
By: **Senator Bromwell**

Introduced and read first time: January 31, 2002

Assigned to: Finance

A BILL ENTITLED

AN ACT concerning

Insurance - Life Settlement Act

FOR the purpose of requiring a person to obtain a license from the Maryland Insurance Commissioner before the person acts as a provider, sales agent, or broker in the State in connection with a life settlement contract or a purchase agreement; prohibiting the use of a person to perform certain functions unless the person holds a certain license; requiring an applicant for a license to file a certain application in a certain manner, pay a certain fee, and submit certain information and documentation to the Commissioner; requiring the Commissioner to issue a license to an applicant under certain circumstances; prohibiting the Commissioner from issuing a license to a nonresident applicant under certain circumstances; authorizing the Commissioner to refuse to issue a license to an applicant that is an entity under certain circumstances; requiring a licensee to file a certain statement with the Commissioner; providing for the renewal of licenses; requiring that a form for a life settlement contract or a purchase agreement be filed with and approved by the Commissioner before it is used in the State; requiring the Commissioner to disapprove a form under certain circumstances; requiring a provider to make certain disclosures in a certain manner to the owner of a policy being sold under a life settlement contract; requiring a provider to obtain a certain statement and document before entering into a life settlement contract with an owner of a policy insuring an individual who is terminally ill or chronically ill; providing that a life settlement contract entered into within a certain period after the date of issuance of the policy to be acquired is void and unenforceable under certain circumstances; specifying the manner in which fees paid to a broker must be computed and requiring a broker to disclose to an owner certain fees paid to the broker; providing that a broker is deemed to represent only the owner and owes a fiduciary duty to the owner to act in a certain manner; specifying the manner in which proceeds of a life settlement contract are transferred to an owner; requiring a provider to make certain disclosures in a certain manner to a purchaser of an interest in a policy; providing that failure to give notice of certain rights of rescission tolls the rights of rescission; requiring certain records to be maintained and made available to the Commissioner; authorizing the Commissioner to examine the business and affairs of an applicant or licensee under certain circumstances; establishing certain prohibited acts; authorizing

the Commissioner to deny a license to an applicant or suspend, revoke, or refuse to renew a license under certain circumstances; authorizing the Commissioner to impose a certain penalty, require certain restitution, and issue a cease and desist order under certain circumstances; prohibiting the waiver by agreement of certain provisions of this Act; authorizing the Commissioner to adopt certain regulations; establishing a certain short title; defining certain terms; allowing providers, sales agents, and brokers transacting business in the State on the effective date of this Act to continue to transact business in the State without being licensed until a certain time under certain circumstances; and generally relating to life settlement contracts, purchase agreements, and the regulation of providers, sales agents, and brokers.

BY adding to

Article - Insurance

Section 8-601 through 8-619, inclusive, to be under the new subtitle "Subtitle 6. Life Settlement Act"

Annotated Code of Maryland

(1997 Volume and 2001 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article - Insurance

SUBTITLE 6. LIFE SETTLEMENT ACT.

8-601.

(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) "ADVERTISEMENT" MEANS A WRITTEN, ELECTRONIC, OR PRINTED COMMUNICATION OR A COMMUNICATION BY MEANS OF RECORDED TELEPHONE MESSAGE OR TRANSMISSION ON RADIO, TELEVISION, THE INTERNET, OR SIMILAR COMMUNICATIONS MEDIA, INCLUDING FILM STRIPS, MOTION PICTURES, AND VIDEOS, THAT IS PUBLISHED, DISSEMINATED, OR CIRCULATED TO INDUCE A PERSON TO SELL OR PURCHASE A POLICY OR AN INTEREST IN A POLICY UNDER A LIFE SETTLEMENT CONTRACT OR A PURCHASE AGREEMENT.

(C) (1) "BROKER" MEANS A PERSON THAT, 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 ONE OR MORE PROVIDERS.

(2) "BROKER" DOES NOT INCLUDE AN ATTORNEY, CERTIFIED PUBLIC ACCOUNTANT, OR FINANCIAL PLANNER:

(I) WHO IS RETAINED IN A PROFESSIONAL CAPACITY TO REPRESENT THE OWNER; AND

(II) WHOSE COMPENSATION IS NOT PAID DIRECTLY OR INDIRECTLY BY THE PROVIDER.

(D) "CHRONICALLY ILL" MEANS:

(1) BEING UNABLE TO PERFORM AT LEAST TWO ACTIVITIES OF DAILY LIVING, WHICH ARE EATING, TOILETING, TRANSFERRING, BATHING, DRESSING, OR CONTINENCE;

(2) REQUIRING SUBSTANTIAL SUPERVISION TO PROTECT THE INDIVIDUAL FROM THREATS TO HEALTH AND SAFETY DUE TO SEVERE COGNITIVE IMPAIRMENT; OR

(3) HAVING A LEVEL OF DISABILITY SIMILAR TO THAT DESCRIBED IN ITEM (1) OF THIS SUBSECTION, AS DETERMINED BY THE SECRETARY OF HEALTH AND MENTAL HYGIENE.

(E) (1) "FINANCING ENTITY" MEANS A PERSON:

(I) THAT IS AN UNDERWRITER, A PLACEMENT AGENT, A LENDER, A PURCHASER OF SECURITIES, A PERSON THAT ACQUIRES A POLICY FROM A PROVIDER, OR AN ENTITY THAT HAS A DIRECT OWNERSHIP INTEREST IN A POLICY THAT IS THE SUBJECT OF A LIFE SETTLEMENT CONTRACT; AND

(II) 1. WHOSE PRINCIPAL ACTIVITY RELATED TO THE TRANSACTION IS PROVIDING FUNDS TO EFFECT THE LIFE SETTLEMENT OR THE ACQUISITION OF ONE OR MORE PURCHASED POLICIES; OR

2. THAT HAS AN AGREEMENT IN WRITING WITH ONE OR MORE LICENSED PROVIDERS TO FINANCE THE ACQUISITION OF LIFE SETTLEMENT CONTRACTS.

