



SPONSOR: Sen. Bushweller & Rep. B. Short
Sen. Ennis

DELAWARE STATE SENATE
149th GENERAL ASSEMBLY

SENATE BILL NO. 66

AN ACT TO AMEND TITLE 18 OF THE DELAWARE CODE RELATING TO VIATICAL AND LIFE SETTLEMENTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Three-fifths of all members elected to each house thereof concurring therein):

Section 1. Amend Chapter 75, Title 18, of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§ 7502 Definitions.

As used in this chapter:

(1) “Advertising” 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, which are published, disseminated, circulated, or placed directly before the public in this State 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 pursuant to a viatical settlement contract.

(2) “Business of viatical settlements” means an activity involved in, but not limited to, the offering, soliciting, negotiating, procuring, effectuating, purchasing, investing, financing, monitoring, tracking, underwriting, selling, transferring, assigning, pledging, hypothecating or in any other manner, acquiring an interest in a life insurance policy by means of a viatical settlement contract. The term does not include a “viatical settlement investment” as defined in the Delaware Securities Act, §73-103(a)(21) of Title 6.

(3) “Chronically ill” means any of the following:

a. Being chronically unable to perform at least 2 activities of daily living (i.e., eating, toileting, transferring, bathing, dressing or continence).

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

c. Having a level of disability similar to that described in paragraph (3)a. of this section as determined by the Secretary of Health and Human Services.

(4) "Commissioner" means the Insurance Commissioner of this State.

~~(4) (5) "Financing entity" means an underwriter, placement agent, lender, purchaser of securities, purchaser of a policy or certificate from a viatical settlement provider, credit enhancer, or any person that may be a party to a viatical settlement contract and that has a direct ownership in a policy or certificate that is the subject of a viatical settlement contract and all of the following: but whose sole activity related to the transaction is providing funds to effect the viatical settlement and who has an agreement in writing with a licensed viatical settlement provider to act as a participant in a financing transaction:~~

~~a. The person's principal activity related to the transaction is providing funds to effect the viatical settlement or purchase of one or more viaticated policies.~~

~~b. The person has an agreement in writing with one or more licensed viatical settlement providers to finance the acquisition of viatical settlement contracts.~~

~~The term does not include a non-accredited investor or a viatical settlement purchaser.~~

~~(2) "Financing transaction" means a transaction in which a licensed viatical settlement provider or a financing entity obtains financing for viatical settlement contracts, viaticated policies or interests therein, including, without limitation, any secured or unsecured financing, any securitization transaction or any securities offering either registered or exempt from registration under federal and state securities law, or any direct purchase of interests in a policy or certificate, if the financing transaction complies with federal and state securities law.~~

(6) "Fraudulent viatical settlement act" includes:

a. Acts or omissions committed by any person who knowingly or with intent to defraud, for the purpose of depriving another of property or for pecuniary gain, commits or permits its employees or its agents to engage in acts including:

1. Presenting, causing to be presented or preparing with knowledge or belief that it will be presented to or by a viatical settlement provider, viatical settlement broker, viatical settlement purchaser, financing entity, insurer, insurance producer or any other person, false material information or concealing material information, as part of, in support of or concerning a fact material to 1 or more of the following:

A. An application for the issuance of a viatical settlement contract or insurance policy.

B. The underwriting of a viatical settlement contract or insurance policy.

C. A claim for payment or benefit pursuant to a viatical settlement contract or insurance policy.

D. Premiums paid on an insurance policy.

52 E. Payments and changes in ownership or beneficiary made in accordance with the
53 terms of a viatical settlement contract or insurance policy.

54 F. The reinstatement or conversion of an insurance policy.

55 G. The solicitation, offer, effectuation, or sale of a viatical settlement contract or
56 insurance policy.

57 H. The issuance of written evidence of viatical settlement contract or insurance.

58 I. A financing transaction.

59 2. Employing any plan, financial structure, device, scheme, or artifice to defraud related to
60 viaticated policies.

61 b. In the furtherance of a fraud or to prevent the detection of a fraud any person commits or permits its
62 employees or its agents to do any of the following:

63 1. Remove, conceal, alter, destroy or sequester the assets or records of a licensee or other person
64 engaged in the business of viatical settlements.

65 2. Misrepresent or conceal the financial condition of a licensee, financing entity, insurer, or other
66 person.

67 3. Transact the business of viatical settlements in violation of laws requiring a license, certificate
68 of authority or other legal authority for the transaction of the business of viatical settlements.

69 4. File with the Commissioner or the equivalent chief insurance regulatory official of another
70 jurisdiction a document containing false information or otherwise conceals information about a material
71 fact from the Commissioner.

72 c. Embezzlement, theft, misappropriation or conversion of monies, funds, premiums, credits, or other
73 property of a viatical settlement provider, insurer, insured, viator, insurance policy owner or any other person
74 engaged in the business of viatical settlements or insurance.

75 d. Recklessly entering into, negotiating, brokering, otherwise dealing in a viatical settlement contract, the
76 subject of which is a life insurance policy that was obtained by presenting false information concerning any fact
77 material to the policy or by concealing, for the purpose of misleading another, information concerning any fact
78 material to the policy, where the person intended to defraud the policy's issuer, the viatical settlement provider, or
79 the viator. "Recklessly" means engaging in the conduct in conscious and clearly unjustifiable disregard of a
80 substantial likelihood of the existence of the relevant facts or risks, such disregard involving a gross deviation
81 from acceptable standards of conduct.

e. Facilitating the change of state of ownership of a policy or certificate or the state of residency of a viator to a state or jurisdiction that does not have a law similar to this Act for the express purposes of evading or avoiding the provisions of this Act.

f. Attempting to commit, assisting, aiding or abetting in the commission of, or attempting or conspiring to commit, the acts or omissions specified in this subsection.

(7) "Life insurance producer" means any person licensed in this State as a resident or nonresident insurance producer who has received qualification or authority for life insurance coverage or a life line of coverage pursuant to Chapter 17 of this title.

(3) (8) "Person" means a legal entity, including, but not limited to, an individual, partnership, limited liability company, association, trust, corporation, or other legal entity.

(9) "Policy" or "Insurance 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.

(10) "Related provider trust" means a titling trust or other trust established by a licensed viatical settlement 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.

(11) "Special purpose entity" means a corporation, partnership, trust, limited liability company or other similar entity formed solely to provide either directly or indirectly access to institutional capital markets:

a. For a financing entity or licensed viatical settlement provider; or

b. (i) In connection with a transaction in which the securities in the special purpose entity are acquired by the viator or by "qualified institutional buyers" as defined in Rule 144 promulgated under the Securities Act of 1933, as amended; or

(ii) The securities pay a fixed rate of return commensurate with established asset-backed institutional capital markets.

(12) "Terminally ill" means having an illness or sickness that can reasonably be expected to result in death in 24 months or less.

~~(4)a. "Viatical settlement agent" means a person who is an authorized agent of a licensed viatical settlement provider who acts or aids in any manner in the solicitation of a viatical settlement. Viatical settlement agent shall not include:~~

~~1. An attorney, licensed CPA, financial planner or any person exercising a power of attorney granted by a viator;~~

~~or~~

112 2. Any person who is retained to represent a viator and whose compensation is paid by or at the direction of the
113 viator regardless of whether the viatical settlement is consummated.

114 b. A viatical settlement agent is deemed to represent only the viatical settlement provider.

115 (5)(13). "Viatical settlement broker" means a person, including a life insurance producer as provided for in § 7503
116 of this Act, who working exclusively that on behalf of a viator and for a fee, commission or other valuable consideration
117 offers or attempts to negotiate viatical settlements contracts between a viator and 1 or more viatical settlement providers or
118 one or more viatical settlement brokers. Irrespective of the manner in which the viatical settlement broker is compensated, a
119 viatical settlement broker is deemed to represent only the viator, and not the insurer or the viatical settlement provider, and
120 owes a fiduciary duty to the viator to act according to the viator's instructions and in the best interest of the viator. The term
121 does not include an attorney, licensed CPA, or financial planner accredited by a nationally recognized accreditation agency,
122 who is retained to represent the viator and whose compensation is not paid directly or indirectly by the viatical settlement
123 provider or purchaser or at the direction of the viator.

124 (6)(14)a. "Viatical settlement contract" means a written agreement entered into between a viator and a viatical
125 settlement provider and a viator or any affiliate of the viatical settlement provider establishing. The agreement shall
126 establish the terms under which the viatical settlement provider will pay compensation or anything of value is or will be
127 paid, which compensation or value is less than the expected death benefits of the insurance policy or certificate, in return
128 for the viator's present or future assignment, transfer, sale, devise, or bequest of the death benefit or ownership of all or any
129 portion of the insurance policy or certificate of insurance. to the viatical settlement provider. A viatical settlement contract
130 also includes a contract for a loan or other financial transaction secured primarily by an individual or group life insurance
131 policy, other than a loan by a life insurance company pursuant to the terms of the life insurance contract, or a loan secured
132 by the cash value of a policy.

133 b. "Viatical settlement contract" includes a premium finance loan made for a life insurance policy by a lender to
134 viator on, before, or after the date of issuance of the policy where any of the following are met:

135 1. The viator or the insured receives on the date of the premium finance loan a guarantee of a
136 future viatical settlement value of the policy.

137 2. The viator or the insured agrees on the date of the premium finance loan to sell the policy or
138 any portion of its death benefit on any date following the issuance of the policy.

139 c. "Viatical settlement contract" does not include any of the following:

140 1. A policy loan or accelerated death benefit made by the insurer pursuant to the policy's terms.

141 2. Loan proceeds that are used solely to pay any of the following:

142 A. Premiums for the policy.

143 B. The costs of the loan, including interest, arrangement fees, utilization fees and
144 similar fees, closing costs, legal fees and expenses, trustee fees and expenses, and third party
145 collateral provider fees and expenses, including fees payable to letter of credit issuers.

146 3. A loan made by a bank or other licensed financial institution in which the lender takes an
147 interest in a life insurance policy solely to secure repayment of a loan or, if there is a default on the loan
148 and the policy is transferred, the transfer of such a policy by the lender, if the default itself is not pursuant
149 to an agreement or understanding with any other person for the purpose of evading regulation under this
150 Act.

151 4. A loan made by a lender that does not violate Chapter 48 of this title, if the premium finance
152 loan is not described in paragraph (14)b. of this section.

