

**DRAFT ONLY
NOT APPROVED FOR
INTRODUCTION**

HOUSE BILL NO. _____

Insurance-life settlements.

Sponsored by: Joint Corporations, Elections and Political
Subdivisions Interim Committee

A BILL

for

1 AN ACT relating to insurance; providing for licensure of
2 life settlement providers and brokers; providing
3 definitions; providing for disclosures regarding life
4 settlement contracts and life insurance contracts;
5 providing for rescission of life settlement contracts;
6 providing for approval of contract forms by insurance
7 commissioner; restricting premium finance loans; and
8 providing for an effective date.

9

10 *Be It Enacted by the Legislature of the State of Wyoming:*

11

12 **Section 1.** W.S. 26-51-101 through 26-51-105 are
13 created to read:

1

2

ARTICLE 51

3

LIFE SETTLEMENTS

4

5

26-51-101. Definitions.

6

7

(a) As used in this article:

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(i) "Advertisement" means any written, electronic or printed communication or any communication by means of recorded telephone messages or transmitted on radio, television, the Internet, the World Wide Web or a similar proprietary or common carrier electronic system, including film strips, motion pictures and videos, published, disseminated, circulated or placed before the public, directly or indirectly, for the purpose of creating an interest in or inducing a person to purchase or sell, assign, devise, bequest or transfer the death benefit or ownership of a life insurance policy or an interest in a life insurance policy pursuant to a life settlement contract;

22

1 (ii) "Broker" means a person who, on behalf of an
2 owner and for a fee, commission or other valuable
3 consideration, offers or attempts to negotiate life
4 settlement contracts between an owner and providers. A
5 broker represents only the owner and owes a fiduciary duty
6 to the owner to act according to the owner's instructions,
7 and in the best interest of the owner, notwithstanding the
8 manner in which the broker is compensated. "Broker" does
9 not include an attorney, certified public accountant or
10 financial planner retained in the type of practice
11 customarily performed in his professional capacity to
12 represent the owner whose compensation is not paid directly
13 or indirectly by the provider or any other person, except
14 the owner;

15

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

20

21 (iv) "Financing entity" means an underwriter,
22 placement agent, lender, purchaser of securities, purchaser
23 of a policy or certificate from a provider, credit enhancer

1 or any entity that has a direct ownership in a policy or
2 certificate that is the subject of a life settlement
3 contract, as to which both of the following apply:

4

5 (A) It is an entity whose principal
6 activity related to the transaction is providing funds to
7 effect the life settlement contract or purchase of one (1)
8 or more policies;

9

10 (B) It is an entity that has an agreement
11 in writing with one (1) or more providers to finance the
12 acquisition of life settlement contracts.

13

14 (v) "Financing transaction" means a transaction
15 in which a licensed provider obtains financing from a
16 financing entity, including, without limitation, any
17 secured or unsecured financing, any securitization
18 transaction or any securities offering which either is
19 registered or exempt from registration under federal and
20 state securities law;

21

22 (vi) "Fraudulent life settlement act" includes
23 all of the following:

1

2

(A) Acts or omissions committed by any person that, for the purpose of depriving another of property or for pecuniary gain, commits or permits its employees or its agents to engage in acts, including, but not limited to, the following:

7

8

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

15

16

***** Staff note: Should these be limited to life insurance policies? *****

18

19

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

21

22

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

23

1

2

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

5

6

(4) Premiums paid on an insurance policy;

8

9

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

12

13

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

15

16

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

19

20

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

22

1 (9) Any application for, or the
2 existence of or any payments related to, a loan secured
3 directly or indirectly by any interest in a life insurance
4 policy.

5
6 (II) Entering into Stranger-Originated
7 Life Insurance (STOLI);

8
9 (III) Employing any device, scheme, or
10 artifice to defraud in the business of life settlements.

11
12 (B) Any of the following that any person
13 does, or permits his employees or agents to do, in the
14 furtherance of a fraud, or to prevent the detection of a
15 fraud:

16
17 (I) Remove, conceal, alter, destroy or
18 sequester from the commissioner the assets or records of a
19 licensee or other person engaged in the business of life
20 settlements;

21

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

4

5 (III) Transact the business of life
6 settlements in violation of laws requiring a license,
7 certificate of authority or other legal authority for the
8 transaction of the business of life settlements;

9

10 (IV) File with the commissioner or the
11 chief insurance regulatory official of another jurisdiction
12 a document containing false information or otherwise
13 concealing information about a material fact from the
14 commissioner;

15

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

21

22 (VI) Enter into, broker or otherwise
23 deal in a life settlement contract, the subject of which is

1 a life insurance policy that was obtained by presenting
2 false information concerning any fact material to the
3 policy or by concealing, for the purpose of misleading
4 another, information requested concerning any fact material
5 to the policy, where the owner or the owner's agent
6 intended to defraud the policy's issuer;

7

8 (VII) Attempt to commit, assist, aid
9 or abet in the commission of, or conspiracy to commit the
10 acts or omissions specified in this paragraph;

11

12 (VIII) Misrepresent the state of
13 residence of an owner to be a state or jurisdiction that
14 does not have a law substantially similar to this article
15 for the purpose of evading or avoiding the provisions of
16 this article.