(2) "FINANCING ENTITY" DOES NOT INCLUDE A PURCHASER OR A NONACCREDITED INVESTOR.

(F) (1) "FINANCING TRANSACTION" MEANS A TRANSACTION IN WHICH A LICENSED PROVIDER OBTAINS FINANCING FROM A FINANCING ENTITY.

(2) "FINANCING TRANSACTION" INCLUDES:

(I) SECURED OR UNSECURED FINANCING;

(II) A SECURITIZATION TRANSACTION; AND

(III) A SECURITIES OFFERING THAT EITHER IS REGISTERED OR EXEMPT FROM REGISTRATION UNDER FEDERAL AND STATE SECURITIES LAW.

(G) "INDEPENDENT ESCROW AGENT" MEANS A TITLING AGENT OR OTHER AGENT THAT:

(1) EXISTS FOR THE SOLE PURPOSE OF HOLDING THE OWNERSHIP OR BENEFICIAL INTEREST IN PURCHASED POLICIES; AND

(2) HAS A WRITTEN AGREEMENT WITH A LICENSED PROVIDER OR FINANCING ENTITY UNDER WHICH:

(I) THE LICENSED PROVIDER IS RESPONSIBLE FOR ENSURING COMPLIANCE WITH ALL STATUTORY AND REGULATORY REQUIREMENTS; AND

(II) THE AGENT AGREES TO MAKE ALL RECORDS AND FILES RELATED TO LIFE SETTLEMENT TRANSACTIONS AVAILABLE TO THE COMMISSIONER AS IF THOSE RECORDS AND FILES WERE MAINTAINED DIRECTLY BY THE LICENSED PROVIDER.

(H) (1) "LIFE SETTLEMENT CONTRACT" MEANS A WRITTEN AGREEMENT BETWEEN AN OWNER AND A PROVIDER THAT ESTABLISHES THE TERMS UNDER WHICH THE OWNER OF A POLICY WILL SELL, ASSIGN, TRANSFER, DEVISE, OR BEQUEATH THE EXPECTED DEATH BENEFIT PAYABLE UNDER THE POLICY FOR COMPENSATION THAT IS LESS THAN THE EXPECTED DEATH BENEFIT.

(2) "LIFE SETTLEMENT CONTRACT" INCLUDES:

(I) A CONTRACT FOR A LOAN OR OTHER LENDING TRANSACTION WITH AN OWNER THAT IS SECURED PRIMARILY BY A POLICY, OTHER THAN A LOAN BY A LIFE INSURER UNDER THE TERMS OF THE POLICY OR A LOAN SECURED BY THE CASH VALUE OF A POLICY; AND

(II) AN AGREEMENT WITH AN OWNER TO TRANSFER OWNERSHIP OR CHANGE THE BENEFICIARY DESIGNATION AT A LATER DATE REGARDLESS OF THE DATE THAT COMPENSATION IS PAID TO THE SELLER OR OWNER.

(I) (1) "OWNER" MEANS THE OWNER OF A LIFE INSURANCE POLICY OR A CERTIFICATE HOLDER UNDER A GROUP LIFE INSURANCE POLICY WHO ENTERS OR SEEKS TO ENTER INTO A LIFE SETTLEMENT CONTRACT.

(2) "OWNER" DOES NOT INCLUDE A LICENSEE UNDER THIS SUBTITLE.

(J) "POLICY" MEANS AN INDIVIDUAL OR GROUP POLICY, GROUP CERTIFICATE, OR CONTRACT OF LIFE INSURANCE THAT AFFECTS THE RIGHTS OF A RESIDENT OF THE STATE OR THAT BEARS A REASONABLE RELATION TO THE STATE, REGARDLESS OF WHETHER DELIVERED OR ISSUED FOR DELIVERY IN THE STATE.

(K) (1) "PROVIDER" MEANS A PERSON, OTHER THAN AN OWNER, THAT ENTERS INTO OR EFFECTUATES A LIFE SETTLEMENT CONTRACT.

(2) "PROVIDER" DOES NOT INCLUDE:

(I) A BANK, SAVINGS BANK, SAVINGS AND LOAN ASSOCIATION, CREDIT UNION, OR OTHER LICENSED LENDING INSTITUTION THAT TAKES AN ASSIGNMENT OF A POLICY AS COLLATERAL FOR A LOAN;

(II) AN INDIVIDUAL WHO ENTERS INTO NO MORE THAN ONE AGREEMENT IN A CALENDAR YEAR FOR THE TRANSFER OF A POLICY FOR COMPENSATION THAT IS LESS THAN THE EXPECTED DEATH BENEFIT PAYABLE UNDER THE POLICY;

(III) A PURCHASER;

(IV) AN AUTHORIZED INSURER THAT PROVIDES STOP LOSS COVERAGE TO A PROVIDER;

(V) A FINANCING ENTITY;

(VI) A SPECIAL PURPOSE ENTITY;

(VII) AN INDEPENDENT ESCROW AGENT; OR

(VIII) A BROKER.

(L) "PURCHASE AGREEMENT" MEANS A CONTRACT OR AGREEMENT BETWEEN A PROVIDER AND A PURCHASER, TO WHICH THE OWNER IS NOT A PARTY, TO PURCHASE A POLICY OR AN INTEREST IN A POLICY.

(M) "PURCHASED POLICY" MEANS A POLICY THAT HAS BEEN ACQUIRED BY A PROVIDER UNDER A LIFE SETTLEMENT CONTRACT.

(N) (1) "PURCHASER" MEANS A PERSON THAT PAYS COMPENSATION FOR A BENEFICIAL INTEREST IN A POLICY.

(2) "PURCHASER" DOES NOT INCLUDE:

(I) A LICENSEE UNDER THIS SUBTITLE;

(II) AN ACCREDITED INVESTOR OR QUALIFIED INSTITUTIONAL BUYER, AS DEFINED IN REGULATION D, RULE 501, OR RULE 144A OF THE FEDERAL SECURITIES ACT OF 1933;

(III) A FINANCING ENTITY; OR

(IV) A SPECIAL PURPOSE ENTITY.