153 5. An agreement where all the parties have an insurable interest in the insured as defined in §
154 2704 or § 2705 of this title.

155 6. Any designation, consent or agreement by an insured who is an employee of an employer in
156 connection with the purchase by the employer, or trust established by the employer, of life insurance on
157 the life of the employee, where the employer or the trustee has an insurable interest as defined in §
158 2704(c)(3) of this title.

159 7. A bona fide business succession planning arrangement between any of the following:

160 A. One or more shareholders in a corporation or between a corporation and 1 or more
161 of its shareholders or 1 or more trust established by its shareholders.

162 B. One or more partners in a partnership or between a partnership and 1 or more of its
163 partners or 1 or more trust established by its partners.

164 C. One or more members in a limited liability company or between a limited liability
165 company and 1 or more of its members or 1 or more trust established by its members.

166 8. An agreement entered into by a service recipient, or a trust established by the service
167 recipient, and a service provider, or a trust established by the service provider, who performs significant
168 services for the service recipient's trade or business.

169 9. Any other contract, transaction or arrangement exempted from the definition of viatical
170 settlement contract by the Commissioner based on a determination that the contract, transaction, or
171 arrangement is not of the type intended to be regulated by this Act.

(7)(15) "Viatical settlement provider" means a person, other than a viator, that enters into or effectuates a viatical settlement contract with a viator resident in this State. ~~"Viatical settlement provider" also means a person that obtains financing from a financing entity for the purchase, acquisition, transfer or other assignment of 1 or more viatical settlement contracts, viaticated policies or interests therein, or otherwise sells, assigns, transfers, pledges, hypothecates or otherwise disposes of 1 or more viatical settlement contracts, viaticated policies or interests therein.~~

~~Viatical settlement provider~~ The term does not include any of the following:

a. A bank, savings bank, savings and loan association, credit union, or other licensed lending institution that takes an assignment of a life insurance policy solely as collateral for a loan;

b. A premium finance company making premium finance loans and exempted by the Commissioner from the licensing requirement under the premium finance laws that takes an assignment of a life insurance policy solely as collateral for a loan.

~~b. c. The issuer of a life insurance policy, providing accelerated benefits and pursuant to the contract;~~
or

d. An authorized or eligible insurer that provides stop loss coverage or financial guaranty insurance to a viatical settlement provider, purchaser, financing entity, special purpose entity or related provider trust.

~~e-e.~~ A natural person who enters into or effectuates no more than 1 agreement in a calendar year for the transfer of life insurance policies for any value less than the expected death benefit.

f. A financing entity.

g. A special purpose entity.

h. A related provider trust.

i. A viatical settlement purchaser.

j. Any other person that the Commissioner determines is not the type of person intended to be covered by the definition of viatical settlement provider.

(16) "Viatical settlement purchaser" means a person who provides a sum of money as consideration for a life insurance policy or an interest in the death benefits of a life insurance policy, or a person who owns or acquires or is entitled to a beneficial interest in a trust that owns a viatical settlement contract or is the beneficiary of a life insurance policy that has been or will be the subject of a viatical settlement contract, for the purpose of deriving an economic benefit.

The term does not include any of the following:

a. A licensee under this Act.

b. An accredited investor or qualified institutional buyer as defined, respectively, in Rule 501(a) or Rule 144A promulgated under the Federal Securities Act of 1933, as amended.

c. A financing entity.

d. A special purpose entity.

e. A related provider trust.

(8)(17) "Viaticated policy" means a life insurance policy or certificate that has been acquired by a viatical settlement provider pursuant to a viatical settlement contract.

(9)(18) "Viator" means the owner of a life insurance policy or a certificate holder under a group policy ~~insuring the life of an individual with a catastrophic, life-threatening or chronic illness or condition~~ who resides in this State and enters or seeks to enter into a viatical settlement contract. For the purposes of this Act, a viator is not limited to an owner of a life insurance policy or a certificate holder under a group policy insuring the life of an individual with a terminal or chronic illness or condition except where specifically addressed. If there is more than 1 viator on a single policy and the viators are residents of different states, the transaction is governed by the law of the state in which the viator having the largest percentage ownership resides or, if the viators hold equal ownership, the state of residence of 1 viator agreed upon in writing by all the viators. The term does not include any of the following:

a. A licensee under this Act, including a life insurance producer acting as a viatical settlement broker pursuant to this Act.

b. A person who is a qualified institutional buyer as defined, respectively, in Rule 144A promulgated under the Federal Securities Act of 1933, as amended.

c. A financing entity.

d. A special purpose entity.

e. A related provider trust.

§ 7503 License and bond requirements.

(a) A person may not operate as a viatical settlement provider or viatical settlement broker without first obtaining a license from the Commissioner of the state of residence of the viator, having obtained an agency license in accordance with Chapter 17 of this title.

(b) ~~A person shall not operate as a viatical settlement agent without first having obtained a license as a life agent in accordance with Chapter 17 of this title. Notwithstanding the provisions of subsection (a) of this section, Chapter 17 appointment requirements shall not apply to viatical settlement agents performing viatical settlement functions.~~

~~(c) A person shall not operate as a viatical settlement broker without first having obtained a license as a life broker in accordance with Chapter 17 of this title.~~

~~(d) Applications for viatical settlement provider, agent and broker's licenses shall be made in accordance with Chapter 17 of this title.~~

~~(e) The Commissioner is authorized, at all times, to require the applicant to disclose the identity of all stockholders, partners, officers, members and employees. The Commissioner may, in the exercise of his or her discretion, refuse to issue a license in the name of a legal entity if not satisfied that any officer, employee, stockholder, partner or member thereof who may materially influence the applicant's conduct meets the standards of this chapter.~~

~~(f) A license issued to a legal entity authorizes the viatical settlement provider to act within the State for transacting viatical settlements as applicable under this chapter.~~

~~(g) All viatical settlement transactions made on behalf of the viatical settlement provider shall be accomplished by a viatical settlement agent registered with this Department under the viatical settlement provider agency license.~~

~~(h) Upon the filing of an application for a viatical settlement providers license, the Commissioner may require a detailed plan of operation and information relating to the applicant's business reputation.~~

(b) A life insurance producer who has been duly licensed as a resident insurance producer with a life line of authority in this State or the producer's home state for at least 1 year and who is licensed as a nonresident producer in this State meets the licensing requirements of this section and is permitted to operate as a viatical settlement broker.

(1) Not later than 30 days from the first day of operating as a viatical settlement broker, the life insurance producer shall notify the Commissioner that the producer is acting as a viatical settlement broker on a form prescribed by the Commissioner and shall pay any applicable fee to be determined by the Commissioner. Notification includes an acknowledgement that the life insurance producer will operate as a viatical settlement broker in accordance with this Act.

(2) The insurer that issued the policy being viaticated is not responsible for any act or omission of a viatical settlement broker or viatical settlement provider arising out of or in connection with the viatical settlement transaction, unless the insurer receives compensation for the placement of a viatical settlement contract from the viatical settlement provider or viatical settlement broker in connection with the viatical settlement contract.

(c) A person licensed as an attorney, certified public accountant, or financial planner accredited by a nationally recognized accreditation agency, who is retained to represent the viator, whose compensation is not paid directly or indirectly by the viatical settlement provider, may negotiate viatical settlement contracts on behalf of the viator without having to obtain a license as a viatical settlement broker.

(d) An application for a viatical settlement provider or viatical settlement broker license must be made to the Commissioner by the applicant on a form prescribed by the Commissioner and must be accompanied by the fees specified in § 701(30) of this title.

(e) Licenses may be renewed from year to year on the anniversary date upon payment of the annual renewal fees specified in § 701(30) of this title. Failure to pay the fees by the renewal date results in expiration of the license.

(f) The applicant shall provide information on forms required by the Commissioner. The Commissioner has the authority, at any time, to require the applicant to fully disclose the identity of all stockholders, partners, officers, members and employees, and the Commissioner may, in the exercise of the Commissioner's discretion, refuse to issue a license in the name of a legal entity if the Commissioner is not satisfied that any officer, employee, stockholder, partner or member thereof who may materially influence the applicant's conduct meets the standards for licensure under this Act.

(g) A license issued to a legal entity authorizes all partners, officers, members, and designated employees to act as viatical settlement providers or viatical settlement brokers, as applicable, under the license, and all those persons must be named in the application and any supplements to the application.

(h) Upon the filing of an application and the payment of the license fee, the Commissioner shall make an investigation of each applicant and issue a license if the Commissioner finds that the applicant:

(1) If a viatical settlement provider, has provided a detailed plan of operation.

(2) Is competent and trustworthy and intends to act in good faith in the capacity involved by the license applied for.

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

(4)a. If a viatical settlement provider, has demonstrated evidence of financial responsibility in a format prescribed by the Commissioner through either a surety bond executed and issued by an insurer authorized to issue surety bonds in this State or a deposit of cash, certificates of deposit or securities or any combination thereof in the amount of \$250,000.

b. If a viatical settlement broker, has demonstrated evidence of financial responsibility in a format prescribed by the Commissioner through either a surety bond executed and issued by an insurer authorized to issue surety bonds in this State or a deposit of cash, certificates of deposit or securities or any combination thereof in the amount of \$250,000.

c. The Commissioner may ask for evidence of financial responsibility at any time the Commissioner deems necessary.

d. Any surety bond issued pursuant to paragraph (4) of this subsection must be in the favor of this State and must specifically authorize recovery by the Commissioner on behalf of any person in this State who sustained damages as the result of erroneous acts, failure to act, conviction of fraud, or conviction of unfair practices by the viatical settlement provider or viatical settlement broker.

e. Notwithstanding any provision of this section to contrary, the Commissioner shall accept, as evidence of financial responsibility, proof that financial instruments in accordance with the requirements in this paragraph have been filed with 1 state where the applicant is licensed as a viatical settlement provider or viatical settlement broker.

(5) If a legal entity, provides a certificate of good standing from the state of its domicile.

(6) If a viatical settlement provider or viatical settlement broker, has provided an anti-fraud plan that meets the requirements of § 7514(g) of this Act.

(i) The Commissioner may not issue a license to a nonresident applicant, unless a written designation of an agent for service of process is filed and maintained with the Commissioner or the applicant has filed with the Commissioner the applicant's written irrevocable consent that any action against the applicant may be commenced against the applicant by service of process on the Commissioner.

