

February 16, 2009

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1284

Page 5, line 26, after "provider" insert ", or any affiliate of the provider,"

Page 5, line 29, after "owner's" insert "present or future"

Page 5, line 30, after the second "or" insert "ownership of"

Page 10, line 27, after "**Licensing**" insert "**and bonding**"

Page 11, line 10, replace "chapter" with "title"

Page 13, remove line 4

Page 13, line 18, replace the underscored period with "; and

- f. If a provider or broker, has demonstrated evidence of financial responsibility in a format prescribed by the commissioner through a surety bond executed and issued by an insurer authorized to issue surety bonds in this state or through a deposit of cash, certificates of deposit, or securities or any combination thereof in the amount of one hundred fifty thousand dollars. The commissioner shall accept, as evidence of financial responsibility under this subdivision, proof that financial instruments in accordance with the requirements in this subdivision have been filed with one or more states in which the applicant is licensed as a provider or broker. The commissioner may ask for evidence of financial responsibility at any time the commissioner determines necessary. Any surety bond issued pursuant to this subdivision must specifically authorize recovery by the commissioner on behalf of any person in this state which sustained damages as the result of erroneous acts, failure to act, conviction of fraud, or conviction of unfair practices by the provider or broker."

Page 15, line 9, after "2." insert "The commissioner may suspend, revoke, or refuse to renew the license of a broker if the commissioner finds that the broker has violated this chapter or has otherwise engaged in bad-faith conduct with one or more owners.

3."

Page 22, replace lines 30 and 31 with:

- "e. The fact the owner has the right to rescind a life settlement contract before the earlier of sixty calendar days after the date upon which the life settlement contract is executed by all parties or thirty calendar

days after the life settlement proceeds have been delivered to the escrow agent by or on behalf of the provider as provided in subsection 11 of section 26.1-33.4-10."

Page 23, line 1, remove "received the disclosures contained herein."

Page 24, line 17, after the underscored period insert "This contact may be made only by a provider or broker licensed in the state in which the owner resided at the time of the settlement or by the authorized representative of such a provider or broker."

Page 24, after line 31, insert:

- "s. 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, that the owner must be informed of the possible loss of coverage on the other lives under the policy and must be advised to consult with the owner's insurance producer or the insurer issuing the policy for advice on the proposed settlement.
- t. The dollar amount of the current death benefit payable to the provider under the policy or certificate. If known, the provider also shall 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 extent to which the owner's interest in those benefits will be transferred as a result of the life settlement contract.
- u. Any affiliations or contractual arrangements between the provider and the purchaser."

Page 28, replace lines 20 through 27 with:

- "9. All life settlement contracts entered in this state must provide the owner with a right to rescind the contract before the earlier of sixty calendar days after the date upon which the life settlement contract is executed by all parties or thirty calendar days after the life settlement proceeds have been sent to the escrow agent by or on behalf of the provider as provided in subsection 11. Rescission by the owner may be conditioned upon the owner giving notice and repaying to the provider within the rescission period all proceeds of the settlement and any premiums, loans, and loan interest paid by or on behalf of the provider in connection with or as a consequence of the life settlement. If the insured dies during the rescission period, the life settlement contract is deemed to have been rescinded, subject to repayment to the provider or purchaser of all life settlement proceeds and any premiums, loans, and loan interest that have been paid by the provider or purchaser, within sixty calendar days of the death of the insured. In the event of any rescission, if the provider has paid commissions or other compensation to a broker in connection with the rescinded transaction, the broker shall refund all the commissions and compensation to the provider within five business days following receipt of written demand from the provider, which demand must be accompanied by either the owner's notice of rescission if rescinded at the election of the owner or notice of the death of the insured if rescinded by reason of the death of the insured within the applicable rescission period."

Page 29, replace line 3 with "the later to occur of the expiration of any then remaining rescission period or the escrow agent's receipt of the acknowledgment of the properly completed transfer of ownership, assignment, or designation of beneficiary from the insurance company."

Page 29, line 8, replace "thirty" with "sixty"

Page 29, replace lines 17 through 31 with:

- "14. It is a violation of this chapter for any person to enter a life settlement contract at any time before or at the time of the application for 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 unless the owner certifies to the provider or the provider otherwise conclusively shows that one or more of the following conditions have 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, provided the total of the time covered under the conversion policy plus the time covered under the prior policy is at least sixty months. The time covered under a group policy must be calculated without regard to any change in insurance carriers, provided the coverage has been continuous and under the same group sponsorship;
  - b. The owner submitted independent evidence to the provider that one or more of the following conditions have been met within the five-year period:
    - (1) The owner or insured is terminally or chronically ill;
    - (2) The owner's spouse died or no remaining beneficiaries are then surviving;
    - (3) The owner retired from full-time employment; or
    - (4) The owner became physically or mentally disabled and a physician determined that the disability prevents the owner from maintaining full-time employment;
  - c. A final order, judgment, or decree has been entered by a court of competent jurisdiction, on the application of a creditor of the owner, adjudicating the owner in default, 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
  - d. The owner entered 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 before the date that is two years after policy issuance, the following conditions are met:
    - (1) Policy premiums have been funded exclusively with unencumbered assets, including an interest in the life insurance policy being financed only to the extent of the policy's net cash surrender value, provided by, or fully recourse liability incurred by, the insured or a person described in paragraph 5 of subdivision b of subsection 11 of section 26.1-33.4-01;

- (2) 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
  - (3) Neither the insured nor the policy has been evaluated for settlement in connection with the issuance of the policy.
15. Copies of the independent evidence described in subdivision b of subsection 14 and documents required by subsection 1, 2, 3, or 7 must be submitted to the insurer when the provider submits a request to the insurer for verification of coverage. The copies must be accompanied by a letter of attestation from the provider that the copies are true and correct copies of the documents received by the provider.
16. If the provider submits to the insurer a copy of the owner's or insured's certification described in and the independent evidence required by subdivision b of subsection 14 when the provider submits a request to the insurer to effect the transfer of the policy or certificate to the provider, the copy is deemed to establish conclusively that the life settlement contract satisfies the requirements of this section and the insurer timely shall respond to the request."

Page 30, remove lines 1 through 26

Page 30, line 30, after "2." insert "The commissioner may establish standards for evaluating reasonableness of a payment under a life settlement contract for an individual who is terminally or chronically ill. This authority includes 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 an individual who is chronically or terminally ill.

3. The commissioner may establish appropriate licensing requirements, fees, and standards for continued licensure for providers and brokers.

4."

Renumber accordingly