

FIRST REGULAR SESSION

HOUSE BILL NO. 673

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE LIESE.

Read 1st time February 7, 2001, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

1531L.011

AN ACT

To amend chapter 376, RSMo, by adding thereto fifteen new sections relating to life settlements.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 376, RSMo, is amended by adding thereto fifteen new sections, to
2 be known as sections 376.1575, 376.1578, 376.1581, 376.1584, 376.1587, 376.1590, 376.1593,
3 376.1596, 376.1599, 376.1602, 376.1605, 376.1608, 376.1611, 376.1614 and 376.1617, to read
4 as follows:

376.1575. Sections 376.1575 to 376.1617 may be cited as the "Life Settlements Act".

376.1578. As used in sections 376.1575 to 376.1617, the following terms mean:

2 **(1) "Advertisement", any written, electronic or printed communication or any**
3 **communication by means of recorded telephone messages or transmitted on radio,**
4 **television, the Internet or similar communications media, including film strips, motion**
5 **pictures and videos, published, disseminated, circulated or placed before the public,**
6 **directly or indirectly, for the purpose of creating an interest in or inducing a person to**
7 **purchase or sell a life insurance policy or an interest in a life insurance policy pursuant to**
8 **a sales contract or a purchase agreement;**

9 **(2) "Broker", a person who, on behalf of an owner and for a fee, commission or**
10 **other valuable consideration, offers or attempts to negotiate sales contracts, between an**
11 **owner and one or more providers. A broker represents only the owner and owes a**
12 **fiduciary duty to the owner to act according to the owner's instructions, notwithstanding**
13 **the manner in which the broker is compensated. A broker does not include an attorney,**
14 **certified public accountant or financial planner retained in the type of practice customarily**
15 **performed in their professional capacity to represent the owner whose compensation is not**
16 **paid directly or indirectly by the provider;**

17 **(3) "Chronically ill":**

18 **(a) Being unable to perform at least two activities of daily living such as eating,**
19 **toileting, transferring, bathing or dressing;**

20 **(b) Requiring substantial supervision to protect the individual from threats to**
21 **health and safety due to severe cognitive impairment; or**

22 **(c) Having a level of disability similar to that described in paragraph (a) of this**
23 **subdivision, as determined by the director of the department of health;**

24 **(4) "Director", the director of the department of insurance;**

25 **(5) "Financing entity", an underwriter, placement agent, lender, purchaser of**
26 **securities, purchaser of a policy or certificate from a provider, credit enhancer, or any**
27 **entity that has a direct ownership in a policy or certificate that is the subject of a sales**
28 **contract, but:**

29 **(a) Whose principal activity related to the transaction is providing funds to effect**
30 **the life settlement or purchase of one or more policies; and**

31 **(b) Who has an agreement in writing with one or more providers to finance the**
32 **acquisition of sales contracts. The term "financing entity" does not include a**
33 **nonaccredited investor or purchaser;**

34 **(6) "Financing transaction", a transaction in which a licensed provider obtains**
35 **financing from a financing entity including, without limitation, any secured or unsecured**
36 **financing, any securitization transaction, or any securities offering which either is**
37 **registered or exempt from registration pursuant to federal and state securities law;**

38 **(7) "Life settlement", the sale, assignment, transfer, devise or bequest of the death**
39 **benefit or any portion of an insurance policy or certificate of insurance for compensation**
40 **less than the expected death benefit of the insurance policy or certificate, including a loan**
41 **or other lending transaction secured primarily by an individual or group life insurance**
42 **policy or death benefit other than a loan by a life insurance company pursuant to the terms**
43 **of the life insurance contract, a loan secured by the cash value of a policy, or an agreement**
44 **to transfer ownership or change the beneficiary designation at a later date regardless of**
45 **the date that compensation is paid to the seller;**

46 **(8) "Owner", the owner of a life insurance policy or a certificate holder under a**
47 **group policy, but not a provider or other licensee pursuant to sections 376.1575 to**
48 **376.1617;**

49 **(9) "Person", any natural person or legal entity, including but not limited to,**
50 **partnerships, associations, trusts or corporations;**

51 **(10) "Provider", a person, other than an owner, who enters into or effectuates a**
52 **sales contract with an owner, the subject of which is a life settlement, but not:**