17

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

21

22 (viii) "Life expectancy" means the arithmetic
23 mean of the number of months the insured under the life

1 insurance policy to be settled can be expected to live as
2 determined by a life expectancy company considering medical
3 records and appropriate experiential data;

4

5 (ix) "Life insurance producer" means any person
6 licensed in this state as a resident or nonresident
7 insurance agent who has received qualification or authority
8 for life insurance coverage or a life line of coverage
9 pursuant to W.S. 26-9-207;

10

11 (x) "Life settlement contract" means a written
12 agreement solicited, negotiated or entered into in this
13 state between a provider and an owner, establishing the
14 terms under which compensation or any thing of value will
15 be paid, which compensation or thing of value is less than
16 the expected death benefit of the insurance policy or
17 certificate, in return for the owner's assignment,
18 transfer, sale, devise or bequest of the death benefit or
19 any portion of an insurance policy or certificate of
20 insurance for compensation, provided, however, that the
21 minimum value for a life settlement contract shall be
22 greater than a cash surrender value or accelerated death
23 benefit available at the time of an application for a life

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

9

10 (A) Includes a premium finance loan made for
11 a policy on or before the date of issuance of the policy
12 where one (1) or more of the following conditions apply:

13

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

18

19 (II) The owner receives on the date of
20 the premium finance loan a guarantee of the future life
21 settlement value of the policy;

22

1 (III) The owner agrees on the date of
2 the premium finance loan to sell the policy or any portion
3 of the policy's death benefit on any date following the
4 issuance of the policy, not including an agreement to sell
5 the policy in the event of a default, provided that the
6 default is not pursuant to an agreement or understanding
7 with any other person for the purpose of evading regulation
8 under this article.

9

10 (B) Does not include any of the following:

11

12 (I) A policy loan by a life insurance
13 company pursuant to the terms of the life insurance policy
14 or accelerated death benefit provisions contained in the
15 life insurance policy, whether issued with the original
16 policy or as a rider;

17

18 (II) A premium finance loan, as defined
19 herein, or any loan made by a bank or other licensed
20 financial institution, provided that neither default on the
21 loan nor the transfer of the policy in connection with the
22 default is pursuant to an agreement or understanding with

1 any other person for the purpose of evading regulation
2 under this article;

3

4 (III) A collateral assignment of a life
5 insurance policy by an owner;

6

7 (IV) An agreement where all of the
8 parties satisfy one (1) of the following conditions:

9

10 (1) They are closely related to
11 the insured by blood or law;

12

13 (2) They have a lawful
14 substantial economic interest in the continued life, health
15 and bodily safety of the person insured;

16

17 (3) They are trusts established
18 primarily for the benefit of those parties.

19

20 (V) Any designation, consent or
21 agreement by an insured who is an employee of an employer
22 in connection with the purchase by the employer, or by a

1 trust established by the employer of life insurance on the
2 life of the employee;

3

4 (VI) A bona fide business succession
5 planning arrangement:

6

7 (1) Between one (1) or more
8 shareholders in a corporation or between a corporation and
9 one (1) or more of its shareholders or one (1) or more
10 trusts established by its shareholders;

11

12 (2) Between one (1) or more
13 partners in a partnership or between a partnership and one
14 (1) or more of its partners or one (1) or more trusts
15 established by its partners;

16

17 (3) Between one (1) or more
18 members in a limited liability company or between a limited
19 liability company and one (1) or more of its members or one
20 (1) or more trusts established by its members.

21

22 (VII) An agreement entered into by a
23 service recipient, or a trust established by the service

1 recipient, and a service provider, or a trust established
2 by the service provider, who performs significant services
3 for the service recipient's trade or business;

4

5 (VIII) Any other contract, transaction
6 or arrangement from the definition of "life settlement
7 contract" that the commissioner determines is not of the
8 type intended to be regulated by this article.

9

10 (xi) "Net death benefit" means the amount of the
11 life insurance policy or certificate to be settled less any
12 outstanding debts or liens;

13

14 (xii) "Owner" means the owner of a life insurance
15 policy or a certificate holder under a group policy, with
16 or without a terminal illness, who enters or seeks to enter
17 into a life settlement contract. For the purposes of this
18 article, an owner shall not be limited to an owner of a
19 life insurance policy or a certificate holder under a group
20 policy that insures the life of an individual with a
21 terminal illness or condition except where specifically
22 addressed. The term "owner" does not include any of the
23 following:

1

2

(A) Any provider or other licensee under
this article;

4

5

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

8

9

(C) A financing entity;

10

11

(D) A special purpose entity;

12

13

(E) A related provider trust.