(O) "SALES AGENT" MEANS A PERSON, OTHER THAN A LICENSED PROVIDER, THAT ARRANGES THE PURCHASE THROUGH A PURCHASE AGREEMENT OF A POLICY OR AN INTEREST IN A POLICY.

(P) "SPECIAL PURPOSE ENTITY" MEANS A CORPORATION, PARTNERSHIP, LIMITED LIABILITY COMPANY, OR OTHER SIMILAR ENTITY FORMED SOLELY TO PROVIDE, EITHER DIRECTLY OR INDIRECTLY, ACCESS TO INSTITUTIONAL CAPITAL MARKETS FOR A FINANCING ENTITY OR A PROVIDER.

(Q) "TERMINALLY ILL" MEANS HAVING AN ILLNESS OR SICKNESS THAT REASONABLY CAN BE EXPECTED TO RESULT IN DEATH IN 48 MONTHS OR LESS.

8-602.

(A) A PERSON MUST OBTAIN A LICENSE FROM THE COMMISSIONER BEFORE THE PERSON ACTS AS A PROVIDER, SALES AGENT, OR BROKER IN THE STATE.

(B) A PROVIDER MAY NOT USE A PERSON TO PERFORM THE FUNCTIONS OF A SALES AGENT OR BROKER UNLESS THE PERSON HOLDS A CURRENT, VALID LICENSE TO ACT AS A SALES AGENT OR BROKER.

(C) A SALES AGENT OR BROKER MAY NOT USE A PERSON TO PERFORM THE FUNCTIONS OF A PROVIDER UNLESS THE PERSON HOLDS A CURRENT, VALID LICENSE TO ACT AS A PROVIDER.

8-603.

(A) AN APPLICANT FOR A LICENSE AS A PROVIDER, SALES AGENT, OR BROKER SHALL:

(1) FILE THE APPROPRIATE APPLICATION ON THE FORM AND IN THE MANNER THAT THE COMMISSIONER PROVIDES;

(2) PAY TO THE COMMISSIONER A LICENSE FEE OF \$150; AND

(3) SUBMIT TO THE COMMISSIONER ANY INFORMATION AND DOCUMENTATION THAT THE COMMISSIONER REQUIRES.

(B) IN ADDITION TO ANY OTHER INFORMATION REQUIRED ON THE APPLICATION, THE COMMISSIONER MAY REQUIRE AN APPLICANT THAT IS A CORPORATION, PARTNERSHIP, LIMITED LIABILITY COMPANY, OR OTHER ENTITY TO FULLY DISCLOSE THE IDENTITY OF EACH STOCKHOLDER, MEMBER, PARTNER, OFFICER, AND EMPLOYEE OF THE CORPORATION, PARTNERSHIP, LIMITED LIABILITY COMPANY, OR OTHER ENTITY.

8-604.

(A) ON FILING AN APPLICATION AND PAYMENT OF THE LICENSE FEE REQUIRED UNDER § 8-603 OF THIS SUBTITLE, THE COMMISSIONER SHALL ISSUE A LICENSE TO AN APPLICANT IF THE COMMISSIONER FINDS THAT THE APPLICANT:

(1) HAS SUBMITTED THE INFORMATION AND DOCUMENTATION REQUIRED UNDER § 8-603 OF THIS SUBTITLE;

(2) IF A PROVIDER, HAS PROVIDED A DETAILED PLAN OF OPERATION;

(3) IS COMPETENT AND TRUSTWORTHY;

(4) INTENDS TO TRANSACT THE APPLICANT'S BUSINESS IN GOOD FAITH;

(5) HAS EXPERIENCE, TRAINING, OR EDUCATION IN THE LIFE INSURANCE BUSINESS THAT QUALIFIES THE APPLICANT FOR THE LICENSE;

(6) IF A CORPORATION, IS INCORPORATED UNDER THE LAWS OF THE STATE OR IS A FOREIGN CORPORATION AUTHORIZED TO TRANSACT BUSINESS IN THE STATE; AND

(7) IF A PROVIDER, HAS PROVIDED AN ANTI-FRAUD PLAN THAT INCLUDES:

(I) A DESCRIPTION OF THE APPLICANT'S PROCEDURES FOR DETECTING AND INVESTIGATING POSSIBLE FRAUDULENT ACTS AND FOR RESOLVING MATERIAL INCONSISTENCIES BETWEEN MEDICAL RECORDS AND INSURANCE APPLICATIONS;

(II) A DESCRIPTION OF THE APPLICANT'S PROCEDURES FOR REPORTING FRAUDULENT INSURANCE ACTS TO THE COMMISSIONER;

(III) A DESCRIPTION OF THE APPLICANT'S PLAN FOR ANTI-FRAUD EDUCATION AND TRAINING OF ITS UNDERWRITERS AND OTHER PERSONNEL; AND

(IV) A DESCRIPTION OR CHART OUTLINING THE ORGANIZATIONAL STRUCTURE OF THE APPLICANT'S ANTI-FRAUD PERSONNEL RESPONSIBLE FOR INVESTIGATING AND REPORTING POSSIBLE FRAUDULENT INSURANCE ACTS AND INVESTIGATING UNRESOLVED MATERIAL INCONSISTENCIES BETWEEN MEDICAL RECORDS AND INSURANCE APPLICATIONS.

(B) THE COMMISSIONER MAY NOT ISSUE A LICENSE TO A NONRESIDENT APPLICANT UNLESS THE APPLICANT FILES WITH THE COMMISSIONER:

(1) A WRITTEN DESIGNATION OF AN AGENT FOR SERVICE OF PROCESS;
OR

(2) A WRITTEN IRREVOCABLE CONSENT THAT ANY ACTION AGAINST THE APPLICANT MAY BE COMMENCED AGAINST THE APPLICANT BY SERVICE OF PROCESS ON THE COMMISSIONER.

