A life settlement provider, life settlement broker or life settlement representative shall disclose the following information to the owner no later than the time of application:

(1) Possible alternatives to life settlement contracts, including, any accelerated death benefits offered under the owner's life insurance policy;

(2) Some or all of the proceeds of the life settlement may be free from federal income tax and from state franchise and income taxes, and that assistance should be sought from a professional tax advisor;

(3) Proceeds of the life settlement could be subject to the claims of creditors;

(4) Receipt of the proceeds of a life settlement may adversely effect the owner's eligibility for Medicaid or other government benefits or entitlements, and that advice should be obtained from the appropriate government agencies;

(5) The owner's right to rescind a life settlement contract fifteen (15) calendar days after the receipt of the life settlement proceeds by the owner, as provided in Section 11(c);

(6) Funds will be sent to the owner within two (2) business days after the life settlement provider has received the insurer or group administrator's acknowledgment that ownership of the policy or interest in the certificate has been transferred and the beneficiary has been designated pursuant to the life settlement contract; and

(7) Entering into a life settlement contract may cause other rights or benefits, including conversion rights and waiver of premium benefits that may exist under the policy or certificate, to be forfeited by the owner and that assistance should be sought from a financial adviser.

(b) A life settlement provider shall disclose the following information to the owner prior to the date the life settlement contract is signed by all parties:

(1) The affiliation, if any, between the life settlement provider and the issuer of an insurance policy which is to be the subject of a life settlement;

(2) If an insurance policy which is to be the subject of a life settlement has been issued as a joint policy or involves family riders or any coverage of a life other than the insured under the policy which is to be the subject of a life settlement, the owner shall be informed of the possible loss of coverage on the other lives and be advised to consult with his or her insurance producer or the company issuing the policy for advice on the proposed life settlement; and

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

SECTION 11. General Rules.

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

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

(2) A witnessed document in which the owner consents to the life settlement contract, acknowledges whether the insured has a catastrophic, life threatening or chronic illness or condition, represents that the owner has a full and complete understanding of the life settlement contract, that he or she has a full and complete understanding of the benefits of the life insurance policy and acknowledges that he or she has entered into the life settlement contract freely and voluntarily; and

(3) A document in which the insured consents to the release of his or her medical records to a life settlement provider or life settlement broker.

(b) All medical information solicited or obtained by any licensee shall be subject to the applicable provision of state law relating to confidentiality of medical information.

(c) All life settlement contracts entered into in this state shall provide the owner with an unconditional right to rescind the contract for at least thirty (30) calendar days from the date of contract or fifteen (15) days upon receipt of the life settlement proceeds, whichever is less. If the insured dies during the rescission period, the life settlement contract shall be deemed to have been rescinded, subject to repayment to the life settlement provider of all life settlement proceeds.

(d) Immediately upon the life settlement provider's receipt of documents to effect the transfer of the insurance policy, the life settlement provider shall pay the proceeds of the life settlement to an escrow or trust account in a state or federally chartered financial institution whose deposits are insured by the Federal Deposit Insurance Corporation (FDIC). The account shall be managed by a trustee or escrow agent independent of the parties to the contract. The trustee or escrow agent shall transfer the proceeds to the owner immediately upon the life settlement provider's receipt of acknowledgment of the transfer of the insurance policy.

(e) Failure to tender consideration to the owner for the life settlement contract within the time disclosed pursuant to Section 10(a)(6) renders the life settlement contract voidable by the owner for lack of consideration.

(f) Contacts with the insured for the purpose of determining the health status of the insured by the life settlement provider, life settlement broker or life settlement representative after the life settlement has occurred shall only be made by the life settlement provider or broker licensed in this state and shall be limited to once every three (3) months for insureds with a life expectancy of more than one year, and to no more than one per month for insureds with a life expectancy of one year or less. The provider or broker shall explain the procedure for these contacts at the time the life settlement contract is entered into. The limitations set forth in this subsection shall not apply to any contacts with an insured under a life policy for reasons other than determining the insured's health status.

SECTION 12. Authority to Promulgate Regulations. The Commissioner of Commerce and Insurance shall have the authority to:

- (a) Promulgate regulations implementing this act;
- (b) Establish standards for evaluating reasonableness of payments under life settlement contracts. This 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;
- (c) Establish appropriate licensing requirements, fees and standards for continued licensure for life settlement providers, representatives and brokers;
- (d) Require a bond or other mechanism for financial accountability for life settlement providers; and
- (e) Adopt rules governing the relationship and responsibilities of both insurers and life settlement providers, brokers and representatives during the settlement of a life insurance policy or certificate. Any rules promulgated pursuant to this act shall conform with the provisions of the Uniform Administrative Procedures Act, Chapter 4, Title 5.

SECTION 13. Unfair Trade Practices. A violation of this act shall be considered an unfair trade practice under Chapter 8 of this title, subject to the penalties contained in that chapter.

SECTION 14. Effective Date. This act shall become effective upon becoming law for rulemaking purposes, the public welfare requiring it. This act shall become effective for all other purposes on January 1, 2001.

PASSED: May 3, 2000


JOHN S. WILDER
SPEAKER OF THE SENATE


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 9th day of May 2000


DON SUNDQUIST, GOVERNOR