- 53 (a) Any bank, savings bank, savings and loan association, credit union or other
54 licensed lending institution which takes an assignment of a life insurance policy or
55 certificate issued pursuant to a group life insurance policy as collateral for a loan;
- 56 (b) Any natural person who enters into no more than one agreement in a calendar
57 year for the transfer of a life insurance policy or certificate issued pursuant to a group life
58 insurance policy, for compensation or anything of value less than the expected death
59 benefit payable under the policy;
- 60 (c) A purchaser;
- 61 (d) Any authorized or eligible insurer that provides stop loss coverage to a
62 provider;
- 63 (e) A financing entity;
- 64 (f) A special purpose entity;
- 65 (g) A related provider trust; or
- 66 (h) A broker;
- 67 (11) "Purchase agreement", a contract or agreement entered into by a provider
68 with a purchaser, to which the owner is not a party, to purchase a policy or an interest in
69 a life insurance policy, or acquire a beneficial interest, or a certificate issued pursuant to
70 a group life insurance policy;
- 71 (12) "Purchased policy", a policy or group certificate that has been acquired by a
72 provider pursuant to a sales contract;
- 73 (13) "Purchaser", a person who pays compensation or anything of value as
74 consideration for a beneficial interest in a trust which is vested with, or for the assignment,
75 transfer or sale of, an ownership or other interest in a life insurance policy or a certificate
76 issued pursuant to a group life insurance policy which has been or will be the subject of a
77 sales contract. A purchaser does not include a licensee licensed pursuant to sections
78 376.1575 to 376.1617, any person who is a qualified institutional buyer or accredited
79 investor as defined, respectively, in Rule 154A or Regulation D, Rule 501, promulgated
80 pursuant to the Securities Act of 1933, as amended, a financing entity, or a special purpose
81 entity;
- 82 (14) "Related provider trust", a titling trust or other trust established by a licensed
83 provider or a financing entity for the sole purpose of holding the ownership or beneficial
84 interest in purchased policies in connection with a financing transaction. In order to
85 qualify as a provider trust, the trust shall have a written agreement with the licensed
86 provider under which the licensed provider is responsible for ensuring compliance with
87 all statutory and regulatory requirements and under which the trust agrees to make all
88 records and files relating to life settlement transactions available to the department of

89 insurance as if those records and files were maintained directly by the licensed provider;

90 (15) "Sales agent", a person other than a licensed provider who arranges the
91 purchase through a purchase agreement of a policy or an interest in a life insurance policy
92 or certificate issued pursuant to a group life insurance policy;

93 (16) "Sales contract", a written agreement entered into between a provider and an
94 owner, the subject of which is a life settlement, and a written agreement for a loan or other
95 lending transaction, secured primarily by an individual or group life insurance policy,
96 other than a loan by a life insurance company pursuant to the terms of the sales contract,
97 or a loan secured by the cash value of a policy;

98 (17) "Special purpose entity", a corporation, limited liability company, or other
99 similar entity formed solely to provide either directly or indirectly access to institutional
100 capital markets to a financing entity or provider;

101 (18) "Terminally ill", having an illness or sickness that can reasonably be expected
102 to result in death in twenty-four months or less;

103 (19) "Viatical settlement", a life settlement in which the insured is terminally or
104 chronically ill.

376.1581. 1. No person, wherever located, shall act as a provider or broker with
2 an owner, multiple owners or purchaser who is a resident of this state, without first having
3 obtained a license from the director.

4 2. Application for a provider, broker, or sales agent license shall be made to the
5 director by the applicant on a form prescribed by the director, and the application shall
6 be accompanied by a fee of one hundred dollars.

7 3. Licenses may be renewed every two years on the anniversary date upon payment
8 of the biennial renewal fee of seventy-five dollars. Failure to pay the fee within the terms
9 prescribed shall result in the automatic revocation of the license.

10 4. The applicant shall provide such information as the director may require on
11 forms prepared by the director. The director shall have authority, at any time, to require
12 such applicant to fully disclose the identity of its stockholders, partners, officers and
13 employees, and the director may, in the exercise of the director's sole discretion, refuse to
14 issue such a license in the name of any person if not satisfied that any officer, employee,
15 stockholder or partner thereof who may materially influence the applicant's conduct meets
16 the standards of sections 376.1575 to 376.1617.