14

15

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

21

22

(xiv) "Policy" means an individual or group
policy, group certificate, contract or arrangement of life

23

1 insurance owned by a resident of this state, regardless of
2 whether delivered or issued for delivery in this state;

3

4 (xv) "Premium finance loan" is a loan made
5 primarily for the purpose of making premium payments on a
6 life insurance policy, which loan is secured by an interest
7 in the life insurance policy;

8

9 (xvi) "Provider" means a person, other than an
10 owner, who enters into or effectuates a life settlement
11 contract with an owner. A provider does not include any of
12 the following:

13

14 (A) Any bank, savings bank, savings and loan
15 association or credit union;

16

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

22

1 (C) The insurer of a life insurance policy
2 or rider to the extent of providing accelerated death
3 benefits or riders or cash surrender value;

4

5 (D) A purchaser;

6

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

11

12 (F) A financing entity;

13

14 (G) A related provider trust;

15

16 (H) A broker;

17

18 (J) An accredited investor or qualified
19 institutional buyer as defined respectively in Regulation
20 D, Rule 501 or Rule 144A of the federal Securities Act of
21 1933, as amended, who purchases a life settlement policy
22 from a provider.

23

1 (xvii) "Purchaser" means a person who pays
2 compensation or any thing of value as consideration for a
3 beneficial interest in a trust which is vested with, or for
4 the assignment, transfer or sale of, an ownership or other
5 interest in a life insurance policy or a certificate issued
6 pursuant to a group life insurance policy which has been
7 the subject of a life settlement contract;

8
9 (xviii) "Related provider trust" means a titling
10 trust or other trust established by a licensed provider or
11 a financing entity for the sole purpose of holding the
12 ownership or beneficial interest in purchased policies in
13 connection with a financing transaction. In order to
14 qualify as a related provider trust, the trust shall have a
15 written agreement with the licensed provider under which
16 the licensed provider is responsible for ensuring
17 compliance with all statutory and regulatory requirements
18 and under which the trust agrees to make all records and
19 files relating to life settlement transactions available to
20 the department as if those records and files were
21 maintained directly by the licensed provider;

22

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

4

5 (xx) "Special purpose entity" means a
6 corporation, partnership, trust, limited liability company
7 or other legal entity whose securities pay a fixed rate of
8 return commensurate with established asset-backed capital
9 markets, or has been formed solely to provide either
10 directly or indirectly access to institutional capital
11 markets:

12

13 (A) For a financing entity or provider;

14

15 (B) In connection with a transaction in
16 which the securities in the special purpose entity are
17 acquired by the owner or by a "qualified institutional
18 buyer" as defined in Rule 144 promulgated under the federal
19 Securities Act of 1933, as amended.

20

21 (xxi) "Stranger-originated life insurance" or
22 "STOLI" is an act, practice or arrangement to initiate the
23 issuance of a life insurance policy in this state for the

1 benefit of a third-party investor who, at the time of
2 policy origination, has no insurable interest, under the
3 laws of this state, in the life of the insured. STOLI
4 practices include, but are not limited to, cases in which
5 life insurance is purchased with resources or guarantees
6 from or through a person or entity, that, at the time of
7 policy inception, could not lawfully initiate the policy
8 himself, and where, at the time of inception, there is an
9 arrangement or agreement, to directly or indirectly
10 transfer the ownership of the policy or the policy benefits
11 to a third party. Trusts that are created to give the
12 appearance of insurable interest and that are used to
13 initiate policies for investors violate insurable interest
14 laws and the prohibition against wagering on life. STOLI
15 arrangements do not include otherwise lawful life
16 settlement contracts as permitted by this article or the
17 practices set forth in subparagraph (a)(x)(B) of this
18 section;

19

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

23

1 **23-51-102. Life settlements; licensing.**

2

3 (a) This section applies to any person entering into,
4 brokering or soliciting life settlements pursuant to this
5 article.

6

7 (b) Except as provided in subsection (d) of this
8 section, no person shall enter into, broker or solicit a
9 life settlement contract unless that person has been
10 licensed by the commissioner under this section. The
11 person shall file an application for a license in the form
12 prescribed by the commissioner and the application shall be
13 accompanied by a fee established pursuant to W.S. 26-6-204.
14 The applicant shall provide any information the
15 commissioner may require. The commissioner may issue a
16 license, or deny the application if, in his discretion, it
17 is determined that it is contrary to the interests of the
18 public to issue a license to the applicant. The reasons
19 for a denial shall be set forth in writing.

20

21 (c) An individual acting as a broker under this
22 section shall complete at least fifteen (15) hours of
23 continuing education related to life settlements and life

1 settlement transactions, as required and approved by the
2 commissioner, prior to operating as a broker. This
3 requirement shall not apply to a life insurance producer
4 who qualifies under subsection (e) of this section.

