START\_STATUTE20-3201.  Definitions

In this chapter, unless the context otherwise requires:

1.  "Advertising" means any written, electronic or printed communication or any communication by means of recorded telephone messages or transmitted by radio, television, the internet or similar communications media, including film strips, motion pictures and videos, that is published, disseminated, circulated or placed directly before an owner in this state for the purpose of creating an interest in or inducing an owner to purchase or sell, assign, devise, bequest or transfer the death benefit or ownership of a life insurance policy or an interest in a life insurance policy pursuant to a life settlement contract.

2.  "Broker":

(a)  Means a person who:

(i)  On behalf of an owner, and for a fee, commission or other valuable consideration, offers or attempts to negotiate life settlement contracts between an owner and providers.

(ii)  Represents only the owner.

(iii)  Owes a fiduciary duty to the owner to act according to the owner's instructions, and in the best interest of the owner, notwithstanding the manner in which the broker is compensated.

(b)  Does not include an attorney, certified public accountant or financial planner who is retained in the type of practice customarily performed in that professional capacity to represent the owner and whose compensation is not paid directly or indirectly by the provider or any other person, except the owner.

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

4.  "Chronic illness" means an illness that causes an individual to either:

(a)  Be unable to perform at least two activities of daily living.

(b)  Require substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment.

5.  "Financing entity" means an underwriter, placement agent, lender, purchaser of securities, purchaser of a policy or certificate from a provider, credit enhancer or any entity that has a direct ownership in a policy or certificate that is the subject of a life settlement contract and for which both of the following apply:

(a)  The entity's principal activity related to the transaction is providing monies to effect the life settlement contract or the purchase of one or more policies.

(b)  The entity has an agreement in writing with one or more providers to finance the acquisition of life settlement contracts.

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

7.  "Insured" means the person who is covered under the policy being considered for sale in a life settlement contract.

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

9.  "Life insurance producer" means any person who is licensed to transact life insurance business in this state pursuant to chapter 2, article 3 of this title.

10.  "Life settlement contract":

(a)  Means a written agreement between a provider and an owner that establishes the terms under which compensation or anything of value will be paid, which compensation or thing of value is less than the expected death benefit of the insurance policy or certificate, in return for the owner's assignment, transfer, sale, devise or bequest of the death benefit or any portion of an insurance policy or certificate of insurance for compensation if the minimum value for a life settlement contract is greater than a cash surrender value or accelerated death benefit available at the time of an application for a life settlement contract.

(b)  Includes the transfer for compensation or value of ownership or beneficial interest in a trust or other entity that owns the policy if the trust or other entity was formed or availed of for the principal purpose of acquiring one or more life insurance contracts that are owned by a person residing in this state.

(c)  Includes a premium finance loan made for a policy on or before the date of issuance of the policy if one or more of the following conditions apply:

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

(ii)  The owner receives on the date of the premium finance loan a guarantee of the future life settlement value of the policy.

(iii)  The owner agrees on the date of the premium finance loan to sell the policy or any portion of the policy's death benefit on any date following the issuance of the policy, not including an agreement to sell the policy in the event of a default, if the default is not pursuant to an agreement or understanding with any other person for the purpose of evading regulation under this chapter.

(d)  Does not include any of the following:

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

(ii)  A premium finance loan or any loan made by a bank or other licensed financial institution if the default on the loan or the transfer of the policy in connection with the default is pursuant to an agreement or understanding with any other person for the purpose of evading regulation under this chapter.

(iii)  A collateral assignment of a life insurance policy by an owner.

(iv)  A loan made by a lender if the loan is not described in subdivision (c) of this paragraph and is not otherwise within the definition of life settlement contract.

(v)  An agreement where all of the parties are either 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 in trusts established primarily for the benefit of those parties.

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

(vii)  A bona fide business succession planning arrangement 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, 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 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.

(viii)  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.

(ix)  Any other contract, transaction or arrangement that the director determines is not of the type intended to be regulated by this chapter.

11.  "Owner":

(a)  Means the owner of a policy, with or without a chronic illness or a terminal illness or condition, who enters or seeks to enter into a life settlement contract.

(b)  Is not limited to an owner of a policy that insures the life of an individual with a chronic illness or a terminal illness or condition except where specifically addressed.

(c)  Does not include any of the following:

(i)  Any provider or other licensee under this chapter.

(ii)  A qualified institutional buyer as defined in rule 144A of the federal securities act of 1933, as amended.

(iii)  A financing entity.

(iv)  A special purpose entity.

(v)  A related provider trust.

12.  "Person" means an individual or business entity.

13.  "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.

14.  "Premium finance loan" means a loan that is made primarily for the purpose of making premium payments on a life insurance policy and that is secured by an interest in the life insurance policy.

15.  "Provider":

(a)  Means a person, other than an owner, who enters into or effectuates a life settlement contract with an owner.

(b)  Does not include any of the following:

(i)  Any bank, savings bank, savings and loan association or credit union.

(ii)  A licensed lending institution or creditor or secured party pursuant to a premium finance loan agreement that takes an assignment of a life insurance policy or certificate issued pursuant to a group life insurance policy as collateral for a loan.

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

(iv)  A purchaser.

(v)  Any authorized or eligible insurer that provides stop loss coverage to a provider, purchaser, financing entity, special purpose entity or related provider trust.

(vi)  A financing entity.

(vii)  A related provider trust.

(viii)  A broker.

(ix)  An accredited investor or qualified institutional buyer, as defined in regulation D, rule 501 or rule 144A of the federal securities act of 1933, as amended, who purchases a life settlement policy from a provider.

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

17.  "Related provider trust" means a titling trust or other trust that is established by a licensed provider or a financing entity for the sole purpose of holding the ownership or beneficial interest in purchased policies in connection with a financing transaction and that has a written agreement with the licensed provider under which the licensed provider is responsible for ensuring compliance with all statutory and regulatory requirements and under which the trust agrees to make all records and files relating to life settlement transactions available to the department as if those records and files were maintained directly by the licensed provider.

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

19.  "Special purpose entity" means a corporation, partnership, trust, limited liability company or other legal entity whose securities pay a fixed rate of return commensurate with established asset-backed capital markets or that has been formed solely to provide either directly or indirectly access to institutional capital markets:

(a)  For a financing entity or provider.

(b)  In connection with a transaction in which the securities in the special purpose entity are acquired by the owner or by a qualified institutional buyer as defined in rule 144 of the federal securities act of 1933, as amended.

20.  "Stranger originated life insurance" means an intentional practice or plan as prescribed in section 20‑443.02.

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