(j) A viatical settlement provider or viatical settlement broker shall provide to the Commissioner new or revised information about officers, 10% or more stockholders, partners, directors, members or designated employees within 30 days of the change.

(k) An individual licensed as a viatical settlement broker shall complete, on a biennial basis, 15 hours of training related to viatical settlements and viatical settlement transactions, as required by the Commissioner, but a life insurance producer who is operating as a viatical settlement broker pursuant to subsection (b) of this section is not subject to the requirements of this subsection. Any person failing to meet the requirements of this subsection is subject to the penalties imposed by the Commissioner.

§ 7504 Approval of viatical settlements contracts and disclosure statements.

A person shall not use a viatical settlement contract or provide to a viator a disclosure statement form in this State unless filed with and approved by the Commissioner. The Commissioner shall disapprove a viatical settlement contract or disclosure statement form if, in the Commissioner's opinion, the contract or provisions contained therein are unreasonable, contrary to the interests of the public or otherwise misleading or unfair to the viator.

§ 7504 License revocation and denial.

319 (a) The Commissioner may refuse to issue, suspend, revoke or refuse to renew the license of a viatical settlement
320 provider or viatical settlement broker if the Commissioner finds any of the following:

321 (1) There was a material misrepresentation in the application for the license.

322 (2) The licensee or any officer, partner, member or key management personnel has been convicted of
323 fraudulent or dishonest practices, is subject to a final administrative action, or is otherwise shown to be
324 untrustworthy or incompetent.

325 (3) The viatical settlement provider demonstrates a pattern of unreasonable payments to viators.

326 (4) The licensee or any officer, partner, member or key management personnel has been found guilty of,
327 or has pleaded guilty or nolo contendere to, any felony, or to a misdemeanor involving fraud or moral turpitude,
328 regardless of whether a judgment of conviction has been entered by the court.

329 (5) The viatical settlement provider has entered into any viatical settlement contract that has not been
330 approved pursuant to this Act.

331 (6) The viatical settlement provider has failed to honor contractual obligations set out in a viatical
332 settlement contract or a viatical settlement purchase agreement.

333 (7) The licensee no longer meets the requirements for initial licensure.

334 (8) The viatical settlement provider has assigned, transferred or pledged a viaticated policy to a person
335 other than a viatical settlement provider licensed in this State, a viatical settlement purchaser, an accredited
336 investor or qualified institutional buyer as defined respectively in Rule 501(a) or Rule 144A promulgated under
337 the Federal Securities Act of 1933, as amended, financing entity, special purpose entity, or related provider trust.

338 (9) The licensee or any officer, partner, member or key management personnel has violated any provision
339 of this Act.

340 (b) The Commissioner may suspend, revoke, or refuse to renew the license of a viatical settlement broker or a life
341 insurance producer operating as a viatical settlement broker pursuant to this Act if the Commissioner finds that the viatical
342 settlement broker or life insurance producer has violated the provisions of this Act or has otherwise engaged in bad faith
343 conduct with 1 or more viators.

344 (c) If the Commissioner denies a license application or suspends, revokes, or refuses to renew the license of a
345 viatical settlement provider or viatical settlement broker, or suspends, revokes, or refuses to renew a license of a life
346 insurance producer operating as a viatical settlement broker pursuant to this Act, the Commissioner shall conduct a hearing
347 in accordance with §§ 323-327 of this title and Chapter 101 of title 29.

348 § 7505 Approval of viatical settlement contracts and disclosure statements.

A person may not use a viatical settlement contract form or provide to a viator a disclosure statement form in this State unless it is first filed with and approved by the Commissioner. The Commissioner shall disapprove a viatical settlement contract form or disclosure statement form if, in the Commissioner's opinion, the contract or provisions contained therein fail to meet the requirements of §§ 7508, 7510, 7513, and 7514(b) of this Act or are unreasonable, contrary to the interests of the public, or otherwise misleading or unfair to the viator. At the Commissioner's discretion, the Commissioner may require the submission of advertising material.

§ 7505 ~~7506~~ Reporting requirements and ~~confidentiality~~ privacy.

(a) Each viatical settlement provider shall file with the Commissioner on or before ~~April~~ March 1 of each year an annual statement containing such information as the Commissioner ~~by rule~~ may prescribe by regulation. Such information is limited to only those transactions where the viator is a resident of this State. Individual transaction data regarding the business of viatical settlements or data that could compromise the privacy of personal, financial, and health information of the viator or insured must be filed with the Commissioner on a confidential basis.

(b) Except as otherwise allowed or required by law, a viatical settlement provider, viatical settlement broker, insurance company, insurance ~~agent~~ producer, ~~insurance broker~~, information bureau, rating agency or company, or any other person with actual knowledge of an insured's ~~viator's~~ identity, ~~shall~~ may not disclose that identity as an insured, or the insured's financial or medical information ~~viator~~ to any other person unless the disclosure is any of the following:

(1) Necessary to effect a viatical settlement between the viator and a viatical settlement provider and the viator and insured have ~~has~~ provided prior written consent to the disclosure.

(2) Necessary to effect a viatical settlement purchase agreement between the viatical settlement purchaser and a viatical settlement provider and the viator and insured have provided prior written consent to the disclosure.

~~(2)(3)~~ Provided in response to an investigation or examination by the Commissioner or any other governmental officer or agency or pursuant to the requirements of § 7514(c) of this Act. ~~or~~

~~(3)(4)~~ A term of or condition to the transfer of a ~~viaticated~~ policy by 1 viatical settlement provider to another viatical settlement provider, ~~or disclosures to reinsurers and in similar situations;~~

(5) Necessary to permit a financing entity, related provider trust, or special purpose entity to finance the purchase of policies by a viatical settlement provider and the viator and insured have provided prior written consent to the disclosure.

(6) Necessary to allow the viatical settlement provider or viatical settlement broker or their authorized representatives to make contacts for the purpose of determining health status.

(7) Required to purchase stop loss coverage or financial guaranty insurance.

§ 7506 ~~7507~~ Examination or investigations.

379 (a) ~~The Commissioner may, when the Commissioner deems it reasonably necessary to protect the interests of the~~
380 ~~public, examine the business and affairs of any licensee or applicant for a license. The Commissioner shall have the~~
381 ~~authority to order any licensee or applicant to produce any records, books, files or other information reasonably necessary~~
382 ~~to ascertain whether or not the licensee or applicant is acting or has acted in violation of the law or otherwise contrary to the~~
383 ~~interests of the public. The expenses incurred in conducting any examination shall be paid by the licensee or applicant.~~

384 (b) ~~Names and individual identification data for all viators shall be considered private and confidential information~~
385 ~~and shall not be disclosed by the Commissioner unless required by law.~~

386 (c) ~~Records of all transactions of viatical settlement contracts shall be maintained by the viatical settlement~~
387 ~~provider and shall be available to the Commissioner for inspection during reasonable business hours. A viatical settlement~~
388 ~~provider shall maintain records of each viatical settlement until 5 years after the death of the insured.~~

389 (a) Authority, scope and scheduling of examinations.

390 (1) The Commissioner may conduct an examination under this Act of a licensee as often as the
391 Commissioner, in the Commissioner's discretion, deems appropriate after considering the factors set forth in this
392 subsection.

393 (2) In scheduling and determining the nature, scope, and frequency of the examinations, the
394 Commissioner shall consider such matters as consumer complaints, results of financial statement analyses and
395 ratios, changes in management or ownership, actuarial opinions, report of independent certified public
396 accountants, and other relevant criteria as determined by the Commissioner.

397 (3) For purposes of completing an examination of a licensee under this Act, the Commissioner may
398 examine or investigate any person, or the business of any person, if the examination or investigation is, in the sole
399 discretion of the Commissioner, necessary or material to the examination of the licensee.

400 (4) In lieu of an examination under this Act of any foreign or alien licensee licensed in this State, the
401 Commissioner may, at the Commissioner's discretion, accept an examination report on the licensee as prepared by
402 the commissioner for the licensee's state of domicile or port-of-entry state.

403 (5) As far as practical, the examination of a foreign or alien licensee must be made in cooperation with
404 the insurance supervisory officials of other states in which the licensee transacts business.

405 (b) Record retention requirements.

406 (1) A person required to be licensed by this Act must retain copies of all of the following for 5 years:

407 a. Proposed, offered or executed contracts, purchase agreements, underwriting documents,
408 policy forms, and applications from the date of the proposal, offer or execution of the contract or
409 purchase agreement, whichever is later.

410 b. All checks, drafts, or other evidence and documentation related to the payment, transfer,
411 deposit or release of funds from the date the transaction.

412 c. All other records and documents related to the requirements of this Act.

413 (2) This section does not relieve a person of the obligation to produce these documents to the
414 Commissioner after the retention period has expired if the person has retained the documents.

415 (3) Records required to be retained by this section must be legible and complete and may be retained in
416 paper, photograph, microprocess, magnetic, mechanical, or electronic media, or by any process that accurately
417 reproduces or forms a durable medium for the reproduction of a record.

418 (c) Conduct of examinations.

419 (1) Upon determining that an examination should be conducted, the Commissioner shall issue an
420 examination warrant appointing 1 or more examiners to perform the examination and instructing them as to the
421 scope of the examination. In conducting the examination, the examiner shall observe those guidelines and
422 procedures set forth in the Examiners Handbook adopted by the National Association of Insurance Commissioners
423 (NAIC). The Commissioner may also employ such other guidelines or procedures as the Commissioner may deem
424 appropriate.

425 (2) Every licensee or person from whom information is sought, its officers, directors and agents shall
426 provide to the examiners timely, convenient and free access at all reasonable hours at its offices to all books,
427 records, accounts, papers, documents, assets and computer or other recordings relating to the property, assets,
428 business and affairs of the licensee being examined. The officers, directors, employees and agents of the licensee
429 or person shall facilitate the examination and aid in the examination so far as it is in their power to do so. The
430 refusal of a licensee, by its officers, directors, employees or agents, to submit to examination or to comply with
431 any reasonable written request of the Commissioner is grounds for suspension, revocation or refusal of, or
432 nonrenewal of any license or authority held by the licensee to engage in the viatical settlement business or other
433 business subject to the Commissioner's jurisdiction. Any proceedings for suspension, revocation or refusal of any
434 license or authority must be conducted pursuant to §§ 323-327 of this title and Chapter 101 of Title 29.