5
6 (d) A life insurance producer who has been duly
7 licensed as a life agent in this state for at least one (1)
8 year or a licensed nonresident producer in this state who
9 has been licensed as a insurance producer with a life line
10 of authority in his home state for one (1) year shall be
11 deemed to meet the licensing requirements of this section
12 and shall be permitted to operate as a broker. Not later
13 than ten (10) days from the first day of operating as a
14 broker, the life insurance producer shall notify the
15 commissioner that he is acting as a broker on a form
16 prescribed by the commissioner and shall pay any applicable
17 fee to be determined by the commissioner. Notification
18 shall include an acknowledgment by the life insurance
19 producer that he will operate as a broker in accordance
20 with this article.

21
22 (e) An insurer that issued a policy that is the
23 subject of a life settlement contract shall not be

1 responsible for any act or omission of a broker or provider
2 arising out of, or in connection with, the life settlement
3 transaction, unless the insurer receives compensation for
4 the replacement of the life settlement contract from the
5 provider or broker.

6

7 (f) No person licensed pursuant to this section shall
8 engage in any false or misleading advertising, solicitation
9 or practice. In no case shall a broker or provider,
10 directly or indirectly, market, advertise, solicit or
11 otherwise promote the purchase of a new policy for the sole
12 purpose of or with a primary emphasis on settling the
13 policy or use the words "free," "no cost" or words of
14 similar import in the marketing, advertising, soliciting or
15 otherwise promoting of the purchase of a policy.

16

17 (g) Any person who enters into a life settlement with
18 a life settlement licensee shall have the absolute right to
19 rescind the settlement within thirty (30) days of the date
20 it is executed by all parties and the owner has received
21 all required disclosures or fifteen (15) days from receipt
22 by the owner of the proceeds of the settlement, whichever
23 is sooner, and any waiver or settlement language contrary

1 to this subsection shall be void. Rescission, if exercised
2 by the owner, is effective only if both notice of
3 rescission is given and the owner repays all proceeds and
4 any premiums, loans and loan interest paid on account of
5 the provider within the rescission period. If the insured
6 dies during the rescission period, the contract shall be
7 deemed to have been rescinded subject to repayment by the
8 owner or the owner's estate of all proceeds and any
9 premiums, loans and loan interest to the provider.

10

11 (h) Any licensee under this article shall be subject
12 to the authority and jurisdiction of the insurance
13 commissioner as provided in this title.

14

15 **26-51-103. Life settlement contracts; disclosures.**

16

17 (a) A life settlement licensee shall file with the
18 department a copy of all life settlement forms used in this
19 state. No licensee shall use any life settlement form in
20 this state unless it has been provided in advance to the
21 commissioner. The commissioner may disapprove a life
22 settlement form if, in his discretion, the form, or
23 provisions contained therein, are contrary to the interests

1 of the public or otherwise misleading or unfair to the
2 consumer. In the case of disapproval, the licensee may,
3 within fifteen (15) days of notice of the disapproval,
4 request a hearing before the commissioner or his designee,
5 and the hearing shall be held within thirty (30) days of
6 the request.

7

8 (b) Life settlement licensees shall be required to
9 provide any applicant for a life settlement contract, at
10 the time of application for the life settlement contract,
11 all of the following disclosures in writing and signed by
12 the owner, in at least twelve (12) point type:

13

14 (i) That there are possible alternatives to life
15 settlements, including, but not limited to, accelerated
16 benefits options that may be offered by the life insurer;

17

18 (ii) The fact that some or all of the proceeds of
19 a life settlement may be taxable and that assistance should
20 be sought from a professional tax adviser;

21

22 (iii) That there may be consequences for
23 interruption of public assistance;

1

2 (iv) That the proceeds from a life settlement
3 could be subject to the claims of creditors;

4

5 (v) That entering into a life settlement contract
6 may cause other rights or benefits, including conversion
7 rights and waiver of premium benefits that may exist under
8 the policy or certificate of a group policy to be forfeited
9 by the owner and that assistance should be sought from a
10 professional financial adviser;

11

12 (vi) That a change in ownership of the settled
13 policy could limit the insured's ability to purchase
14 insurance in the future on the insured's life because there
15 is a limit to how much coverage insurers will issue on one
16 (1) life;

17

18 (vii) That the owner has a right to rescind a
19 life settlement contract within thirty (30) days of the
20 date it is executed by all parties and the owner has
21 received all required disclosures, or fifteen (15) days
22 from receipt by the owner of the proceeds of the
23 settlement, whichever is sooner. Rescission, if exercised

1 by the owner, is effective only if both notice of
2 rescission is given and the owner repays all proceeds and
3 any premiums, loans and loan interest paid on account of
4 the provider within the rescission period. If the insured
5 dies during the rescission period, the contract shall be
6 deemed to have been rescinded subject to repayment by the
7 owner or the owner's estate of all proceeds and any
8 premiums, loans and loan interest to the provider;