(C) THE COMMISSIONER MAY REFUSE TO ISSUE A LICENSE TO AN APPLICANT THAT IS A CORPORATION, PARTNERSHIP, LIMITED LIABILITY COMPANY, OR OTHER ENTITY IF THE COMMISSIONER DETERMINES THAT ANY MEMBER, PARTNER, OFFICER, OR DIRECTOR WHO MAY INFLUENCE THE APPLICANT'S CONDUCT DOES NOT MEET THE REQUIREMENTS FOR LICENSURE ESTABLISHED UNDER THIS SECTION.

(D) A LICENSE ISSUED TO A CORPORATION, PARTNERSHIP, LIMITED LIABILITY COMPANY, OR OTHER ENTITY AUTHORIZES EACH PARTNER, MEMBER, OFFICER, AND DESIGNATED EMPLOYEE TO ACT AS A LICENSEE UNDER THE LICENSE IF THE PARTNER, MEMBER, OFFICER, OR DESIGNATED EMPLOYEE IS NAMED IN THE APPLICATION AND ANY SUPPLEMENTS TO THE APPLICATION.

(E) ON OR BEFORE MARCH 1 OF EACH YEAR, EACH LICENSEE SHALL FILE WITH THE COMMISSIONER A STATEMENT THAT CONTAINS THE INFORMATION THE COMMISSIONER BY REGULATION MAY REQUIRE.

8-605.

(A) A LICENSE ISSUED UNDER THIS SUBTITLE EXPIRES EVERY OTHER YEAR ON THE ANNIVERSARY OF THE DATE OF ISSUANCE OF THE LICENSE UNLESS RENEWED AS PROVIDED IN THIS SECTION.

(B) BEFORE A LICENSE EXPIRES, THE HOLDER OF THE LICENSE MAY RENEW IT FOR AN ADDITIONAL 2-YEAR TERM IF THE LICENSEE:

(1) OTHERWISE IS ENTITLED TO A LICENSE;

(2) FILES WITH THE COMMISSIONER A RENEWAL APPLICATION ON THE FORM THAT THE COMMISSIONER PROVIDES; AND

(3) PAYS TO THE COMMISSIONER A RENEWAL FEE OF \$50.

(C) AN APPLICATION FOR RENEWAL OF A LICENSE SHALL BE CONSIDERED MADE IN A TIMELY MANNER IF IT IS POSTMARKED ON OR BEFORE THE EXPIRATION DATE OF THE LICENSE.

8-606.

(A) A FORM FOR A LIFE SETTLEMENT CONTRACT OR A PURCHASE AGREEMENT MAY NOT BE USED IN THE STATE UNLESS THE FORM HAS BEEN FILED WITH AND APPROVED BY THE COMMISSIONER.

(B) A FORM FILED WITH THE COMMISSIONER SHALL BE DEEMED APPROVED IF IT HAS NOT BEEN DISAPPROVED WITHIN 60 DAYS AFTER FILING.

(C) THE COMMISSIONER SHALL DISAPPROVE A FORM IF THE COMMISSIONER DETERMINES THAT THE FORM OR THE PROVISIONS CONTAINED IN THE FORM ARE UNREASONABLE, CONTRARY TO THE INTERESTS OF THE PUBLIC, OR OTHERWISE MISLEADING OR UNFAIR TO AN OWNER OR A PURCHASER.

8-607.

(A) NO LATER THAN THE DATE THAT THE LIFE SETTLEMENT CONTRACT IS SIGNED BY ALL PARTIES, THE PROVIDER SHALL PROVIDE THE OWNER WITH AT LEAST THE FOLLOWING DISCLOSURES:

(1) THERE MAY BE ALTERNATIVES TO SELLING A POLICY UNDER A LIFE SETTLEMENT CONTRACT, INCLUDING BORROWING AGAINST THE CASH VALUE OF THE POLICY, APPLYING FOR ACCELERATED DEATH BENEFITS UNDER THE POLICY, AND SURRENDERING THE POLICY, AND THE OWNER SHOULD OBTAIN INFORMATION ABOUT THESE ALTERNATIVES FROM THE ISSUER OF THE POLICY;

(2) SOME OR ALL OF THE PROCEEDS OF A LIFE SETTLEMENT CONTRACT MAY BE TAXABLE UNDER FEDERAL OR STATE INCOME TAX LAW, AND ADVICE SHOULD BE OBTAINED FROM A PROFESSIONAL TAX ADVISOR;

(3) THE PROCEEDS OF A LIFE SETTLEMENT CONTRACT MAY BE SUBJECT TO THE CLAIMS OF CREDITORS, PERSONAL REPRESENTATIVES, TRUSTEES IN BANKRUPTCY, AND RECEIVERS IN STATE OR FEDERAL COURTS;

(4) RECEIPT OF THE PROCEEDS OF A LIFE SETTLEMENT CONTRACT MAY AFFECT THE RECIPIENT'S ELIGIBILITY FOR MEDICAID, AID TO FAMILIES WITH DEPENDENT CHILDREN, SUPPLEMENTAL SOCIAL SECURITY INCOME, AIDS DRUG ASSISTANCE PROGRAMS, AND OTHER PUBLIC ASSISTANCE PROGRAMS, AND ADVICE SHOULD BE OBTAINED FROM THE APPROPRIATE GOVERNMENT AGENCIES ABOUT HOW RECEIPT OF THE PROCEEDS MAY AFFECT ELIGIBILITY OF THE RECIPIENT AND THE RECIPIENT'S SPOUSE AND DEPENDENTS;

(5) (I) THE OWNER MAY RESCIND A LIFE SETTLEMENT CONTRACT WITHIN 15 DAYS AFTER THE DATE THE LIFE SETTLEMENT CONTRACT IS EXECUTED;
AND

(II) IF THE INSURED DIES DURING THE RESCISSION PERIOD, THE LIFE SETTLEMENT CONTRACT SHALL BE DEEMED TO HAVE BEEN RESCINDED SUBJECT TO REPAYMENT OF ALL PROCEEDS TO THE PROVIDER;

(6) FUNDS WILL BE AVAILABLE TO COMPLETE A PROPOSED PURCHASE OF THE POLICY WITHIN 3 BUSINESS DAYS AFTER ALL OF THE FOLLOWING HAVE OCCURRED:

(I) ACCEPTANCE OF AN OFFER MADE BY THE PROVIDER;

(II) ASSIGNMENT OF THE POLICY TO THE PROVIDER; AND

(III) ACKNOWLEDGMENT OF THE ASSIGNMENT BY THE INSURER;

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, TO BE FORFEITED BY THE OWNER, AND ADVICE SHOULD BE OBTAINED FROM A PROFESSIONAL FINANCIAL ADVISER.