435 (3) The Commissioner has the power to issue subpoenas, administer oaths, and examine under oath any
436 person as to any matter pertinent to the examination. Upon the failure or refusal of a person to obey a subpoena,

the Commissioner may petition the Superior Court, in any county in which is pending the proceeding at which such individual is so required to appear, or the Superior Court in the county in which such individual resides, and upon proper showing, the Court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the court order is punishable as contempt of court.

(4) When making an examination under this Act, the Commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants or other professionals and specialists as examiners, the reasonable cost of which must be borne by the licensee that is the subject of the examination.

(5) Nothing contained in this Act limits the Commissioner's authority to terminate or suspend an examination in order to pursue other legal or regulatory action pursuant to the insurance laws of this State. Findings of fact and conclusions made pursuant to any examination are prima facie evidence in any legal or regulatory action.

(6) Nothing contained in this Act limits the Commissioner's authority to use and, if appropriate, to make public any final or preliminary examination report, any examiner or licensee workpapers or other documents, or any other information discovered or developed during the course of any examination in the furtherance of any legal or regulatory action brought as part of the Commissioner's official duties which the Commissioner may, in the Commissioner's sole discretion, deem appropriate.

(d) Examination Reports.

(1) Examination reports may only be comprised of facts appearing upon the books, records or other documents of the licensee, its agents or other persons examined, or as ascertained from the testimony of its officers or agents or other persons examined concerning its affairs, and such conclusions and recommendations as the examiners find reasonably warranted from the facts.

(2) No later than 60 days following completion of the examination, the examiner in charge shall file with the Commissioner a verified written report of examination under oath. Upon receipt of the verified report, the Commissioner shall transmit the report to the licensee examined, together with a notice that affords the licensee examined a reasonable opportunity of not more than 30 days to make a written submission or rebuttal with respect to any matters contained in the examination report.

(3) In the event the Commissioner determines that regulatory action is appropriate as a result of an examination, the Commissioner may initiate any proceedings or actions provided by law.

(e) Confidentiality of Examination Information.

(1) Names and individual identification data for all viators is private and confidential information and may not be disclosed by the Commissioner, unless required by law.

(2) Except as otherwise provided in this Act, all examination reports, working papers, recorded information, documents and copies thereof produced by, obtained by or disclosed to the Commissioner or any other person in the course of an examination made under this Act, or in the course of analysis or investigation by the Commissioner of the financial condition or market conduct of a licensee are confidential and privileged, are not a "public record" under the Freedom of Information Act, 29 Del. C. Chapter 100, are not subject to subpoena, and are not subject to discovery or admissible in evidence in any private civil action. The Commissioner is authorized to use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as part of the Commissioner's official duties.

(3) Documents, materials, or other information, including all working papers and copies thereof in the possession or control of the NAIC and its affiliates and subsidiaries are confidential and privileged, are not subject to subpoena, and are not subject to discovery or admissible in evidence in any private civil action if they are any of the following:

a. Created, produced or obtained by or disclosed to the NAIC and its affiliates and subsidiaries in the course of assisting an examination made under this Act, or assisting a commissioner in the analysis or investigation of the financial condition or market conduct of a licensee.

b. Disclosed to the NAIC and its affiliates and subsidiaries under paragraph (4) of this subsection by a commissioner.

c. For the purposes of paragraph (2) of this subsection, "Act" includes the law of another state or jurisdiction that is substantially similar to this Act.

(4) The Commissioner or any person that receives the documents, material, or other information while acting under the authority of the Commissioner, including the NAIC and its affiliates and subsidiaries, may not testify in any private civil action concerning any confidential documents, materials, or information subject to paragraph (1) of this subsection.

(5) In order to assist in the performance of the Commissioner's duties, the Commissioner may do all of the following:

a. Share documents, materials or other information, including the confidential and privileged documents, materials or information subject to paragraph (1) of this subsection, with other state, federal and international regulatory agencies, with the NAIC and its affiliates and subsidiaries, and with state,

496 federal and international law enforcement authorities, if that recipient agrees to maintain the
497 confidentiality and privileged status of the document, material, communication, or other information.

498 b. Receive documents, materials, communications or information, including otherwise
499 confidential and privileged documents, materials or information, from the NAIC and its affiliates and
500 subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions,
501 and shall maintain as confidential or privileged any document, material or information received with
502 notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the
503 source of the document, material, or information.

504 c. Enter into agreements governing sharing and use of information consistent with this
505 subsection.

506 (6) No waiver of any applicable privilege or claim of confidentiality in the documents, materials or
507 information occurs as a result of disclosure to the Commissioner under this section or as a result of sharing as
508 authorized in paragraph (5) of this subsection.

509 (7) A privilege established under the law of any state or jurisdiction that is substantially similar to the
510 privilege established under this subsection is available and enforceable in any proceeding in, and in any court of,
511 this State.

512 (8) Nothing contained in this Act prevents or prohibits the Commissioner from disclosing the content of
513 an examination report, preliminary examination report or results, or any matter relating thereto, to the
514 commissioner of any other state or country, or to law enforcement officials of this or any other state or agency of
515 the federal government at any time or to the NAIC, if such agency or office receiving the report or matters relating
516 thereto agrees in writing to hold it confidential and in a manner consistent with this Act.

517 (f) Conflict of interest.

518 (1) An examiner may not be appointed by the Commissioner if the examiner, either directly or indirectly,
519 has a conflict of interest or is affiliated with the management of or owns a pecuniary interest in any person subject
520 to examination under this Act. This section does not automatically preclude an examiner from being any of the
521 following:

522 a. A viator.

523 b. An insured in a viaticated insurance policy.

524 c. A beneficiary in an insurance policy that is proposed to be viaticated.

(2) Notwithstanding paragraph (f)(1) of this subsection, the Commissioner may retain from time to time, on an individual basis, qualified actuaries, certified public accountants, or other similar individuals who are independently practicing their professions, even though these persons may from time to time be similarly employed or retained by persons subject to examination under this Act.

(g) Immunity from liability.

(1) No cause of action may exist and no liability may be imposed against the Commissioner, the Commissioner's authorized representatives, or any examiner appointed by the Commissioner for any statements made or conduct performed in good faith while carrying out the provisions of this Act.

(2) No cause of action may exist and no liability may be imposed against any person for the act of communicating or delivering information or data to the Commissioner or the Commissioner's authorized representative or examiner pursuant to an examination made under this Act, if the act of communication or delivery was performed in good faith and without fraudulent intent or the intent to deceive. This paragraph does not abrogate or modify any common law or statutory privilege or immunity heretofore enjoyed by any person identified in paragraph (g)(1) of this subsection.

(3) A person identified in paragraph (g)(1) or (g)(2) of this subsection is entitled to an award of attorney's fees and costs if the person is the prevailing party in a civil lawsuit for libel, slander, or any other relevant tort arising out of activities related to carrying out the provisions of this Act and the party bringing the lawsuit did not have a reasonable basis in law or fact to bring the lawsuit at the time the lawsuit was initiated.

(h) Investigative authority of the commissioner.

The Commissioner may investigate suspected fraudulent viatical settlement acts and persons engaged in the business of viatical settlements.

§ 7507 7508. Disclosure to viator.

(a) A With each application for a viatical settlement, a viatical settlement provider, viatical settlement agent or viatical settlement broker shall provide the viator with at least the following disclosures~~disclose the following information to the viator~~ no later than the time the application for the viatical settlement contract is signed by all parties. The disclosures must be provided in a separate document that is signed by the viator and the viatical settlement provider or viatical settlement broker, and must provide the following information:

(1) There are Possible~~possible~~ alternatives to viatical settlement contracts ~~for individuals with catastrophic, life-threatening or chronic illnesses,~~ including any accelerated death benefits or policy loans offered under the viator's life insurance policy;

555 (2) That a viatical settlement broker represents exclusively the viator, and not the insurer or the viatical
556 settlement provider, and owes a fiduciary duty to the viator, including a duty to act according to the viator's
557 instructions and in the best interest of the viator.

558 ~~(2)~~(3) Some or all of the proceeds of the viatical settlement may be ~~free from~~ taxable under federal
559 income tax and state franchise and income taxes, and that assistance should be sought from a professional tax
560 advisor;.

561 ~~(3)~~(4) Proceeds of the viatical settlement could ~~may~~ be subject to the claims of creditors;.

562 ~~(4)~~(5) Receipt of the proceeds of a viatical settlement may adversely affect the viator's eligibility for
563 Medicaid or other government benefits or entitlements, and that advice should be obtained from the appropriate
564 government agencies;.

565 ~~(5) (6) The viator's right to rescind a viatical settlement contract 15 calendar days after the receipt of the~~
566 ~~viatical settlement proceeds by the viator, as provided in § 7508(e) of this title~~ The viator has the right to rescind a
567 viatical settlement contract before the earlier of 60 calendar days after the date upon which the viatical settlement
568 contract is executed by all parties or 30 calendar days after the viatical settlement proceeds have been paid to the
569 viator, as provided in § 7510(f) of this Act. Rescission, if exercised by the viator, is effective only if both notice of
570 the rescission is given, and the viator repays all proceeds and any premiums, loans and loan interest paid on
571 account of the viatical settlement within the rescission period. If the insured dies during the rescission period, the
572 viatical settlement contract is deemed to have been rescinded, subject to repayment by the viator or the viator's
573 estate of all viatical settlement proceeds and any premiums, loans and loan interest the viatical settlement within
574 60 days of the insured's death.

575 ~~(6)~~(7) Funds will be sent to the viator within ~~2~~ 3 business days after the viatical settlement provider has
576 received the insurer or group administrator's written acknowledgment that ownership of the policy or interest in
577 the certificate has been transferred and the beneficiary has been designated ~~pursuant to the viatical settlement~~
578 ~~contract; and.~~

579 ~~(7)~~(8) Entering into a viatical settlement contract may cause other rights or benefits, including conversion
580 rights and waiver of premium benefits that may exist under the policy or certificate, to be forfeited by the viator,
581 and that assistance should be sought from a financial adviser;.

582 (9) Disclosure to a viator must include distribution of a brochure describing the process of viatical
583 settlements. The NAIC's form for the brochure must be used unless another form is developed or approved by the
584 Commissioner.

(10) The disclosure document must contain the following language: "All medical, financial or personal information solicited or obtained by a viatical settlement provider or viatical settlement broker about an insured, including the insured's identity or the identity of family members, a spouse or a significant other may be disclosed as necessary to effect the viatical settlement between the viator and the viatical settlement provider. If you are asked to provide this information, you will be asked to consent to the disclosure. The information may be provided to someone who buys the policy or provides funds for the purchase. You may be asked to renew your permission to share information every two years."