9

10 (viii) That proceeds will be sent to the owner
11 within three (3) business days after the provider has
12 received the insurer or group administrator's
13 acknowledgment that ownership of the policy or the interest
14 in the certificate has been transferred and the beneficiary
15 has been designated in accordance with the terms of the
16 life settlement contract;

17

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

20

21 (x) The disclosure document shall include the
22 following language:

23

1 "All medical, financial or personal information solicited
2 or obtained by a provider or broker about an insured,
3 including the insured's identity or the identity of family
4 members, a spouse or a significant other may be disclosed
5 as necessary to effect the life settlement contract between
6 the owner and provider. If you are asked to provide this
7 information, you will be asked to consent to the
8 disclosure. The information may be provided to someone who
9 buys the policy or provides funds for the purchase. You
10 may be asked to renew your permission to share information
11 every two (2) years."

12

13 (xi) That the insured may be contacted by either
14 the provider or the broker or its authorized representative
15 for the purpose of determining the insured's health status
16 or to verify the insured's address. This contact is
17 limited to once every three (3) months if the insured has a
18 life expectancy of more than one (1) year and no more than
19 once per month if the insured has a life expectancy of one
20 (1) year or less;

21

22 (xii) Any affiliations or contractual relations
23 between the provider and the broker and the affiliation, if

1 any, between the provider and the issuer of the policy to
2 be settled;

3

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

9

10 (xiv) The name, business address and telephone
11 number of the broker.

12

13 (c) The broker shall provide the owner and the insured
14 with at least all of the following disclosures in writing
15 prior to the signing of the life settlement contract by all
16 parties. The disclosures shall be clearly displayed in the
17 life settlement contract or in a separate document signed
18 by the owner:

19

20 (i) The name, business address and telephone
21 number of the broker;

22

1 (ii) A full, complete and accurate description of
2 all of the offers, counteroffers, acceptances and
3 rejections relating to the proposed life settlement
4 contract;

5

6 (iii) A disclosure of any affiliations or
7 contractual arrangements between the broker and any person
8 making an offer in connection with the proposed life
9 settlement contract;

10

11 (iv) A complete reconciliation of the gross offer
12 or bid by the provider to the net amount of proceeds or
13 value to be received by the owner. For the purposes of
14 this paragraph, gross offer or bid shall mean the total
15 amount or value offered by the provider for the purchase of
16 one (1) or more life insurance policies, inclusive of
17 commissions and fees;

18

19 (v) All estimates of the life expectancy of the
20 insured which are obtained by the licensee in connection
21 with the life settlement, unless such disclosure would
22 violate any Wyoming or federal privacy law.

23

1 (d) The commissioner may consider any failure to
2 provide the disclosures or rights described in this section
3 as a basis for suspending or revoking a broker's or
4 provider's license.

5
6 (e) Except as otherwise allowed or required by law, a
7 provider, broker, insurance company, insurance producer,
8 information bureau, rating agency or company or any other
9 person with actual knowledge of an insured's identity,
10 shall not disclose the identity of an insured or
11 information that there is a reasonable basis to believe
12 could be used to identify the insured or the insured's
13 financial or medical information to any other person unless
14 the disclosure is one (1) or more of the following:

15
16 (i) It is necessary to effectuate a life
17 settlement contract between the owner and a provider and
18 the owner and insured have provided prior written consent
19 to the disclosure;

20
21 (ii) It is necessary to effectuate the sale of
22 life settlement contracts or interests therein as
23 investments, provided the sale is conducted in accordance

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

4

5 (iii) It is provided in response to an
6 investigation or examination by the commissioner or any
7 other governmental officer or agency or any other provision
8 of law;

9

10 (iv) It is a term or condition to the transfer of
11 a policy by one (1) provider to another provider, in which
12 case the receiving provider shall be required to comply
13 with the confidentiality requirements of this subsection;

14

15 (v) It is necessary to allow the provider or
16 broker or their authorized representatives to make contacts
17 for the purpose of determining health status. For purposes
18 of this subsection, the term "authorized representative"
19 shall not include any person who has or may have any
20 financial interest in the settlement contract other than a
21 provider or licensed broker and a provider or broker shall
22 require its authorized representative to agree in writing
23 to adhere to the privacy provisions of this article;

1

2 (vi) It is required to purchase stop loss

3 coverage.

4

5 (f) In addition to other questions an insurance
6 carrier may lawfully pose to a life insurance applicant,
7 insurance carriers may inquire in the application for
8 insurance whether the proposed owner intends to pay
9 premiums with the assistance of financing from a lender
10 that will use the policy as collateral to support the
11 financing. If the premium finance loan provides funds
12 which can be used for a purpose other than paying for the
13 premiums, costs and expenses associated with obtaining and
14 maintaining the life insurance policy and loan, the
15 application shall be rejected as a violation of a
16 prohibited practice under this article. If the financing
17 does not violate this subsection or violate the insurer's
18 lawful underwriting guidelines, the insurer may not reject
19 the life insurance application solely because the premiums
20 will be financed. The insurance carrier shall make
21 disclosures to the applicant, either on the application or
22 an amendment to the application to be completed no later

1 than the delivery of the policy, including, but not limited
2 to, the following:

3

4 "If you have entered into a loan arrangement where the
5 policy is used as collateral and the policy changes
6 ownership at some point in the future in satisfaction of
7 the loan, the following may be true:

8

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

11

12 (B) A change of ownership could in the future limit
13 your ability to purchase insurance on the insured's life
14 because there is a limit to how much coverage insurers will
15 issue on a life.