(B) THE DISCLOSURES REQUIRED UNDER SUBSECTION (A) OF THIS SECTION SHALL BE:

(1) IN WRITING; AND

(2) DISPLAYED CONSPICUOUSLY IN ANY LIFE SETTLEMENT CONTRACT FURNISHED TO THE OWNER BY A PROVIDER.

(C) FAILURE TO GIVE NOTICE OF THE RIGHT OF RESCISSION AS REQUIRED UNDER SUBSECTION (A)(5) OF THIS SECTION SHALL TOLL THE RIGHT OF RESCISSION UNTIL 15 DAYS AFTER WRITTEN NOTICE OF THE RIGHT OF RESCISSION HAS BEEN GIVEN.

8-608.

(A) A BROKER SHALL DISCLOSE TO THE OWNER THE AMOUNT OF ANY FEE PAID TO THE BROKER THAT RELATES TO THE LIFE SETTLEMENT CONTRACT TO WHICH THE OWNER IS A PARTY.

(B) (1) ANY FEE PAID BY A PROVIDER, OWNER, OR OTHER PERSON TO A BROKER IN EXCHANGE FOR SERVICES PROVIDED TO THE OWNER RELATING TO A LIFE SETTLEMENT CONTRACT SHALL BE COMPUTED AS A PERCENTAGE OF THE OFFER OBTAINED, AND NOT OF THE FACE VALUE OF THE POLICY.

(2) THIS SUBSECTION DOES NOT PROHIBIT A BROKER FROM REDUCING THE BROKER'S FEE BELOW THE AMOUNT CALCULATED AS PROVIDED IN PARAGRAPH (1) OF THIS SUBSECTION.

(C) NOTWITHSTANDING THE MANNER IN WHICH THE BROKER IS COMPENSATED, A 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.

8-609.

BEFORE ENTERING INTO A LIFE SETTLEMENT CONTRACT WITH AN OWNER OF A POLICY INSURING AN INDIVIDUAL WHO IS TERMINALLY ILL OR CHRONICALLY ILL, A PROVIDER SHALL OBTAIN:

(1) A WRITTEN STATEMENT FROM A LICENSED ATTENDING PHYSICIAN THAT THE INSURED IS OF SOUND MIND AND UNDER NO CONSTRAINT OR UNDUE INFLUENCE;

(2) A WITNESSED DOCUMENT IN WHICH THE INSURED:

(I) RELEASES MEDICAL RECORDS NECESSARY TO EFFECTUATE THE LIFE SETTLEMENT CONTRACT; AND

(II) AGREES TO ALLOW PERIODIC MEDICAL OR HEALTH CONDITION UPDATES FOR TRACKING PURPOSES; AND

(3) IN ADDITION, IF THE INSURED IS ALSO THE OWNER, A WITNESSED DOCUMENT IN WHICH THE OWNER:

(I) CONSENTS TO THE LIFE SETTLEMENT CONTRACT;

(II) REPRESENTS THAT THE OWNER HAS A COMPLETE UNDERSTANDING OF THE LIFE SETTLEMENT CONTRACT AND THE BENEFITS UNDER THE POLICY;

(III) ACKNOWLEDGES THE OWNER'S CATASTROPHIC OR LIFE-THREATENING ILLNESS; AND

(IV) ACKNOWLEDGES THAT THE OWNER HAS ENTERED INTO THE LIFE SETTLEMENT CONTRACT FREELY AND VOLUNTARILY.

8-610.

(A) A LIFE SETTLEMENT CONTRACT ENTERED INTO WITHIN THE 2-YEAR PERIOD THAT BEGINS WITH THE DATE OF ISSUANCE OF THE POLICY TO BE ACQUIRED IS VOID AND UNENFORCEABLE BY ANY PARTY TO THE LIFE SETTLEMENT CONTRACT UNLESS:

(1) THE OWNER CERTIFIES TO THE PROVIDER THAT, WITHIN THE 2-YEAR PERIOD, ONE OR MORE OF THE FOLLOWING CONDITIONS HAVE BEEN MET:

(I) THE POLICY WAS ISSUED ON THE OWNER'S EXERCISE OF CONVERSION RIGHTS UNDER A GROUP OR TERM POLICY;

(II) THE TOTAL OF THE TIME COVERED UNDER THE CONVERTED POLICY AND THE TIME COVERED UNDER GROUP POLICY, CALCULATED WITHOUT REGARD TO ANY CHANGE IN INSURANCE CARRIERS, IS AT LEAST 24 MONTHS; AND

(III) COVERAGE UNDER THE GROUP POLICY HAS BEEN CONTINUOUS AND UNDER THE SAME GROUP SPONSORSHIP; OR

(2) THE OWNER SUBMITS EVIDENCE TO THE PROVIDER THAT, WITHIN THE 2-YEAR PERIOD, ONE OR MORE OF THE FOLLOWING CONDITIONS HAVE BEEN MET:

(I) THE OWNER OR INSURED IS DIAGNOSED WITH AN ILLNESS OR CONDITION THAT IS TERMINAL OR CHRONIC, OR REQUIRES A COURSE OF TREATMENT FOR A PERIOD OF AT LEAST 3 YEARS OF LONG-TERM OR HOME HEALTH CARE, AND THE ILLNESS OR CONDITION WAS NOT KNOWN TO THE OWNER OR INSURED AT THE TIME THE SALES CONTRACT WAS ENTERED INTO;

(II) THE OWNER'S OR INSURED'S SPOUSE DIES;

(III) THE OWNER OR INSURED BECOMES PHYSICALLY OR MENTALLY DISABLED AND A PHYSICIAN DETERMINES THAT THE DISABILITY PREVENTS THE OWNER OR INSURED FROM ENGAGING IN ANY GAINFUL OCCUPATION FOR WHICH THE OWNER OR INSURED IS REASONABLY QUALIFIED, BASED ON EDUCATION, TRAINING, OR EXPERIENCE;

(IV) THE OWNER WAS THE INSURED'S EMPLOYER AT THE TIME THE POLICY WAS ISSUED, AND THE EMPLOYMENT RELATIONSHIP HAS TERMINATED;

(V) THE OWNER OR INSURED BECOMES INSOLVENT OR ACKNOWLEDGES IN WRITING THE OWNER'S OR INSURED'S INABILITY TO PAY DEBTS AS THEY BECOME DUE;

(VI) A PETITION IS FILED BY OR AGAINST THE OWNER OR INSURED IN CONNECTION WITH A BANKRUPTCY, INSOLVENCY, OR OTHER PROCEEDING;

(VII) A RECEIVER IS APPOINTED FOR A SUBSTANTIAL PORTION OF THE OWNER'S OR INSURED'S ASSETS; OR

(VIII) THE OWNER OR INSURED MAKES AN ASSIGNMENT FOR THE BENEFIT OF CREDITORS.

(B) COPIES OF THE EVIDENCE REQUIRED UNDER SUBSECTION (A)(2) OF THIS SECTION SHALL BE:

(1) SUBMITTED TO THE INSURER WHEN THE PROVIDER SUBMITS A REQUEST FOR VERIFICATION OF COVERAGE; AND

(2) ACCOMPANIED BY A NOTARIZED STATEMENT FROM THE PROVIDER THAT THE COPIES ARE TRUE AND CORRECT COPIES OF THE DOCUMENTS RECEIVED BY THE PROVIDER.

8-611.

(A) WITHIN 3 BUSINESS DAYS AFTER RECEIPT FROM THE OWNER OF DOCUMENTS NECESSARY TO EFFECT THE TRANSFER OF THE OWNERSHIP OF A POLICY, THE PROVIDER SHALL PAY THE PROCEEDS OF THE LIFE SETTLEMENT CONTRACT TO AN ESCROW ACCOUNT MANAGED BY AN INDEPENDENT ESCROW AGENT AND LOCATED IN A STATE OR FEDERALLY CHARTERED FINANCIAL INSTITUTION.

(B) THE INDEPENDENT ESCROW AGENT SHALL TRANSFER THE PROCEEDS DUE TO THE OWNER WITHIN 3 BUSINESS DAYS AFTER THE INDEPENDENT ESCROW AGENT RECEIVES ACKNOWLEDGMENT OF THE TRANSFER OF THE POLICY FROM THE INSURER.

8-612.

(A) NO LATER THAN THE DATE THAT THE PURCHASE AGREEMENT IS SIGNED BY ALL PARTIES, THE PROVIDER, DIRECTLY OR THROUGH ANOTHER PERSON, SHALL PROVIDE THE PURCHASER WITH AT LEAST THE FOLLOWING DISCLOSURES:

(1) (I) THE AMOUNT OF THE DEATH BENEFIT TO BE RECEIVED BY THE PURCHASER UNDER THE PURCHASE AGREEMENT IS FIXED, BUT THE AMOUNT OF TIME BEFORE THE DEATH BENEFIT IS PAID DEPENDS ON THE ACTUAL LIFE SPAN OF THE INSURED;

(II) ESTIMATING LIFE EXPECTANCY, EVEN FOR THE TERMINALLY ILL, IS AN INHERENTLY SUBJECTIVE PROCESS;

(III) THE ACTUAL LIFE SPAN OF THE INSURED MAY BE AFFECTED BY NUMEROUS FACTORS, INCLUDING MEDICAL ADVANCES, AND MAY BE SHORTER OR LONGER THAN THE ESTIMATED LIFE EXPECTANCY; AND

(IV) AN ACTUAL LIFE SPAN THAT EXCEEDS THE ESTIMATED LIFE EXPECTANCY MAY TRIGGER PREMIUM PAYMENT OBLIGATIONS ON THE PART OF THE PURCHASER;

(2) THE ESTIMATED LIFE EXPECTANCY OF THE INSURED MAY BE BASED ON A MISDIAGNOSIS;

(3) IF REQUIRED BY THE TERMS OF THE PURCHASE AGREEMENT, THE PURCHASER MAY BE RESPONSIBLE FOR PAYMENT OF PREMIUMS, LATE OR SURRENDER FEES, OR OTHER COSTS RELATED TO THE POLICY WHICH MAY REDUCE THE RETURN;

(4) LIFE SETTLEMENT CONTRACTS ARE ILLIQUID AND FUNDS WILL BE UNAVAILABLE TO THE PURCHASER UNTIL THE INSURED DIES;

(5) IF THE LIFE INSURER THAT ISSUED THE PURCHASED POLICY BECOMES UNABLE TO MEET ITS OBLIGATIONS TO POLICYHOLDERS AND THERE IS NO STATE GUARANTY FUND AVAILABLE TO PAY THE LIFE INSURER'S OBLIGATIONS, THE PURCHASERS OF PURCHASED POLICIES ISSUED BY THE LIFE INSURER MAY NOT RECEIVE ALL OR ANY PART OF THEIR INTEREST IN THE DEATH BENEFIT;