17 5. A license issued to a partnership, corporation or other entity authorizes all
18 members, officers and designated employees to act as a licensee under the license, if those
19 persons are named in the application and any supplements to the application.

20 6. Upon the filing of an application and the payment of the license fee, the director

21 shall make an investigation of each applicant and may issue a license if the director finds
22 that the applicant:

23 (1) If a provider, has provided a detailed plan of operation;

24 (2) Is competent and trustworthy and intends to transact its business in good faith;

25 (3) Has a good business reputation and has had experience, training or education
26 so as to be qualified in the business for which the license is applied;

27 (4) If the applicant is a corporation, is incorporated pursuant to the laws of this
28 state or is a foreign corporation authorized to transact business in this state; and

29 (5) Has provided to the director or department of insurance an anti-fraud plan that
30 includes:

31 (a) A description of the procedures for detecting and investigating possible
32 fraudulent acts and procedures for resolving material inconsistencies between medical
33 records and insurance applications;

34 (b) A description of the procedures for reporting fraudulent insurance acts to the
35 director;

36 (c) A description of the plan for anti-fraud education and training of its
37 underwriters and other personnel; and

38 (d) A written description or chart outlining the arrangement of the anti-fraud
39 personnel who are responsible for the investigation and reporting of possible fraudulent
40 insurance acts and investigating unresolved material inconsistencies between medical
41 records and insurance applications.

42 7. The director shall not issue any license to any nonresident applicant, unless a
43 written designation of an agent for service of process is filed and maintained with the
44 director or unless the applicant has filed with the director the applicant's written
45 irrevocable consent that any action against the applicant may be commenced against the
46 applicant by service of process on the director.

47 8. Each licensee shall file with the director on or before the first day of March of
48 each year an annual statement containing such information as the director by rule may
49 prescribe.

50 9. A provider may not use any person to perform the functions of a sales agent or
51 broker unless the person holds a current, valid license as a sales agent or broker, and as
52 provided in this section.

53 10. A sales agent or broker may not use any person to perform the functions of a
54 provider unless such person holds a current, valid license as a provider, and as provided
55 in this section.

376.1584. 1. The director may suspend, revoke or refuse to renew the license of any

2 licensee if the director finds that:

3 (1) There was any material misrepresentation in the application for the license;

4 (2) The licensee has been guilty of fraudulent or dishonest practices, is subject to
5 a final administrative action or is otherwise shown to be untrustworthy or incompetent to
6 act as a licensee;

7 (3) The provider demonstrates a pattern of unreasonable payments to policy
8 owners;

9 (4) The licensee has been convicted of a felony or any misdemeanor of which
10 criminal fraud is an element; or the licensee has pleaded guilty or nolo contendere with
11 respect to any felony or any misdemeanor of which criminal fraud is an element, regardless
12 whether a judgement of conviction has been entered by the court; or

13 (5) The licensee has violated any of the provisions of sections 376.1575 to 376.1617.

14 2. Before the director shall deny a license application or suspend, revoke or refuse
15 to renew the license of any licensee pursuant to sections 376.1575 to 376.1617, the director
16 shall conduct a hearing in accordance with this state's laws governing administrative
17 hearings.

376.1587. No person may use any form of sales contract or purchase agreement in
2 this state unless it has been filed with and approved by the director. Any such form filed
3 with the director shall be deemed approved if it has not been disapproved within sixty days
4 of the filing. The director shall disapprove a form if, in the director's opinion, the sales
5 contract form or purchase agreement or provisions contained therein are unreasonable,
6 contrary to the interests of the public, or otherwise misleading or unfair to the owner or
7 purchaser.

376.1590. 1. The director may, when the director deems it reasonably necessary to
2 protect the interests of the public, examine the business and affairs of any licensee or
3 applicant for a license. The director may order any licensee or applicant to produce any
4 records, books, files or other information reasonably necessary to ascertain whether such
5 licensee or applicant is acting or has acted in violation of the law or otherwise contrary to
6 the interests of the public. The expenses incurred in conducting any examination shall be
7 paid by the licensee or applicant.

8 2. Names of and individual identification data for all owners and insureds shall be
9 considered private and confidential information and shall not be disclosed by the director
10 unless required by law.

11 3. Records of all transactions, sales contracts and purchase agreements, shall be
12 maintained for five years after the death of the insured by the provider and shall be
13 available to the director for inspection during reasonable business hours.