16

17 (C) You should consult a professional adviser since a
18 change in ownership in satisfaction of the loan may result
19 in tax consequences to the owner, depending on the
20 structure of the loan."

21

1 (g) In addition to the disclosures in subsection (h) of
2 this section, the insurance carrier may require the
3 following certifications from the applicant or the insured:
4

5 “(A) I have not entered into any agreement or
6 arrangement under which I have agreed to make a future sale
7 of this life insurance policy.
8

9 (B) My loan arrangement for this policy provides
10 funds sufficient to pay for some or all of the premiums,
11 costs and expenses associated with obtaining and
12 maintaining my life insurance policy, but I have not
13 entered into any agreement by which I am to receive
14 consideration in exchange for procuring this policy.
15

16 (C) The borrower has an insurable interest in the
17 insured.”
18

19 (h) Life insurers shall provide individual life
20 insurance policyholders with a statement informing them
21 that if they are considering making changes in the status
22 of their policy, they should consult with a licensed
23 insurance or financial advisor. The statement may

1 accompany or be included in notices or mailings otherwise
2 provided to such policyholders.

3

4 (j) The commissioner may adopt rules and regulations
5 reasonably necessary to govern life settlements and
6 transactions.

7

8 **26-51-104. Life settlement policies; verifications.**

9

10 (a) A provider entering into a life settlement
11 contract with any owner of a policy, wherein the insured is
12 terminally ill, shall first obtain the following:

13

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

18

19 (ii) A document in which the insured consents to
20 the release of his medical records to a provider,
21 settlement broker or insurance producer and, if the policy
22 was issued less than two (2) years from the date of

1 application for a settlement contract, to the insurance
2 company that issued the policy.

3

4 (b) The insurer shall respond to a request for
5 verification of coverage submitted by a provider,
6 settlement broker or life insurance producer not later than
7 thirty (30) calendar days of the date the request is
8 received. The request for verification of coverage shall
9 be made on a form approved by the commissioner. The
10 insurer shall complete and issue the verification of
11 coverage or indicate in which respects it is unable to
12 respond. In its response, the insurer shall indicate
13 whether, based on the medical evidence and documents
14 provided, the insurer intends to pursue an investigation at
15 that time regarding the validity of the insurance contract.

16

17 (c) Before or at the time of execution of the
18 settlement contract, the provider shall obtain a witnessed
19 document in which the owner consents to the settlement
20 contract, represents that the owner has a full and complete
21 understanding of the settlement contract and a full and
22 complete understanding of the benefits of the policy,
23 acknowledges that the owner is entering into the settlement

1 contract freely and voluntarily and, for persons with a
2 terminal illness or condition, acknowledges that the
3 insured has a terminal illness and that the terminal
4 illness or condition was diagnosed after the policy was
5 issued.

6

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

11

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

16

17 (f) If a broker performs those verification of
18 coverage activities required of the provider, the provider
19 is deemed to have fulfilled the requirements of this
20 section.

21

22 (g) Within twenty (20) days after an owner executes
23 the life settlement contract, the provider shall give

1 written notice to the insurer that issued the insurance
2 policy that the policy has become subject to a life
3 settlement contract.

4

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

9

10 **26-51-105. Life settlement contracts; generally.**

11

12 (a) All life settlement contracts entered into in this
13 state shall provide that the owner may rescind the contract
14 as provided in W.S. 26-51-102(h).

15

16 (b) Within three (3) business days after receipt from
17 the owner of documents to effect the transfer of the
18 insurance policy, the provider shall pay the proceeds of
19 the settlement to an escrow or trust account managed by a
20 trustee or escrow agent in a state or federally chartered
21 financial institution pending acknowledgment of the
22 transfer by the issuer of the policy. The trustee or
23 escrow agent shall be required to transfer the proceeds due

1 to the owner within three (3) business days of receipt of
2 acknowledgment of the transfer from the insurer.

3

4 (c) Failure to tender the life settlement contract
5 proceeds to the owner by the date disclosed to the owner
6 renders the contract voidable by the owner for lack of
7 consideration until the time the proceeds are tendered to
8 and accepted by the owner. A failure to give written
9 notice of the right of rescission hereunder shall toll the
10 right of rescission until thirty (30) days after the
11 written notice of the right of rescission has been given.