(6) THE PURCHASE OF PURCHASED POLICIES AND RELATED DEATH BENEFITS MAY HAVE STATE OR FEDERAL TAX CONSEQUENCES FOR THE PURCHASER, AND ADVICE SHOULD BE OBTAINED FROM A PROFESSIONAL TAX ADVISOR;

(7) GROUP POLICIES MAY CONTAIN LIMITATIONS ON CONVERSION RIGHTS, AND ADDITIONAL PREMIUMS MAY HAVE TO BE PAID IF THE POLICY IS CONVERTED;

(8) THE NAME AND ADDRESS OF THE PERSON RESPONSIBLE FOR TRACKING THE INSURED;

(9) THE NAME AND ADDRESS OF THE PERSON RESPONSIBLE FOR PAYING THE PREMIUM UNTIL THE DEATH OF THE INSURED;

(10) THE NAME AND ADDRESS OF THE INDEPENDENT ESCROW AGENT;
AND

(11) THE PURCHASER HAS THE RIGHT TO RESCIND A PURCHASE AGREEMENT WITHIN 15 DAYS AFTER THE DATE THE PURCHASE AGREEMENT IS EXECUTED.

(B) THE DISCLOSURES REQUIRED UNDER SUBSECTION (A) OF THIS SECTION SHALL BE:

(1) IN WRITING; AND

(2) DISPLAYED CONSPICUOUSLY IN ANY PURCHASE AGREEMENT FURNISHED TO THE PURCHASER BY A PROVIDER.

(C) FAILURE TO GIVE NOTICE OF THE RIGHT OF RESCISSION AS REQUIRED UNDER SUBSECTION (A)(11) OF THIS SECTION SHALL TOLL THE RIGHT OF RESCISSION UNTIL 15 DAYS AFTER WRITTEN NOTICE OF THE RIGHT OF RESCISSION HAS BEEN GIVEN.

8-613.

(A) RECORDS OF ALL LIFE SETTLEMENT CONTRACTS, PURCHASE AGREEMENTS, AND ANY RELATED DOCUMENTS SHALL BE:

(1) MADE AVAILABLE TO THE COMMISSIONER FOR INSPECTION DURING REASONABLE BUSINESS HOURS; AND

(2) MAINTAINED BY THE PROVIDER FOR 5 YEARS AFTER THE DATE OF DEATH OF THE INSURED.

(B) (1) WHENEVER THE COMMISSIONER CONSIDERS IT NECESSARY TO PROTECT THE INTERESTS OF THE PUBLIC, THE COMMISSIONER MAY EXAMINE THE BUSINESS AND AFFAIRS OF AN APPLICANT FOR A LICENSE OR A LICENSEE.

(2) THE COMMISSIONER MAY ORDER THE APPLICANT OR LICENSEE TO PRODUCE ANY RECORDS, BOOKS, FILES, OR OTHER INFORMATION REASONABLY NECESSARY TO ASCERTAIN WHETHER AN APPLICANT OR LICENSEE IS ACTING OR HAS ACTED IN VIOLATION OF THE LAW OR OTHERWISE CONTRARY TO THE INTERESTS OF THE PUBLIC.

(3) THE APPLICANT OR LICENSEE BEING EXAMINED SHALL PAY THE EXPENSE OF THE EXAMINATION.

(C) THE NAMES OF AND INDIVIDUAL IDENTIFICATION DATA FOR OWNERS AND INSURED SHALL BE CONSIDERED PRIVATE AND CONFIDENTIAL INFORMATION AND MAY NOT BE DISCLOSED BY THE COMMISSIONER UNLESS REQUIRED BY LAW.

(D) ANY MEDICAL INFORMATION OBTAINED BY A LICENSEE UNDER THIS SUBTITLE IS SUBJECT TO THE APPLICABLE PROVISIONS OF STATE LAW RELATING TO CONFIDENTIALITY OF MEDICAL INFORMATION.

8-614.

(A) A PERSON MAY NOT:

(1) ENTER INTO A LIFE SETTLEMENT CONTRACT IF THE PERSON KNOWS OR REASONABLY SHOULD HAVE KNOWN THAT THE POLICY BEING PURCHASED UNDER THE LIFE SETTLEMENT CONTRACT WAS OBTAINED BY MEANS OF A FALSE, DECEPTIVE, OR MISLEADING APPLICATION;

(2) IN THE ADVERTISEMENT, OFFER, OR SALE OF A PURCHASE AGREEMENT:

(I) EMPLOY A DEVICE, SCHEME, OR ARTIFICE TO DEFRAUD;

(II) OBTAIN MONEY OR OTHER PROPERTY BY MEANS OF A FALSE STATEMENT OF A MATERIAL FACT OR BY AN OMISSION TO STATE A MATERIAL FACT NECESSARY TO MAKE THE STATEMENT MADE, IN LIGHT OF THE CIRCUMSTANCES UNDER WHICH IT WAS MADE, NOT MISLEADING;

(III) ENGAGE IN A TRANSACTION, PRACTICE, OR COURSE OF BUSINESS THAT OPERATES OR WOULD OPERATE TO DEFRAUD OR DECEIVE ANOTHER PERSON;

(IV) MISREPRESENT THE RATE OF RETURN, OR THE DATE ON WHICH A PAYMENT WILL BE MADE, TO A PURCHASER;

(V) MISREPRESENT THAT THE PERSON HAS BEEN SPONSORED OR RECOMMENDED, OR THAT THE PERSON'S ABILITIES OR QUALIFICATIONS HAVE BEEN REVIEWED AND APPROVED, BY THE STATE OR AN AGENCY OR OFFICER OF THE STATE OR BY THE UNITED STATES OR AN AGENCY OR OFFICER OF THE UNITED STATES;

(VI) MISREPRESENT THAT A PURCHASE AGREEMENT IS GUARANTEED, SPONSORED, RECOMMENDED, OR APPROVED BY THE STATE OR AN AGENCY OR OFFICER OF THE STATE OR BY THE UNITED STATES OR AN AGENCY OR OFFICER OF THE UNITED STATES;