(11) Following execution of a viatical settlement contract, the insured may be contacted for the purpose of determining the insured's health status and to confirm the insured's residential or business street address and telephone number, or as otherwise provided in this Act. This contact must be limited to once every 3 months if the insured has a life expectancy of more than 1 year, and no more than once per month if the insured has a life expectancy of 1 year or less. All such contracts may only be made by a viatical settlement provider licensed in the state in which the viator resided at the time of the viatical settlement, or by the authorized representative of a duly licensed viatical settlement provider.

(b) A viatical settlement provider shall ~~disclose the following information to the viator prior to provide the viator~~ with at least the following disclosures no later than the date the viatical settlement contract is signed by all parties: ~~The disclosures must be conspicuously displayed in the viatical settlement contract or in a separate document signed by the viator and provide the following information:~~

(1) The affiliation, if any, between the viatical settlement provider and the issuer of an insurance policy to be viaticated;

(2) The document must include the name, business address, and telephone number of the viatical settlement provider.

(3) Any affiliations or contractual arrangements between the viatical settlement provider and the viatical settlement purchaser.

~~(2)(4)~~ If an insurance policy to be viaticated 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 viaticated, the viator ~~shall~~ must be informed of the possible loss of coverage on the other lives under the policy and must be advised to consult with his or her insurance producer or the company issuing the policy for advice on the proposed ~~viatication~~ viatical settlement; and,

~~(3)(5)~~ The State the dollar amount of the current death benefit payable to the viatical settlement provider under the policy or certificate. ~~The~~ If known, the viatical settlement provider shall also 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 ~~viatical settlement provider's interest in those benefits.~~ extent to which the viator's interest in those benefits will be transferred as a result of the viatical settlement contract.

(6) State whether the funds will be escrowed with an independent third party during the transfer process, and if so, provide the name, business address, and telephone number of the independent third party escrow agent, and the fact that the viator or owner may inspect or receive copies of the relevant escrow or trust agreements or documents.

(c) A viatical settlement broker shall provide the viator with at least the following disclosures no later than the date the viatical settlement contract is signed by all parties. The disclosures must be conspicuously displayed in the viatical settlement contract or in a separate document signed by the viator and provide the following information:

(1) The name, business address, and telephone number of the viatical settlement broker.

(2) A full, complete, and accurate description of all offers, counter-offers, acceptances and rejections relating to the proposed viatical settlement contract.

(3) A written disclosure of any affiliations or contractual arrangements between the viatical settlement broker and any person making an offer in connection with the proposed viatical settlement contracts.

(4) The amount and method of calculating the broker's compensation. The term "compensation" includes anything of value paid or given to a viatical settlement broker for the placement of a policy.

(5) Where any portion of the viatical settlement broker's compensation, as defined in paragraph (c)(4) of this subsection, is taken from a proposed viatical settlement offer, the broker shall disclose the total amount of the viatical settlement offer and the percentage of the viatical settlement offer comprised by the viatical settlement broker's compensation.

(d) If the viatical settlement provider transfers ownership or changes the beneficiary of the insurance policy, the provider shall communicate in writing the change in ownership or beneficiary to the insured within 20 days after the change.

§ 7509 Disclosure to insurer.

Prior to the initiation of a plan, transaction, or series of transactions, a viatical settlement broker or viatical settlement provider shall fully disclose to an insurer a plan, transaction, or series of transactions, to which the viatical settlement broker or viatical settlement provider is a party, to originate, renew, continue, or finance a life insurance policy with the insurer for the purpose of engaging in the business of viatical settlements at any time prior to, or during the first 5 years after, issuance of the policy.

§ 7508 7510 General rules.

(a) A viatical settlement provider entering into a viatical settlement contract shall first obtain the following:

(1) If the viator is the insured, a written statement from a licensed attending physician that the viator is of sound mind and under no constraint or undue influence to enter into a viatical settlement contract;

~~(2) A witnessed document in which the viator consents to the viatical settlement contract, acknowledges that the insured has a catastrophic, life-threatening or chronic illness or condition, and that represents that the viator has a full and complete understanding of the viatical settlement contract and that he or she has a full and complete understanding of the benefits of the life insurance policy and acknowledges that he or she has entered into the viatical settlement contract freely and voluntarily; and~~

~~(3) A document in which the insured consents to the release of his or her the insured's medical records to a licensed viatical settlement provider, or viatical settlement broker, and the insurance company that issued the life insurance policy covering the life of the insured.~~

(3) Within 20 days after a viator executes documents necessary to transfer any rights under an insurance policy or within 20 days of entering any agreement, option, promise, or any other form of understanding, expressed or implied, to viaticate the policy, the viatical settlement provider shall give written notice to the insurer that issued that insurance policy that the policy has or will become a viaticated policy. The notice must be accompanied by the documents required by this subsection.

(4) The viatical settlement provider shall deliver a copy of the medical release required under paragraph (a)(2) of this subsection, a copy of the viator's application for the viatical settlement contract, the notice required under § 7509 of this Act, and a request for verification of coverage to the insurer that issued the life policy that is the subject of the viatical transaction. The NAIC's form for verification of coverage must be used unless another form is developed and approved by the Commissioner.

(5) The insurer shall respond to a request for verification of coverage submitted on an approved form by a viatical settlement provider or viatical settlement broker within 30 calendar days of the date the request is received and indicate whether, based on the medical evidence and documents provided, the insurer intends to pursue an investigation at this time regarding the validity of the insurance contract or possible fraud. The insurer shall accept a request for verification of coverage made on an NAIC form or any other form approved by the Commissioner. The insurer shall accept an original, facsimile, or electronic copy of such request and any accompanying authorization signed by the viator. Failure by the insurer to meet its obligations under this subsection is a violation of §§ 7511(c) and 7516 of this Act.

(6) Prior to or at the time of execution of the viatical settlement contract, the viatical settlement provider shall obtain a witnessed document in which the viator consents to the viatical settlement contract, represents that the viator has a full and complete understanding of the viatical settlement contract, that the viator has a full and complete understanding of the benefits of the life insurance policy, acknowledges that the viator is entering into the viatical settlement contract freely and voluntarily and, for persons with a terminal or chronic illness or condition, acknowledges that the insured has a terminal or chronic illness or condition that was diagnosed after the life insurance policy was issued.

(7) If a viatical settlement broker performs any of these activities required of the viatical settlement provider, the provider is deemed to have fulfilled the requirements of this subsection.

(b) All medical information solicited or obtained by any licensee shall be is subject to the applicable provisions of state law relating to confidentiality of medical information.

(c) All viatical settlement contracts entered into in this State must provide the viator with an ~~unconditional~~ absolute right to rescind the contract for at least 15 calendar days from the receipt of the viatical settlement proceeds, before the earlier of 60 calendar days after the date upon which the viatical settlement contract is executed by all parties or 30 calendar days after the viatical settlement proceeds have been sent to the viator as provided in § 7510(f) of this Act. Rescission by the viator may be conditioned upon the viator both giving notice and repaying to the viatical settlement provider within the rescission period all proceeds of the settlement and any premiums, loans and loan interest paid by or on behalf of the viatical settlement provider in connection with or as a consequence of the viatical settlement. If the insured dies during the rescission period, the viatical settlement contract shall be is deemed to have been rescinded, subject to repayment to the viatical settlement provider or purchaser of all viatical settlement proceeds, and any premiums, loans and loan interest that have been paid by the viatical settlement provider or purchaser, which must be paid within 60 calendar days of the death of the insured. In the event of any rescission, if the viatical settlement provider has paid commissions or other compensation to a viatical settlement broker in connection with the rescinded transaction, the viatical settlement broker shall refund all such commissions and compensation to the viatical settlement provider within 5 business days following receipt of written demand from the viatical settlement provider, which demand must be accompanied by either the viator's notice of rescission if rescinded at the election of the viator, or notice of the death of the insured if rescinded by reason of the death of the insured within the applicable rescission period.

(d) ~~Immediately upon the viatical settlement provider's receipt of documents to effect the transfer of the insurance policy, the viatical settlement provider shall pay the proceeds of the viatical settlement to an escrow or trust account in a state or federally chartered financial institution whose deposits are insured by the Federal Deposit Insurance Corporation~~

(FDIC). ~~The account shall be managed by a trustee or escrow agent independent of the parties to the contract. The trustee or~~
~~escrow agent shall transfer the proceeds to the viator immediately upon the viatical settlement provider's receipt of~~
~~acknowledgment of the transfer of the insurance policy. The viatical settlement provider shall instruct the viator to send the~~
~~executed documents required to effect the change in ownership, assignment or change in beneficiary directly to the~~
~~independent escrow agent. Within 3 business days after the date the escrow agent receives the document (or from the date~~
~~the viatical settlement provider receives the documents, if the viator erroneously provides the documents directly to the~~
~~provider), the provider must pay or transfer the proceeds of the viatical settlement into an escrow or trust account~~
~~maintained in a state or federally-chartered financial institution whose deposits are insured by the Federal Deposit~~
~~Insurance Corporation (FDIC). Upon payment of the settlement proceeds into the escrow account, the escrow agent shall~~
~~deliver the original change in ownership, assignment or change in beneficiary forms to the viatical settlement provider or~~
~~related provider trust or other designated representative of the viatical settlement provider. Upon the escrow agent's receipt~~
~~of the acknowledgment of the properly completed transfer of ownership, assignment or designation of beneficiary from the~~
~~insurance company, the escrow agent shall pay the settlement proceeds to the viator.~~

(e) ~~Failure to tender consideration to the viator for the viatical settlement contract within the time disclosed~~
~~pursuant to set forth in the disclosure pursuant to § 7508(a)(6) 7508(a)(7) of this title renders the viatical settlement contract~~
~~voidable by the viator for lack of consideration until the time consideration is tendered to and accepted by the viator. Funds~~
~~are deemed sent by a viatical settlement provider to a viator as of the date that the escrow agent either releases funds for~~
~~wire transfer to the viator or places a check for delivery to the viator via United States Postal Service or other nationally~~
~~recognized delivery service.~~

(f) ~~Contacts with the insured for the purpose of determining the health status of the insured by the viatical~~
~~settlement provider, or viatical settlement broker or viatical settlement agent after the viatical settlement has occurred shall~~
~~may only be made by the viatical settlement provider or broker licensed in this State or its authorized representative and~~
~~shall be are limited to once every 3 months for insureds with a life expectancy of more than 1 year, and to no more than 1~~
~~per month for insureds with a life expectancy of 1 year or less. The provider or broker shall explain the procedure for these~~
~~contacts at the time the viatical settlement contract is entered into. The limitations set forth in this subsection shall do not~~
~~apply to any contacts with an insured under a viaticated policy for reasons other than determining the insured's health~~
~~status. Viatical settlement providers and viatical settlement brokers are responsible for the actions of their authorized~~
~~representatives.~~

(g) ~~A related provider trust must have a written agreement with the licensed viatical settlement provider under~~
~~which the licensed viatical settlement provider is responsible for ensuring compliance with all statutory and regulatory~~

requirements and under which the trust agrees to make all records and files related to viatical settlement transactions available to the Commissioner as if those records and files were maintained directly by the licensed viatical settlement provider.