12

13 (d) Any fee paid by a provider, party, individual or
14 an owner to a broker in exchange for services provided to
15 the owner pertaining to a life settlement contract shall be
16 computed as a percentage of the offer obtained, not the
17 face value of the policy. Nothing in this section shall be
18 construed as prohibiting a broker from reducing its
19 broker's fee below this percentage if the broker so
20 chooses.

21

1 (e) The broker shall disclose to the owner any thing
2 of value paid or given to a broker, which relates to a life
3 settlement contract.

4
5 (f) No person at any time prior to, or at the time of,
6 the application for, or issuance of a policy or during a
7 two (2) year period commencing with the date of issuance of
8 the policy, shall enter into a life settlement regardless
9 of the date the compensation is to be provided and
10 regardless of the date the assignment, transfer, sale,
11 devise, bequest or surrender of the policy is to occur.
12 This prohibition shall apply as follows:

13
14 (i) The prohibition under this subsection shall
15 not apply if the owner certifies to the provider that the
16 policy was issued upon the owner's exercise of conversion
17 rights arising out of a group or individual policy,
18 provided the total of the time covered under the conversion
19 policy plus the time covered under the prior policy is at
20 least twenty-four (24) months. The time covered under a
21 group policy shall be calculated without regard to a change
22 in insurance carriers, provided the coverage has been
23 continuous and under the same group sponsorship;

1

2 (ii) The prohibition under this subsection shall
3 not apply if the owner submits independent evidence to the
4 provider that one (1) or more of the following conditions
5 have been met within the two (2) year period:

6

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

8

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

14

15 (C) The owner's spouse dies;

16

17 (D) The owner divorces his spouse;

18

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

21

1 (F) The owner becomes physically or mentally
2 disabled and a physician determines that the disability
3 prevents the owner from maintaining full-time employment;
4

5 (G) A final order, judgment or decree is
6 entered by a court of competent jurisdiction, on the
7 application of a creditor of the owner, adjudicating the
8 owner bankrupt or insolvent or approving a petition seeking
9 reorganization of the owner or appointing a receiver,
10 trustee or liquidator to all or a substantial part of the
11 owner's assets.
12

13 (iii) Copies of the independent evidence required
14 by paragraph (ii) of this subsection shall be submitted to
15 the insurer when the provider submits a request to the
16 insurer for verification of coverage. The copies shall be
17 accompanied by a letter of attestation from the provider
18 that the copies are true and correct copies of the
19 documents received by the provider. Nothing in this
20 paragraph shall prohibit an insurer from exercising its
21 right to contest the validity of any policy. If the
22 provider submits to the insurer a copy of independent
23 evidence provided for in subparagraph (ii)(A) of this

1 subsection when the provider submits a request to the
2 insurer to effectuate the transfer of the policy to the
3 provider, the copy shall be deemed to establish that the
4 settlement contract satisfies the requirements of this
5 subsection.

6

7 (iv) The prohibition under this subsection shall
8 apply only to policies issued on or after July 1, 2009.

9

10 (g) An insurer shall not:

11

12 (1) Engage in any transaction, act or practice
13 that restricts, limits or impairs the lawful transfer of
14 ownership, change of beneficiary or assignment of a policy;

15

16 (2) Make any false or misleading statement for the
17 purpose of dissuading an owner or insured from a lawful
18 life settlement contract.

19

20 (h) No person providing premium financing shall
21 receive any proceeds, fees or other consideration from the
22 policy or owner of the policy that are in addition to the
23 amounts required to pay principal, interest and any

1 reasonable costs or expenses incurred by the lender or
2 borrower in connection with the premium finance agreement,
3 except for the event of a default, unless either the
4 default on the loan or transfer of the policy occurs
5 pursuant to an agreement or understanding with any other
6 person for the purpose of evading regulation under this
7 article.

8

9 (j) If there is more than one (1) owner on a single
10 policy, and the owners are residents of different states,
11 the life settlement contract shall be governed by the law
12 of the state in which the owner having the largest
13 percentage ownership resides or, if the owners hold equal
14 ownership, the state of residence of one (1) owner agreed
15 upon in writing by all of the owners. The law of the state
16 of the insured shall govern in the event that equal owners
17 fail to agree in writing upon a state of residence for
18 jurisdictional purposes.

19

20 (k) A provider from this state who enters into a life
21 settlement contract with an owner who is a resident of
22 another state that has enacted statutes or adopted
23 regulations governing life settlement contracts shall be

1 governed in the effectuation of that life settlement
2 contract by the statutes and regulations of the owner's
3 state of residence. If the state in which the owner is a
4 resident has not enacted statutes or regulations governing
5 life settlement contracts, the provider shall give the
6 owner notice that neither state regulates the transaction
7 upon which he is entering. For transactions in those
8 states, however, the provider is to maintain all records
9 required if the transactions were executed in the state of
10 residence. The forms used in those states need not be
11 approved by the commissioner.