376.1593. 1. The provider shall provide in writing the following information to the owner no later than the date the sales contract is signed by all parties:

(1) The fact that possible alternatives to sales contracts exist, including, but not limited to, accelerated benefits offered by the issuer of the life insurance policy;

(2) The fact that some or all of the proceeds of a sales contract may be taxable, and that assistance should be sought from a professional tax advisor;

(3) The fact that the proceeds from a sales contract could be subject to the claims of creditors;

(4) The fact that receipt of proceeds from a sales contract may adversely affect the recipients' eligibility for public assistance or other government benefits or entitlements, and that advice should be obtained from the appropriate agencies;

(5) The fact that the owner has a right to rescind a sales contract within fifteen days of the date it is executed by all parties and the owner has received the disclosures contained herein; if the insured dies during the rescission period, the contract shall be deemed to have been rescinded subject to repayment of all proceeds to the provider;

(6) The fact that proceeds will be sent to the owner within three business days after the provider has received the insurer or group administrator's acknowledgment that ownership of the policy or interest in the certificate has been transferred and the beneficiary has been designated in accordance with the terms of the sales contract;

(7) The fact that entering into a sales contract may cause other rights or benefits, including conversion rights and waiver of premium benefits that may exist under the policy or certificate of a group policy to be forfeited by the owner and that assistance should be sought from a professional financial advisor;

(8) The amount and method of calculating the broker's compensation, wherein the term compensation includes anything of value paid or given to a broker for the placement of a policy;

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

(10) The fact that the director shall require delivery of a buyer's guide or a similar consumer advisory package to owners during the solicitation process;

(11) The fact that the director shall require providers and brokers to print fraud warnings on their applications and on their sales contracts in compliance with the state's insurance fraud warning requirements;

2. The written disclosures required by this section shall be conspicuously displayed in any sales contract furnished to the owner by a provider.

376.1596. 1. The provider and the sales agent, themselves or through another

2 person, shall provide in writing the following disclosures to any purchaser or prospective
3 purchaser, no later than the date the purchase agreement is signed by all parties:

4 (1) That the life expectancy and rate of return are only estimates and cannot be
5 guaranteed;

6 (2) That the return represented as being available under the purchase agreement
7 is directly tied to the projected date of death of one or more insured persons;

8 (3) If a rate of return is represented, the projected life expectancy of the insured or
9 insureds whose life or lives are tied to the return, and that the longer the life of the insured
10 or insureds, the less the return will be;

11 (4) If required by the terms of the purchase agreement, that the purchaser may be
12 responsible for the payment of insurance premiums or late or surrender fees, or other costs
13 related to the life insurance policy which may reduce the return;

14 (5) The amount of any trust fees, commissions, deductions, or other expenses, if
15 any, to be charged to the purchaser;

16 (6) The name and address of the person responsible for tracking the insured or
17 insureds;

18 (7) The name and address of the person with the responsibility for paying the
19 premium until the death of the insured;

20 (8) The name and address of the escrow agent and its relation, if any, to the
21 provider, trust, broker or sales agent;

22 (9) That group policies may contain limitation on conversion rights and that
23 additional premiums may have to be paid if the policy is converted;

24 (10) That the purchase of a sales contract should not be considered a liquid
25 purchase, since it is impossible to predict the exact timing of its maturity and the funds
26 may not be available until the death of the insured; and

27 (11) That the purchaser has the right to rescind a purchase agreement within
28 fifteen days of the date the purchase agreement is executed by all parties and the purchaser
29 has received the disclosures contained herein.

30 2. The written disclosures required by this section shall be conspicuously displayed
31 in any purchase agreement furnished to the purchaser by a provider or sales agent. The
32 disclosures need not be furnished in an invitation to inquire, the objective of which is to
33 create a desire to inquire further about effectuating a purchase agreement. The invitation
34 to inquire may not quote rates of return, may not include material attendant to the
35 execution of any specific sales contract, and may not relate to any specific policy.

36 3. No person shall misrepresent the rate of return, or the date on which any
37 payment will be made, to a purchaser.