§ 7511 Prohibited practices.

(a) It is a violation of this Act for any person to enter into a viatical settlement contract at any time prior to the application or issuance of a policy which is the subject of viatical settlement contract or within a 5 year period commencing with the date of issuance of the insurance policy or certificate unless the viator certifies to the viatical settlement provider that 1 or more of the following conditions have been met within the 5 year period:

(1) The policy was issued upon the viator's exercise of conversion rights arising out of a group or individual policy, if the total of the time covered under the conversion policy plus the time covered under the prior policy is at least 60 months. The time covered under a group policy must be calculated without regard to any change in insurance carriers, if the coverage has been continuous and under the same group sponsorship.

(2) The viator submits independent evidence to the viatical settlement provider that 1 or more of the following conditions have been met within the 5 year period:

a. The viator or insured is terminally or chronically ill.

b. The viator's spouse dies.

c. The viator divorces his or her spouse.

d. The viator retires from full-time employment.

e. The viator becomes physically or mentally disabled and a physician determines that the disability prevents the viator from maintaining full-time employment.

f. A final order, judgment, or decree is entered by a court of competent jurisdiction, on the application of a creditor of the viator, adjudicating the viator bankrupt or insolvent, or approving a petition seeking reorganization of the viator or appointing a receiver, trustee, or liquidator to all or a substantial part of the viator's assets.

(3) The viator enters into a viatical settlement contract more than 2 years after the date of issuance of a policy and, with respect to the policy, at all times prior to the date that is 2 years after policy issuance, the following conditions are met:

a. Policy premiums have been funded exclusively with unencumbered assets, including an interest in the life insurance policy being financed only to the extent of its net cash surrender value.

provided by, or fully recourse liability incurred by, the insured or a person described in § 7502(14)c.5. of this title.

b. 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.

c. Neither the insured nor the policy has been evaluated for settlement.

(b) Copies of the independent evidence described in paragraph (a)(2) of this subsection and documents required by § 7510(a) of this Act must be submitted to the insurer when the viatical settlement provider or other party entering into a viatical settlement contract with a viator submits a request to the insurer for verification of coverage. The copies must be accompanied by a letter of attestation from the viatical settlement provider that the copies are true and correct copies of the documents received by the viatical settlement provider.

(c) If the viatical settlement provider submits to the insurer a copy of the owner or insured's certification described in § 7511(a) of this Act and the independent evidence required by paragraph (a)(2) of this subsection when the provider submits a request to the insurer to effect the transfer of the policy or certificate to the viatical settlement provider, the copy conclusively establishes that the viatical settlement contract satisfies the requirements of this subsection and the insurer shall timely respond to the request.

(d) No insurer may, as a condition of responding to a request for verification of coverage or effecting the transfer of a policy pursuant to a viatical settlement contract, require that the viator, insured, viatical settlement provider, or viatical settlement broker sign any form, disclosure, consent, or waiver form that has not been expressly approved by the Commissioner for use in connection with viatical settlement contracts in this State.

(e) Upon receipt of a properly completed request for change of ownership or beneficiary of a policy, the insurer shall respond in writing within 30 calendar days with written acknowledgement confirming that the change has been effected or specifying the reasons why the requested change cannot be processed. The insurer may not unreasonably delay effecting change of ownership or beneficiary and may not otherwise seek to interfere with any viatical settlement contract lawfully entered into in this State.

§ 7512 Prohibited practices and conflicts of interest.

(a) With respect to any viatical settlement contract or insurance policy, a viatical settlement broker may not knowingly solicit an offer from, effectuate a viatical settlement with, or make a sale to any viatical settlement provider, viatical settlement purchaser, financing entity or related provider trust that is controlling, controlled by, or under common control with such viatical settlement broker.

794 (b) With respect to any viatical settlement contract or insurance policy, no viatical settlement provider knowingly
795 may enter into a viatical settlement contract with a viator, if, in connection with such viatical settlement contract, anything
796 of value will be paid to a viatical settlement broker that is controlling, controlled by, or under common control with such
797 viatical settlement provider or the viatical settlement purchaser, financing entity or related provider trust that is involved in
798 such viatical settlement contract.

799 (c) A violation of subsection (a) or subsection (b) of this section is a fraudulent viatical settlement act.

800 (d) A viatical settlement provider may not enter into a viatical settlement contract unless the viatical settlement
801 promotional, advertising and marketing materials, as may be prescribed by regulation, have been filed with the
802 Commissioner. Marketing materials may not expressly reference that the insurance is "free" for any period of time. The
803 inclusion of any reference in the marketing materials that would cause a viator to reasonably believe that the insurance is
804 free for any period of time is a violation of this Act.

805 (e) A life insurance producer, insurance company, viatical settlement broker, or viatical settlement provider may
806 not make any statement or representation to the applicant or policyholder in connection with the sale or financing of a life
807 insurance policy to the effect that the insurance is free or without cost to the policyholder for any period of time unless
808 provided in the policy.

809 § 7513 Advertising for viatical settlements.

810 (a) The purpose of this section is to provide prospective viators with clear and unambiguous statements in the
811 advertisement of viatical settlements and to assure the clear, truthful, and adequate disclosure of the benefits, risks,
812 limitations, and exclusions of any viatical settlement contract bought or sold. This purpose is intended to be accomplished
813 by the establishment of guidelines and standards of permissible and impermissible conduct in the advertising of viatical
814 settlements to assure that product descriptions are presented in a manner that prevents unfair, deceptive, or misleading
815 advertising and is conducive to accurate presentation and description of viatical settlements through the advertising media
816 and material used by viatical settlement licensees.

817 (b) This section applies to any advertising of viatical settlement contracts or related products or services intended
818 for dissemination in this State, including Internet advertising viewed by persons located in this State. Where disclosure
819 requirements are established pursuant to federal regulation, this section must be interpreted so as to minimize or eliminate
820 conflict with federal regulation wherever possible.

821 (c) Every viatical settlement licensee shall establish and at all times maintain a system of control over the content,
822 form and method of dissemination of all advertisements of its contracts, products, and services. All advertisements,
823 regardless of by whom written, created, designed, or presented, are the responsibility of the viatical settlement licensees, as

well as the individual who created or presented the advertisement. A system of control must include regular routine notification, at least once a year, to agents and others authorized by the viatical settlement licensee who disseminate advertisements of the requirements and procedures for approval prior to the use of any advertisements not furnished by the viatical settlement licensee.

(d) Advertisements must be truthful and not misleading in fact or by implication. The form and content of an advertisement of a viatical settlement contract or product or service must be sufficiently complete and clear so as to avoid deception. The advertisement must not have the capacity or tendency to mislead or deceive. Whether an advertisement has the capacity or tendency to mislead or deceive must be determined by the Commissioner from the overall impression that the advertisement may be reasonably expected to create upon a person of average education or intelligence within the segment of the public to which it is directed.

(e) Certain viatical settlement advertisements are deemed false and misleading on their face and are prohibited. Those advertisements include the following representations:

(1) "Guaranteed," "fully secured," "100 percent secured," "fully insured," "secure," "safe," "backed by rated insurance companies," "backed by federal law," "backed by state law," or "state guaranty funds," or similar representations.

(2) "No risk," "minimal risk," "low risk," "no speculation," "no fluctuation," or similar representations.

(3) "Qualified or approved for individual retirement accounts (IRAs), Roth IRAs, 401(k) plans, simplified employee pensions (SEP), 403(b), Keogh plans, TSA, other retirement account rollovers," "tax deferred," or similar representations.

(4) Utilization of the word "guaranteed" to describe the fixed return, annual return, principal, earnings, profits, investment, or similar representations.

(5) "No sales charges or fees" or similar representations.

(6) "High yield," "superior return," "excellent return," "high return," "quick profit," or similar representations.

(7) Purported favorable representations or testimonials about the benefits of viatical settlement contracts as an investment, taken out of context from newspapers, trade papers, journals, radio and television programs, and all other forms of print and electronic media.

(f) The information required to be disclosed under this section may not be minimized, rendered obscure, or presented in an ambiguous fashion or intermingled with the text of the advertisement so as to be confusing or misleading.

853 (1) An advertisement may not omit material information or use words, phrases, statements, references, or
854 illustrations if the omission or use has the capacity, tendency, or effect of misleading or deceiving viators as to the
855 nature or extent of any benefit, loss covered, premium payable, or state or federal tax consequence. The fact that
856 the viatical settlement contract offered is made available for inspection prior to consummation of the sale, or an
857 offer is made to refund the payment if the viator is not satisfied or that the viatical settlement contract includes a
858 "free look" period that satisfies or exceeds legal requirements, does not remedy misleading statements.

859 (2) An advertisement may not use the name or title of a life insurance company or a life insurance policy
860 unless the advertisement has been approved by the insurer.

861 (3) An advertisement may not represent that premium payments will not be required to be paid on the life
862 insurance policy that is the subject of a viatical settlement contract in order to maintain that policy, unless that is
863 the fact.

864 (4) An advertisement may not state or imply that interest charged on an accelerated death benefit or a
865 policy loan is unfair, inequitable, or in any manner an incorrect or improper practice.

866 (5) The words "free," "no cost," "without cost," "no additional cost," at no extra cost," or words of similar
867 import may not be used with respect to any benefit or service unless true. An advertisement may specify the
868 charge for a benefit or a service or may state that a charge is included in the payment or use other appropriate
869 language.