12

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

17

18 (n) It is a fraudulent life settlement act and a
19 violation of this section for any person to do any of the
20 following, or any of the acts listed in subdivision (G) of
21 W.S. 26-51-101(a)(vi):

22

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

5

6 (ii) Engage in any transaction, practice or
7 course of business if a person knows or reasonably should
8 have known that the intent was to avoid the notice
9 requirements of this article;

10

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

14

15 (iv) Fail to provide the disclosures or file the
16 required reports with the commissioner as required by this
17 article;

18

19 (v) Issue, solicit or market the purchase of a
20 new life insurance policy for the purpose of, or with a
21 primary emphasis on, settling the policy;

22

1 (vi) Enter into a premium finance agreement with
2 any person or agency, or any person affiliated with a
3 person or agency that is prohibited under this article;

4

5 (vii) With respect to any settlement contract or
6 insurance policy and a broker, knowingly solicit an offer
7 from, effectuate a life settlement contract with or make a
8 sale to any provider, financing entity or related provider
9 trust that is controlling, controlled by or under common
10 control with a broker, unless the relationship has been
11 fully disclosed to the owner;

12

13 (viii) With respect to any life settlement
14 contract or insurance policy and a provider, knowingly
15 enter into a life settlement contract with an owner, if, in
16 connection with a life settlement contract, any thing of
17 value will be paid to a broker that is controlling,
18 controlled by or under common control with a provider or
19 the financing entity or related provider trust that is
20 involved in a settlement contract, unless the relationship
21 has been fully disclosed to the owner;

22

1 (ix) With respect to a provider, enter into a
2 life settlement contract unless the life settlement
3 promotional, advertising and marketing materials, as may be
4 prescribed by regulation, have been filed with the
5 commissioner. In no event shall any marketing materials
6 expressly reference that the insurance is "free" for any
7 period of time. The inclusion of any reference in the
8 marketing materials that would cause an owner to reasonably
9 believe that the insurance is free for any period of time
10 shall be considered a violation of this article, or with
11 respect to any life insurance producer, insurance company,
12 broker or provider make any statement or representation to
13 the applicant or policyholder in connection with the sale
14 or financing of a life insurance policy to the effect that
15 the insurance is free or without cost to the policyholder
16 for any period of time unless provided in the policy.

17

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

22

1 "Any person who knowingly presents false information in an
2 application for insurance or for a life settlement contract
3 may be subject to criminal or civil liability."

4

5 (p) The lack of a statement as required by subsection
6 (o) of this section does not constitute a defense in any
7 prosecution for a fraudulent life settlement act.

8

9 (q) Nothing in this article shall:

10

11 (i) Preempt the authority or relieve the duty of
12 other law enforcement or regulatory agencies to
13 investigate, examine and prosecute suspected violations of
14 law;

15

16 (ii) Preempt, supersede or limit any provision of
17 any state securities law or any rule, order or notice
18 issued thereunder;

19

20 (iii) Prevent or prohibit a person from
21 disclosing voluntarily information concerning life
22 settlement fraud to a law enforcement or regulatory agency
23 other than the insurance department;

1

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

6

7 (r) A provider lawfully transacting business in this
8 state prior to July 1, 2009 may continue to do so, pending
9 approval or disapproval of that person's application for a
10 license as long as the application is filed with the
11 commissioner not later than thirty (30) days after
12 publication by the commissioner of an application form and
13 instructions for licensure of providers. During the time
14 that an application is pending with the commissioner, the
15 applicant may use any form of life settlement contract that
16 has been filed with the commissioner pending approval
17 thereof, provided that the form is otherwise in compliance
18 with the provisions of this article. A person who has
19 lawfully acted as a broker and negotiated life settlement
20 contracts between any owner residing in this state and one
21 (1) or more providers for at least one (1) year immediately
22 prior to July 1, 2009 may continue to do so pending
23 approval or disapproval of that person's application for a

1 license, as long as the application is filed with the
2 commissioner not later than thirty (30) days after
3 publication by the commissioner of an application form and
4 instructions for licensure of brokers. Any person
5 transacting business in this state under this subsection
6 shall be obligated to comply with all other requirements of
7 this article.

8

9 **Section 2.** W.S. 26-16-102(a) is amended to read:

10

11 **26-16-102. Standard provisions required.**

12

13 (a) No life insurance policy, other than group and
14 pure endowments with or without return of premiums or of
15 premiums and interest, shall be delivered or issued for
16 delivery in this state unless it contains provisions
17 conforming in substance to each of the applicable
18 provisions specified in W.S. 26-16-103 through 26-16-114
19 and 26-51-103(f) through (h). This section does not apply
20 to annuity contracts nor to any provisions of a life
21 insurance policy, or contract supplemental thereto,
22 relating to disability benefits or to additional benefits
23 in case of death by accident or accidental means.

1

2

Section 3. This act is effective July 1, 2009.

3

4

(END)