376.1599. 1. A provider entering into a sales contract with any owner of a policy, wherein the insured is terminally or chronically ill, with a catastrophic or life-threatening illness or condition shall first obtain:

(1) A written statement from a licensed attending physician that the person is of sound mind and under no constraint or undue influence; and

(2) A witnessed document in which the terminally or chronically ill owner, who is also the insured, consents to the sales contract, acknowledges the catastrophic or life-threatening illness, represents that such person has a full and complete understanding of the sales contract, that such person has a full and complete understanding of the benefits of the life insurance policy, releases medical records necessary to effectuate the sales contract, and acknowledges that such person has entered into the sales contract freely and voluntarily.

2. All medical information solicited or obtained by any licensee shall be subject to all state laws relating to confidentiality of medical information, if not otherwise provided in sections 376.1575 to 376.1617.

3. All sales contracts and purchase agreements entered into in this state shall provide that the owner may rescind the contract on or before fifteen days after the date it is executed by all parties thereto.

4. Within three business days after receipt from the owner of documents to effect the transfer of the insurance policy, the provider shall pay the proceeds of the settlement to an escrow or trust account managed by a trustee or escrow agent in a state or federally chartered financial institution pending acknowledgment of the transfer by the issuer of the policy. The trustee or escrow agent shall be required to transfer the proceeds due to the owner within three business days of acknowledgment of the transfer from the insurer.

5. Failure to tender the sales contract proceeds to the owner by the date disclosed to the owner renders the contract voidable by the owner for lack of consideration until the time the proceeds are tendered to and accepted by the owner. A failure to give written notice of the right of rescission hereunder shall toll the right of rescission until thirty days after the written notice of the right of rescission has been given.

6. Any fee paid by a provider, party, individual, or an owner to a broker in exchange for services provided to the owner pertaining to a sales contract shall be computed as a percentage of the offer obtained, not the face value of the policy. Nothing in this section shall be construed as prohibiting a broker from reducing such broker's fee below this percentage if the broker so chooses.

7. The broker shall disclose to the owner the amount of any and all fees paid to a broker which relate to the sales contract in which the owner has engaged.

37 **8. Except as herein provided, if a sales contract is entered into within the two-year**
38 **period commencing with the date of issuance of the policy or certificate to be acquired, the**
39 **sales contract is void and unenforceable by either party. Notwithstanding the foregoing**
40 **provision, such a contract shall be valid and enforceable if the owner certifies to the**
41 **provider that one or more of the following conditions have been met within such two-year**
42 **period:**

43 **(1) The policy was issued upon the owner's exercise of conversion rights arising out**
44 **of a group or term policy; provided that, the total of the time covered under the conversion**
45 **policy plus the time covered under the group policy is at least twenty-four months. The**
46 **time covered under the group policy shall be calculated without regard to any change in**
47 **insurance carriers, provided coverage has been continuous and under the same group**
48 **sponsorship;**

49 **(2) The owner of the policy is a charitable organization exempt from taxation**
50 **pursuant to Title 26 U.S.C. Section 501(c)(3);**

51 **(3) The owner of the policy is not a natural person, but is the original owner of the**
52 **policy;**

53 **(4) The sales contract was entered into before August 28, 2001;**

54 **(5) The owner submits evidence to the provider that one or more of the following**
55 **conditions have been met within the two-year period:**

56 **(a) The owner or insured is diagnosed with an illness or condition that is either**
57 **terminal or chronic, or requires a course of treatment for a period of at least three years**
58 **of long-term or home health care, and such condition was not known to the owner or**
59 **insured at the time the sales contract was entered into;**

60 **(b) The owner's or insured's spouse dies;**

61 **(c) The owner or insured becomes physically or mentally disabled and a physician**
62 **determines that such disability prevents the owner or insured from engaging in any and**
63 **every gainful occupation for which he or she is reasonably qualified, based on education,**
64 **training or experience;**

65 **(d) The owner was the insured's employer at the time the policy or certificate was**
66 **issued and such employment relationship terminates; or**

67 **(e) The owner or insured becomes insolvent or acknowledges in writing his or her**
68 **inability to pay debts as they fall due, any petition filed by or against the owner or insured**
69 **in connection with any bankruptcy, insolvency or other proceeding, a receiver is appointed**
70 **for a substantial portion of the owner's or insured's assets, or the owner or insured makes**
71 **an assignment for the benefit of creditors.**

72 **9. Copies of the independent evidence pursuant to subsection 8 of this section shall**

73 be submitted to the insurer when the provider submits a request for verification of
74 coverage. Such copies shall be accompanied by a letter of attestation from the provider
75 that the copies are true and correct copies of the documents received by the provider. The
76 insurer shall respond to the request in the same time frame allotted for responding to the
77 verification of coverage. The insurer's response shall indicate to the provider whether,
78 based on the medical evidence document provided pursuant to this section, the insurer
79 intends to pursue further investigation regarding the validity of the insurance contract.
80 Nothing in this section shall prohibit an insurer from exercising its right to contest the
81 validity of any policy.