870 (6) Testimonials, appraisals, or analysis used in advertisements must be genuine; represent the current
871 opinion of the author; be applicable to the viatical settlement contract, product or service advertised, if any; and be
872 accurately reproduced with sufficient completeness to avoid misleading or deceiving prospective viators as to the
873 nature or scope of the testimonials, appraisal, analysis, or endorsement. In using testimonials, appraisals, or
874 analysis, a licensee under this Act makes as its own all the statements contained therein, and the statements are
875 subject to all the provisions of this section.

876 a. If the individual making a testimonial, appraisal, analysis or an endorsement has a financial
877 interest in the party making use of the testimonial, appraisal, analysis, or endorsement, either directly or
878 through a related entity as a stockholder, director, officer, employee or otherwise, or receives any benefit
879 directly or indirectly other than required union scale wages, that fact must be prominently disclosed in the
880 advertisement.

881 b. An advertisement may not state or imply that a viatical settlement contract, benefit, or service
882 has been approved or endorsed by a group of individuals, society, association, or other organization

883 unless that is the fact and unless any relationship between an organization and the viatical settlement
884 licensee is disclosed. If the entity making the endorsement or testimonial is owned, controlled, or
885 managed by the viatical settlement licensee, or receives any payment or other consideration from the
886 viatical settlement licensee for making an endorsement or testimonial, that fact must be disclosed in the
887 advertisement.

888 c. When an endorsement refers to benefits received under a viatical settlement contract, all
889 pertinent information must be retained for a period of 5 years after its use.

890 (g) An advertisement may not contain statistical information unless it accurately reflects recent and relevant facts.
891 The source of all statistics used in an advertisement must be identified.

892 (h) An advertisement may not disparage insurers, viatical settlement providers, viatical settlement brokers,
893 insurance producers, policies, services, or methods of marketing.

894 (i) The name of the viatical settlement licensee must be clearly identified in all advertisements about the licensee
895 or its viatical settlement contract, products or services, and if any specific viatical settlement contract is advertised, the
896 viatical settlement contract must be identified either by form number or some other appropriate description. If an
897 application is part of the advertisement, the name of the viatical settlement provider must be shown on the application.

898 (j) An advertisement may not use a trade name, group designation, name of the parent company of a viatical
899 settlement licensee, name of a particular division of the viatical settlement licensee, service mark, slogan, symbol, or other
900 device or reference without disclosing the name of the viatical settlement licensee, if the advertisement would have the
901 capacity or tendency to mislead or deceive as to the true identity of the viatical settlement licensee, or to create the
902 impression that a company other than the viatical settlement licensee would have any responsibility for the financial
903 obligation under a viatical settlement contract.

904 (k) An advertisement may not use any combination of words, symbols, or physical materials that by their content,
905 phraseology, shape, color, or other characteristics are so similar to a combination of words, symbols, or physical materials
906 used by a government program or agency or otherwise appear to be of such a nature that they tend to mislead prospective
907 viators into believing that the solicitation is in some manner connected with a government program or agency.

908 (l) An advertisement may state that a viatical settlement licensee is licensed in the state where the advertisement
909 appears, if it does not exaggerate that fact or suggest or imply that competing viatical settlement licensee may not be so
910 licensed. The advertisement may ask the audience to consult the licensee's web site or contact the Department of Insurance
911 to find out if the state requires licensing and, if so, whether the viatical settlement provider, viatical settlement broker is
912 licensed.

913 (m) An advertisement may not create the impression that the viatical settlement provider, its financial condition or
914 status, the payment of its claims or the merits, desirability, or advisability of its viatical settlement contracts forms are
915 recommended or endorsed by any government entity.

916 (n) The name of the actual licensee must be stated in all of its advertisements. An advertisement may not use a
917 trade name, any group designation, name of any affiliate or controlling entity of the licensee, service mark, slogan, symbol,
918 or other device in a manner that would have the capacity or tendency to mislead or deceive as to the true identity of the
919 actual licensee or create the false impression that an affiliate or controlling entity would have any responsibility for the
920 financial obligation of the licensee.

921 (o) An advertisement may not directly or indirectly create the impression that any division or agency of the State
922 or of the United States government endorses, approves, or favors any of the following:

923 (1) Any viatical settlement licensee or its business practices or methods of operation.

924 (2) The merits, desirability or advisability of any viatical settlement contract.

925 (3) Any viatical settlement contract.

926 (4) Any life insurance policy or life insurance company.

927 (p) If the advertiser emphasizes the speed with which the viatication will occur, the advertising must disclose the
928 average time frame from completed application to the date of offer and from acceptance of the offer to receipt of the funds
929 by the viator.

930 (q) If the advertising emphasizes the dollar amounts available to viators, the advertising must disclose the average
931 purchase price as a percent of face value obtained by viators contracting with the licensee during the past 6 months.

932 § 7514 Fraud prevention and control.

933 (a) Fraudulent viatical settlement acts, interference, and participation of convicted felons prohibited.

934 (1) A person may not commit a fraudulent viatical settlement act.

935 (2) A person may not knowingly or intentionally interfere with the enforcement of the provisions of this
936 Act or investigations of suspected or actual violations of this Act.

937 (3) A person in the business of viatical settlements may not knowingly or intentionally permit any person
938 convicted of a felony or of any other crime involving dishonesty or breach of trust to participate in the business of
939 viatical settlements.

940 (b) Fraud warning required.

941 (1) Viatical settlements contract forms and applications for viatical settlements, regardless of the form of
942 transmission, must contain the following statement or a substantially similar statement:

943 "Any person who knowingly presents false information in an application for insurance or viatical
944 settlement contract is guilty of a crime and may be subject to fines and confinement in prison."

945 (2) The lack of a statement as required in paragraph (b)(1) of this subsection does not constitute a defense
946 in any prosecution for a fraudulent viatical settlement act.

947 (c) Mandatory reporting of fraudulent viatical settlement acts.

948 (1) Any person engaged in the business of viatical settlements having knowledge or a reasonable
949 suspicion that a fraudulent viatical settlement act is being, will be, or has been committed shall provide to the
950 Commissioner such information as required by, and in a manner prescribed by, the Commissioner.

951 (2) Any other person having knowledge or a reasonable belief that a fraudulent viatical settlement act is
952 being, will be, or has been committed may provide to the Commissioner the information required by, and in a
953 manner prescribed by, the Commissioner.

954 (d) Immunity from liability.

955 (1) No cause of action may exist and no civil liability may be imposed on a person for furnishing
956 information concerning suspected, anticipated, or completed fraudulent viatical settlement acts or suspected or
957 completed fraudulent insurance acts, if the information is provided to or received from any of the following:

958 a. The Commissioner or the Commissioner's employees, agents, or representatives.

959 b. Federal, state or local law enforcement or regulatory officials or their employees, agents, or
960 representatives.

961 c. A person involved in the prevention and detection of fraudulent viatical settlement acts or that
962 person's agents, employees, or representatives.

963 d. The National Association of Insurance Commissioners (NAIC), National Association of
964 Securities Dealers (NASD), the North American Securities Administrators Association (NASAA), or
965 their employees, agents or representatives, or other regulatory body overseeing life insurance, viatical
966 settlements, securities, or investment fraud.

967 e. The life insurer that issued the life insurance policy covering the life of the insured.

968 (2) Paragraph (1) of this subsection does not apply to statements made with actual malice. In an action
969 brought against a person for filing a report or furnishing other information concerning a fraudulent viatical
970 settlement act, the party bringing the action must plead specifically any allegation that paragraph (1) of this
971 subsection does not apply because the person filing the report or furnishing the information did so with actual
972 malice.

973 (3) A person furnishing information as identified in paragraph (1) of this subsection is entitled to an
974 award of attorney's fees and costs if the person is the prevailing party in a civil lawsuit for libel, slander, or any
975 other relevant tort arising out of activities related to carrying out the provisions of this Act and the party bringing
976 the lawsuit did not have a reasonable basis in law or fact to bring the lawsuit at the time that it was initiated.
977 However, such an award does not apply to any person furnishing information concerning that person's own
978 fraudulent viatical settlement acts.

979 (4) This section does not abrogate or modify common law or statutory privileges or immunities enjoyed
980 by a person described in paragraph (1) of this subsection.

981 (e) Confidentiality.

982 (1) The documents and evidence provided pursuant to subsection (d) or obtained by the Commissioner in
983 an investigation of suspected or actual fraudulent viatical settlement acts are privileged and confidential. The
984 documents and evidence are not public records and are not subject to discovery or subpoena in a civil action.

985 (2) Paragraph (1) of this subsection does not prohibit release by the Commissioner of documents and
986 evidence obtained in an investigation of suspected or actual fraudulent viatical settlement acts:

987 (A) In administrative or judicial proceedings to enforce laws administered by the Commissioner.

988 (B) To federal, state or local law enforcement or regulatory agencies, to an organization
989 established for the purpose of detecting and preventing fraudulent viatical settlement acts, or to the NAIC.

990 (C) At the discretion of the Commissioner, to a person in the business of viatical settlements that
991 is aggrieved by a fraudulent viatical settlement act.

992 (3) Release of documents and evidence under paragraph (2) of this subsection does not abrogate or
993 modify the privilege granted in paragraph (1) of this subsection.

994 (f) Other law enforcement or regulatory authority.

995 (1) This Act does not:

996 a. Preempt the authority or relieve the duty of the Attorney General or any other law
997 enforcement or regulatory agencies to investigate, examine and prosecute suspected violations of law.

998 b. Prevent or prohibit a person from disclosing voluntarily information concerning viatical
999 settlement fraud to a law enforcement or regulatory agency other than the Insurance Department.

1000 c. Limit the powers granted elsewhere by the laws of this State to the Commissioner or an
1001 insurance fraud unit to investigate and examine possible violations of law and to take appropriate action
1002 against wrongdoers.

(g) Viatical settlement antifraud initiatives.

(1) Viatical settlement providers and viatical settlement brokers shall have in place antifraud initiatives reasonably calculated to detect, prosecute, and prevent fraudulent viatical settlement acts. At the discretion of the Commissioner, the Commissioner may order, or a licensee may request and the Commissioner may grant, such modifications of the following required initiatives as necessary to ensure an effective antifraud program. The modifications may be more or less restrictive than the required initiatives so long as the modifications may reasonably be expected to accomplish the purpose of this section.

