§ 7802. Definitions. In this article:

(a) "Accredited investors" shall be as defined in regulation D, rule 501 of the Federal Securities Act of 1933, as amended.

(b) "Advertisement" means any written, electronic or printed communication or any communication by means of recorded telephone messages or transmitted on radio, television, the Internet or similar communications media, 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, 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.

(c)(1) "Business of life settlements" means an activity involving, but not limited to, offering to enter into, soliciting, negotiating, procuring, effectuating, monitoring, or tracking life settlement contracts.

(2) For purposes of this article, "business of life settlements" shall also include:

(A) such acts or transactions effectuated in this state by mail or otherwise from outside this state; and

(B) doing or proposing to do any business in substance equivalent to the business of life settlements in a manner designed to evade the provisions of this chapter.

(d) "Compensation" means anything of value, including money, credits, loans, interest on premium, forgiveness of principal or interest, vacations, prizes, gifts or the payment of employee salaries or expenses, whether paid as commission or otherwise.

(e) "Financing entity" means an accredited investor:

(1) whose principal activity in connection with the transaction is providing funds to effect the life settlement contract or to purchase one or more policies; and

(2) who has an agreement in writing with a life settlement provider to finance the acquisition of a life settlement contract.

(f) "Financing transaction" means a transaction in which a licensed life settlement provider obtains financing from a financing entity, including any secured or unsecured financing, any securitization

transaction, or any securities offering which is registered or exempt from registration under federal and state securities laws.

(g) "Insured" means a person covered under a policy that is or may be the subject of a life settlement contract.

(h) "Insurer" means a life insurance company or a fraternal benefit society.

(i) "Life expectancy" means the arithmetic mean of the number of months the insured can be expected to live taking into consideration medical records and appropriate experiential data.

(j) "Life settlement broker" means a person who, for compensation, solicits, negotiates or offers to negotiate a life settlement contract; except that such term shall not include a licensed life settlement provider, or representative thereof, licensed attorney at law, certified public accountant, or financial planner that is accredited by a nationally recognized accreditation agency acceptable to the superintendent, who is retained in his or her professional capacity, does not advertise as being in the business of life settlements and is compensated without regard to whether a life settlement contract is effectuated.

(k)(1) "Life settlement contract" means an agreement establishing the terms under which compensation is provided to an owner, which compensation is less than the expected death benefit of the policy, in return for the assignment, transfer, sale, release, devise or bequest of any portion of:

(A) the death benefit;

(B) the ownership of the policy; or

(C) any beneficial interest in the policy, or in a trust or any other entity that owns the policy, where a primary purpose of the transaction is to acquire the policy.

(2) "Life settlement contract" shall include an agreement, entered into after the effective date of this article, described in paragraph one of this subsection regardless of the date the compensation is provided and regardless of the date the assignment, transfer, sale, devise or bequest is effectuated.

(3) "Life settlement contract" shall not include:

(A) an assignment of a policy as collateral for a loan by any depository institution insured by the Federal Deposit Insurance

Corporation or the National Credit Union Administration;

(B) an assignment of a policy as collateral for a loan made by a licensed financial institution under which the lender takes an interest in a life insurance policy solely to secure repayment of a loan or, if there is a default on the loan and the policy is transferred, the transfer of the policy by the lender, provided that the default itself is not pursuant to an agreement or understanding with any other person for the purpose of evading regulation under this article;

(C) an assignment of a policy as collateral for a loan made by a lender that does not violate article twelve-B of the banking law;

(D) the making of a policy loan, or the paying of surrender benefits or other benefits, by the issuer of a policy with respect to that policy;

(E) an exchange of life insurance policies in a transaction described by section 1035 of the Internal Revenue Code of 1986, as amended;

(F) an agreement made by an individual to take an assignment, purchase, or otherwise receive the death benefit or ownership of any portion of a policy or policies on the life of a single insured or lives of joint insureds; provided that, in a calendar year, the individual enters into no other agreement to take an assignment, purchase, or otherwise receive the death benefit or ownership of any portion of a policy or policies on the life of any other insured or lives of any other joint insureds;

(G) an agreement to assign, transfer or pledge a settled policy, or any interest therein, to a licensed life settlement provider, an accredited investor or qualified institutional buyer, financing entity, special purpose entity, or related provider trust;

(H) an agreement where all the parties are 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 are trusts established primarily for the benefit of such parties;

(I) any designation, consent or agreement by an insured who is an employee of an employer in connection with the purchase by the employer, or trust established by the employer, of life insurance on the life of the employee;

(J) a bona fide business succession planning arrangement between:

(i) 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;

(ii) 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

(iii) 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;

(K) legitimate corporate or pension benefit plans, as determined by the superintendent; or

(L) any other agreement that the superintendent determines is substantially similar to any of the foregoing.

(l) "Life settlement intermediary" means a person who maintains an electronic or other facility or system, for the disclosure, through a forum of offers and counteroffers, to sell or purchase a policy pursuant to a life settlement contract; and delivers to:

(1) a life settlement provider an offer from a life settlement broker or owner to sell a policy; or

(2) an owner or life settlement broker an offer from a life settlement provider to purchase a policy.

(m) "Life settlement provider" means a person who enters, or offers to enter, into a life settlement contract with the owner.

(n) "Owner" means the owner of a policy who enters or seeks to enter into a life settlement contract.

(o) "Person" means any natural person or legal entity, including a partnership, limited liability company, association, trust or corporation.

(p) "Policy" means an individual or group life insurance policy or certificate.

(q) "Premium finance loan" means a loan made for the purposes of making premium payments on a life insurance policy, which loan is secured by an interest in such life insurance policy.

(r) "Qualified institutional buyer" shall be as defined in rule 144A of the Federal Securities Act of 1933, as amended.

(s) "Related provider trust" means a trust established by a licensed life settlement provider or a financing entity for the sole purpose of holding the ownership or beneficial interest in settled policies in

connection with a financing transaction; provided that the trust has a written agreement with the licensed life settlement provider under which:

(1) the licensed life settlement provider is responsible for ensuring compliance with all statutory and regulatory requirements; and

(2) the trust agrees to make all records and files relating to life settlement transactions available to the superintendent as if those records and files were maintained directly by the licensed life settlement provider.

(t) "Settled policy" means a policy that at any time has been acquired by a life settlement provider pursuant to a life settlement contract.

(u) "Special purpose entity" means a corporation, partnership, trust, limited liability company, or other legal entity formed solely to provide, either directly or indirectly, access to institutional capital markets for a financing entity or licensed life settlement provider.