376.1602. 1. The director may:

- 2 **(1) Promulgate regulations implementing sections and regulating the activities and**
3 **relationships of providers, brokers and sales agents, insurers and their agents, subject to**
4 **statutory limitations on administrative rulemaking;**
- 5 **(2) Establish standards for evaluating reasonableness of payments under sales**
6 **contracts, and;**
- 7 **(3) Establish appropriate licensing requirements and standards for continued**
8 **licensure for licensees.**

9 **2. No rule or portion of a rule promulgated pursuant to the authority of this section**
10 **shall become effective unless it has been promulgated pursuant to the provisions of chapter**
11 **536, RSMo.**

12 **3. The following shall govern where a conflict of laws situation arises:**

- 13 **(1) If there is more than one owner on a single policy, and the owners are residents**
14 **of different states, the sales contract shall be governed by the law of the state in which the**
15 **owner having the largest percentage ownership resides or, if the owners hold equal**
16 **ownership, the state of residence of one owner agreed upon in writing by all of the owners;**
- 17 **(2) If there is more than one purchaser on a single policy, and the purchasers are**
18 **residents of different states, the purchase agreement shall be governed by the law of the**
19 **state in which the purchaser, purchasing the largest percentage ownership resides or, if the**
20 **purchasers seek equal ownership, the state of residence of one purchaser agreed upon in**
21 **writing by all of the purchasers;**
- 22 **(3) A provider from this state who enters into a purchase agreement with a**
23 **purchaser who is a resident of another state that has enacted statutes or adopted**
24 **regulations governing purchase agreements, shall be governed in the effectuation of that**
25 **purchase agreement by the statutes and regulations of the purchaser's state of residence.**
26 **If the state in which the purchaser is a resident has not enacted statutes or regulations**
27 **governing purchase agreements, the provider shall give the purchaser notice that neither**

28 state regulates the transaction upon which he or she is entering. For transactions in these
29 states, however, the provider is to maintain all records required as if the transactions were
30 executed in his or her state. The forms used in those states need not be approved by the
31 department;

32 (4) A provider from this state who enters into a sales contract with an owner who
33 is a resident of another state that has enacted statutes or adopted regulations governing
34 sales contracts, shall be governed in the effectuation of that sales contract by the statutes
35 and regulations of the owner's state of residence. If the state in which the owner is a
36 resident has not enacted statutes or regulations governing purchase agreements, the
37 provider shall give the owner notice that neither state regulates the transaction upon which
38 he or she is entering. For transactions in those states, however, the provider is to maintain
39 all records required if the transactions were executed in the state of residence. The forms
40 used in those states need not be approved by the department;

41 (5) If there is a conflict in the laws that apply to an owner and a purchaser in any
42 individual transaction, the laws of the state that apply to the owner shall take precedence
43 and the provider shall comply with those laws.

376.1605. 1. It is unlawful for any person:

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

5 (2) To, in the solicitation or sale of a purchase agreement:

6 (a) Employ any device, scheme or artifice to defraud;

7 (b) Obtain money or property by means of an untrue statement of material fact or
8 by any omission to state a material fact necessary in order to make the statements made,
9 in light of the circumstances under which they were made, not misleading; or

10 (c) Engage in any transaction, practice or course of business which operates or
11 would operate in a fraud or deceit upon a person.

12 2. To engage in any transaction, practice or course of business if such person knows
13 or reasonably should have known that the intent was to avoid the notice requirements of
14 this section;

15 3. To engage in any fraudulent act or practice in connection with any transaction
16 relating to any settlement involving an owner or purchaser who is a resident of this state.

376.1608. 1. It is unlawful for a person in the advertisement, offer, or sale of a
2 purchase agreement to misrepresent that such an agreement has been guaranteed,
3 sponsored, recommended, or approved by the state, or any agency or officer of the state
4 or by the United States or any agency or officer of the United States. An advertisement

5 shall not use the name or title of a life insurance company or insurance policy unless prior
6 written approval has been obtained from the life insurance company.