(2) Antifraud initiatives must include:

a. Fraud investigators, who may be viatical settlement provider or viatical settlement broker employees or independent contractors.

b. An antifraud plan, which must be submitted to the Commissioner. The antifraud plan must include:

1. A description of the procedures for detecting and investigating possible fraudulent viatical settlement acts and procedures for resolving material inconsistencies between medical records and insurance applications.;

2. A description of the procedures for reporting possible fraudulent viatical settlement acts to the Commissioner.

3. A description of the plan for antifraud education and training of underwriters and other personnel.

4. A description or chart outlining the organizational arrangement of the antifraud personnel who are responsible for the investigation and reporting of possible fraudulent viatical settlement acts and investigating unresolved material inconsistencies between medical records and insurance applications.

c. Antifraud plans submitted to the Commissioner are privileged and confidential. The plans are not public records and are not subject to discovery or subpoena in a civil action.

§ 7515 Injunctions; civil remedies; cease and desist.

(a) In addition to the penalties and other enforcement provisions of this Act, if any person violates this Act or any regulation implementing this Act, the Commissioner, through the Attorney General, may seek an injunction in a court of competent jurisdiction and may apply for temporary and permanent orders that the Commissioner determines are necessary to restrain the person from committing the violation.

1033 (b) Any person damaged by the acts of a person in violation of this Act may bring a civil action against the person
1034 committing the violation in a court of competent jurisdiction.

1035 (c) The Commissioner may issue, in accordance with § 312 of this title, a cease and desist order upon a person that
1036 violates any provision of this Act, any regulation or order adopted by the Commissioner, or any written agreement entered
1037 into with the Commissioner.

1038 (d) When the Commissioner finds that an activity in violation of this Act presents an immediate danger to the
1039 public that requires an immediate final order, the Commissioner may issue an emergency cease and desist order reciting
1040 with particularity the facts underlying the findings. The emergency cease and desist order is effective immediately upon
1041 service of a copy of the order on the respondent and remains effective for 90 days. If the Commissioner begins non-
1042 emergency cease and desist proceedings, the emergency cease and desist order remains effective during the pendency of
1043 such proceedings, absent an order by a court of competent jurisdiction to the contrary.

1044 (e) In addition to the penalties and other enforcement provisions of this Act, any person who violates this Act is
1045 subject to civil penalties of up to \$50,000 per violation. Civil penalties may only be imposed pursuant to an order of the
1046 Commissioner issued in accordance with § 312 of this title and § 10128 of Title 29. The Commissioner's order may require
1047 a person found to be in violation of this Act to make restitution to persons aggrieved by violations of this Act.

1048 (f) If the Commissioner has reason to believe that any person has committed a fraudulent viatical settlement act, or
1049 any other law applicable to viatical settlements for which criminal prosecution is provided, the Commissioner shall give the
1050 information relative thereto to the Attorney General. The Attorney General shall promptly review any information provided
1051 and may take any legal action deemed necessary or appropriate under the circumstances.

1052 (g)(1) Except where a victim is 62 years of age or older, or an "adult who is impaired" as defined in § 3902(2) of
1053 Title 31, or a "person with a disability" as defined in § 3901(a)(2) of Title 12, a fraudulent viatical settlement act is a class
1054 A misdemeanor unless (i) the value of property, services, or other benefit wrongfully obtained or attempted to obtain, or (ii)
1055 the aggregate economic loss suffered by any person as a result of the violation, whichever is greater, is \$1,500 or more, in
1056 which case it is a class G felony.

1057 (2) Where a victim is 62 years of age or older, or an "adult who is impaired" as defined in § 3902(2) of Title 31, or
1058 a "person with a disability" as defined in § 3901(a)(2) of Title 12, a fraudulent viatical settlement act is a class G felony
1059 unless (i) the value of property, services, or other benefit wrongfully obtained or attempted to be obtained, or (ii) the
1060 aggregate economic loss suffered by any person as a result of the violation, whichever is greater, is \$1,500 or more, in
1061 which case it is a class F felony.

1062 (3) Notwithstanding paragraphs (1) and (2) of this subsection:

a. Where (i) the value of property, services, or other benefit wrongfully obtained or attempted to be obtained, or (ii) the aggregate economic loss suffered by any person as a result of the violation, whichever is greater, is more than \$50,000 but less than \$100,000, a fraudulent viatical settlement act is a class D felony.

b. Where (i) the value of property, services, or other benefit wrongfully obtained or attempted to obtain, or (ii) the aggregate economic loss suffered by any person as a result of the violation, whichever is greater, is \$100,000 or more, a fraudulent viatical settlement act is a class B felony.

(h) A person convicted of a fraudulent viatical settlement act must pay restitution to persons aggrieved by the violation of this Act. Restitution must be ordered in addition to a fine or imprisonment, but not in lieu of a fine or imprisonment.

(i) Except for a fraudulent viatical settlement act committed by a viator, the enforcement provisions and penalties of this section may not apply to a viator.

(j) In any prosecution under subsections (f) and (g) of this section, the value of the viatical settlement contracts within any 6 month period may be aggregated and the defendant charged accordingly in applying the provisions of this section but when 2 or more offenses are committed by the same person in 2 or more counties, the accused may be prosecuted in any county in which 1 of the offenses was committed for all of the offenses aggregated under this section. The applicable statute of limitations may not begin to run until the insurance company or law enforcement agency is aware of the fraud, but in no event may the prosecution be commenced later than 7 years after the act has occurred.

§ ~~7509~~-7516 Authority to promulgate regulations.

The Commissioner ~~shall have~~ has the authority to:

(1) Promulgate regulations implementing this chapter;

(2) Establish standards for evaluating reasonableness of payments under viatical settlement contracts for persons who are terminally or chronically ill. This authority includes, ~~but is not limited to,~~ 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 a person that is chronically or terminally ill.

(3) Establish appropriate licensing requirements, fees, and standards for continued licensure for viatical settlement providers and life settlement brokers.

~~(3)(4)~~ Require a bond or other mechanism for financial accountability for viatical settlement providers and life settlement brokers.

~~(4)(5)~~ Adopt rules governing the relationship and responsibilities of both insurers and viatical settlement providers and viatical settlement brokers ~~and~~ during the viatication of a life insurance policy or certificate.

1093 § ~~7510-7517~~ Unfair trade practices.

1094 ~~A violation of this chapter shall be considered an unfair trade practice under Chapter 23 of this title and subject to the~~
1095 ~~penalties contained in such chapter.~~ A violation of this Act, including the commission of a fraudulent viatical settlement
1096 act, is an unfair or deceptive act or practice in the business of insurance under § 2304 of this title, subject to the penalties
1097 contained in Chapter 23 of this title.

1098 § 7518 Non-preemption of requirements under the Delaware Securities Act.

1099 Nothing in this chapter preempts any provision set forth in Chapter 73 of Title 6, as amended, including the
1100 regulation of securities transactions in viatical settlement investments and the licensing of any person or entity engaged in
1101 the sale of securities.

1102 § 7519 Severability.

1103 If any portion of this Act or any amendments thereto, or its applicability to any person or circumstance is held
1104 invalid by a court, the remainder of this Act or its applicability to other persons or circumstances are not affected.

1105 § 7520 Effective date.

1106 A viatical settlement provider or viatical settlement broker transacting business in this State may continue to do so
1107 pending approval or disapproval of the provider or broker's application for a license as long as the application is filed with
1108 the Commissioner by January 1, 2018.

1109 Section 2. This Act takes effect immediately upon its enactment.

SYNOPSIS

On June 30, 2016, the Delaware State Senate adopted Senate Resolution No. 19 ("S.R. 19"), requesting the Delaware Department of Insurance (the "Department") to examine the secondary market for life insurance policies and make recommendations for possible legislation. In response to S.R. 19, the Department issued a report in December 2016 recommending the adoption of the Model Viatical Settlements Act adopted by the National Association of Insurance Commissioners ("NAIC"). This bill significantly modifies 18 Del. C. Chapter 75, the Delaware Viatical Settlements Act by adopting the NAIC Model. This bill establishes strong consumer protections while protecting policyholder rights. Key provisions include:

- The bill significantly expands the class of persons, known as "viators," who are permitted to enter into viatical settlement contracts. Under present law, viators are defined as individuals with a catastrophic, life threatening or chronic illness or condition. This physical condition restriction is eliminated in this bill (Section 7502(20)).
- A limited 5 year settlement prohibition targeting transactions with characteristics of stranger-originated life insurance, such as non-recourse financing, settlement guarantees, or life expectancy valuations. (Section 7511).
- Protection of consumer property rights by permitting any-time settlements for cause such as death of spouse, divorce, disability, bankruptcy, loss of job, or chronic or terminal illness (Section 7511), and by requiring full disclosure to the prospective viator (Section 7508).
- Expanded consumer right to rescind a settlement contract for up to 60 days (Section 7510(c)).
- Settlement reporting requirements to enable regulators to identify and stop stranger-originated life insurance (Section 7506).
- Prohibition on advertising representing that insurance is "free" or at "no cost" (Sections 7512(d) and 7513(e)).
- Disclosure to insurers of any plan to originate, renew, or finance a policy prior to or within 5 years of policy issue (Section 7509).
- A comprehensive definition of "viatical settlement contract" which includes policy transfers regardless of when they occur if they include indicia of stranger-originated life insurance, and transfers which do not fall within a legitimate

settlement exception, such as non-recourse financing arrangements, debt forgiveness, or settlement guarantees (Section 7502(15)).

- The bill contains fraud prevention and control measures, grants regulatory authority to the Insurance Commissioner to address violations of the Act through the issuance of cease and desist orders, imposition of civil penalties, petitions for injunctive relief, and other enforcement measures. The bill also allows persons injured by violations of the Act to bring civil actions, and allows the Attorney General to seek criminal penalties for “fraudulent viatical acts,” as defined in the Act. The criminal penalties in the current version of the bill are based on the penalties for theft in 11 Del. C. § 841. The bill expressly states that it does not preempt the authority or relieve the duty of the Attorney General or any other law enforcement or regulatory agencies to investigate, examine, and prosecute suspected violations of law.

- Section 7518 of the bill provides that nothing in this chapter preempts any provision of the Delaware Securities Act, as amended, including the regulation of securities transactions in viatical settlement investments and the licensing of any person or entity engaged in the sale of securities.

Enactment of the NAIC Model will provide regulators with strong and important tools to combat stranger-originated life insurance and the fraudulent behavior it engenders, while continuing to allow honest policyholders to exercise all of their individual and contractual rights.

Author: Senator Bushweller