(VII) MISREPRESENT THAT A PURCHASE AGREEMENT IS GUARANTEED BY AN INSURANCE GUARANTY FUND;

(VIII) MISREPRESENT THAT A PURCHASE AGREEMENT IS "GUARANTEED", THAT THE PURCHASE AMOUNT IS "SAFE", OR THAT THE PURCHASE AGREEMENT IS FREE OF RISK; OR

(IX) USE THE NAME OR TITLE OF A LIFE INSURER OR A LIFE INSURANCE POLICY IN AN ADVERTISEMENT UNLESS PRIOR WRITTEN APPROVAL HAS BEEN OBTAINED FROM THE LIFE INSURER;

(3) ENGAGE IN A TRANSACTION, PRACTICE, OR COURSE OF BUSINESS THAT THE PERSON KNOWS OR REASONABLY SHOULD KNOW IS INTENDED TO AVOID THE DISCLOSURE REQUIREMENTS OF §§ 8-607 AND 8-612 OF THIS SUBTITLE; OR

(4) ENGAGE IN A FRAUDULENT ACT OR PRACTICE IN CONNECTION WITH A TRANSACTION RELATING TO A LIFE SETTLEMENT CONTRACT OR A PURCHASE AGREEMENT THAT INVOLVES AN OWNER OR PURCHASER WHO IS A RESIDENT OF THE STATE.

(B) SUBSECTION (A) OF THIS SECTION DOES NOT PROHIBIT A PERSON FROM MAKING A STATEMENT THAT THE PERSON IS LICENSED UNDER THIS SUBTITLE IF:

(1) THE STATEMENT IS REQUIRED BY THIS SUBTITLE OR A REGULATION ADOPTED UNDER THIS SUBTITLE;

(2) THE STATEMENT IS TRUE; AND

- (3) THE EFFECT OF THE STATEMENT IS NOT MISREPRESENTED.

8-615.

SUBJECT TO THE HEARING PROVISIONS OF TITLE 2 OF THIS ARTICLE, THE COMMISSIONER MAY DENY A LICENSE TO AN APPLICANT OR SUSPEND, REVOKE, OR REFUSE TO RENEW THE LICENSE OF A LICENSEE IF THE APPLICANT OR LICENSEE:

- (1) MAKES A MATERIAL MISREPRESENTATION IN AN APPLICATION FOR A LICENSE;

- (2) ENGAGES IN FRAUDULENT OR DISHONEST PRACTICES OR OTHERWISE SHOWS A LACK OF TRUSTWORTHINESS OR COMPETENCE TO ACT AS A PROVIDER, SALES AGENT, OR BROKER;

- (3) DEMONSTRATES A PATTERN OF UNREASONABLE PAYMENTS TO OWNERS;

- (4) HAS BEEN CONVICTED OF A FELONY OR MISDEMEANOR INVOLVING FRAUD, DISHONESTY, OR BREACH OF TRUST, OR HAS PLEADED GUILTY OR NOLO CONTENDERE WITH RESPECT TO A FELONY OR MISDEMEANOR INVOLVING FRAUD, DISHONESTY, OR BREACH OF TRUST, REGARDLESS OF WHETHER A JUDGMENT OF CONVICTION HAS BEEN ENTERED BY THE COURT; OR

- (5) VIOLATES A PROVISION OF THIS SUBTITLE OR A REGULATION ADOPTED UNDER THIS SUBTITLE.

8-616.

IN ADDITION TO THE PENALTIES PROVIDED IN § 8-615 OF THIS SUBTITLE, ON FINDING A VIOLATION OF THIS SUBTITLE OR A REGULATION ADOPTED UNDER THIS SUBTITLE, THE COMMISSIONER:

- (1) MAY IMPOSE ON THE PERSON WHO COMMITTED THE VIOLATION A PENALTY NOT EXCEEDING \$1,500 FOR EACH VIOLATION;

- (2) MAY REQUIRE THE PERSON WHO COMMITTED THE VIOLATION TO MAKE RESTITUTION TO ANY PERSON WHO HAS SUFFERED FINANCIAL INJURY BECAUSE OF THE VIOLATION IN AN AMOUNT NOT EXCEEDING THE PERSON'S ACTUAL REALIZED DAMAGES; AND

- (3) AFTER PROVIDING NOTICE AND A HEARING, MAY ISSUE A CEASE AND DESIST ORDER AND HAVE IT SERVED ON THE PERSON COMMITTING THE VIOLATION.

8-617.

THE PROVISIONS OF THIS SUBTITLE MAY NOT BE WAIVED BY AGREEMENT.

8-618.

THE COMMISSIONER MAY ADOPT REGULATIONS TO CARRY OUT THIS SUBTITLE, INCLUDING REGULATIONS:

(1) GOVERNING THE ACTIVITIES AND RELATIONSHIPS OF PROVIDERS, SALES AGENTS, AND BROKERS;

(2) ESTABLISHING APPROPRIATE LICENSING REQUIREMENTS AND STANDARDS FOR CONTINUED LICENSURE OF LICENSEES; AND

(3) ESTABLISHING STANDARDS FOR EVALUATING THE REASONABLENESS OF PAYMENTS MADE UNDER LIFE SETTLEMENT CONTRACTS.

8-619.

THIS SUBTITLE MAY BE CITED AS THE LIFE SETTLEMENT ACT.

SECTION 2. AND BE IT FURTHER ENACTED, That, in the absence of an order by the Maryland Insurance Commissioner to the contrary, a provider, sales agent, or broker transacting business in the State on the effective date of this Act may continue to transact business in the State without being licensed, as required under Section 1 of this Act, until the Commissioner approves or disapproves the provider's, sales agent's, or broker's application for licensure if:

(a) the provider, sales agent, or broker applies for licensure no later than 90 days after the date the Commissioner makes available provider, sales agent, or broker license applications; and

(b) the provider, sales agent, or broker complies with all other provisions of this Act.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2002.