7 2. It is unlawful for a person in conjunction with the sale of a purchase agreement
8 to directly or indirectly misrepresent that the person has been sponsored, recommended,
9 or approved, or that the person's abilities or qualifications have in any respect been passed
10 upon, by this state or any other state, or any agency or officer thereof, or by the United
11 States or any agency or officer thereof.

12 3. It is unlawful for a person in the offer or sale of a purchase agreement to obtain
13 money or property by:

14 (1) A misrepresentation that the purchase agreement purchased, offered, or sold
15 is guaranteed, sponsored, recommended, or approved by this state or any other state, or
16 any agency or officer thereof, or by the United States or any agency or officer thereof;

17 (2) A misrepresentation that the person is sponsored, recommended, or approved,
18 or that the person's abilities or qualifications have in any respect been passed upon, by this
19 state or any other state, or any agency or officer thereof, or by the United States or any
20 agency or officer thereof;

21 (3) A misrepresentation that a purchase agreement is guaranteed by any insurance
22 guaranty fund; or

23 (4) A misrepresentation that a purchase agreement is "guaranteed", that the
24 principal is "safe", or that the purchase agreement is free of risk.

25 4. Subsections 1, 2 and 3 of this section may not be construed to prohibit a
26 statement that the person is licensed or appointed pursuant to sections 376.1575 to
27 376.1617 if such a statement is required by sections 376.1575 to 376.1617 or rules adopted
28 pursuant to sections 376.1575 to 376.1617, if the statement is true in fact, and if the effect
29 of the statement is not misrepresented;

30 5. The director may allow exceptions to this section, by rule.

376.1611. 1. In addition to the penalties and other enforcement provisions of
2 sections 376.1575 to 376.1617, if any person violates any provision of sections 376.1575 to
3 376.1617 or any rule implementing the same, the director may seek an injunction in a court
4 of competent jurisdiction in the county where the person resides or has a principal place
5 of business and may apply for temporary and permanent orders that the director
6 determines necessary to restrain the person from further committing the violation.

7 2. Any person damaged by the acts of another person in violation of sections
8 376.1575 to 376.1617 or any rule implementing the same, may bring a civil action for
9 damages against the person committing the violation in a court of competent jurisdiction.

10 3. A violation of sections 376.1575 to 376.1617 attendant to the execution of a

11 purchase agreement renders such purchase agreement voidable by the purchaser. Suit for
12 damages may be brought in a court of competent jurisdiction.

13 4. The director may issue a cease and desist order upon a person who violates any
14 provision of this part, any rule or order adopted by the director, or any written agreement
15 entered into with the director, in accordance with chapter 536, RSMo.

16 5. When the director finds that such an action presents an immediate danger to the
17 public and requires an immediate final order, the director may issue an emergency cease
18 and desist order reciting with particularity the facts underlying such findings. The
19 emergency cease and desist order is effective immediately upon service of a copy of the
20 order on the respondent and remains effective for ninety days. If the department begins
21 nonemergency cease and desist proceedings pursuant to subsection 1 of this section, the
22 emergency cease and desist order remains effective, absent an order by an appellate court
23 of competent jurisdiction pursuant to chapter 536, RSMo. In the event of a willful
24 violation of sections 376.1575 to 376.1617, the trial court may award statutory damages in
25 addition to actual damages in an additional amount up to three times the actual damage
26 award. The provisions of sections 376.1575 to 376.1617 may not be waived by agreement.
27 No choice of law provision may be utilized to prevent the application of sections 376.1575
28 to 376.1617 to any settlement in which a party to the settlement is a resident of this state.
29 In any action brought by a person injured by a violation of sections 376.1575 to 376.1617,
30 no affirmative defenses, including without limitation the affirmative defenses of unclean
31 hands, *pari delicto*, or waiver, may be raised as a defense to a violation of sections 376.1575
32 to 376.1617, unless specifically enumerated in sections 376.1575 to 376.1617.

376.1614. A violation of sections 376.1575 to 376.1617 shall be considered an unfair
2 trade practice pursuant to sections 375.930 to 375.948, RSMo.

376.1617. No provider transacting business in this state may continue to do so after
2 August 28, 2001, unless it is in compliance with sections 376.1575 to 376.1617.