

HOUSE BILL No. 2306

By Committee on Insurance

2-5

AN ACT relating to insurance companies; relating to viatical settlements; repealing K.S.A. 40-2,171, 40-2,172, 40-2,173, 40-2,174, 40-2,175, 40-2,176, 40-2,177, 40-2,178, 40-2,179, 40-2,180, 40-2,181, 40-2,182 and 40-2,183.

Be it enacted by the Legislature of the State of Kansas:

Section 1. Sections 1 through 16 inclusive, and amendments thereto, may be cited as the viatical settlements act of 2001.

Sec. 2. As used in this act, the following words and phrases shall have the meanings ascribed to them in this section:

(a) "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, published, disseminated, circulated or placed before the public, directly or indirectly, for the purpose of creating an interest in or inducing a person to purchase or sell a life insurance policy or an interest in a life insurance policy pursuant to a viatical settlement contract or a viatical settlement purchase agreement.

(b) "Business of viatical settlements" means an activity involved in, but not limited to, offering, soliciting, negotiating, procuring, effectuation, purchasing, investing, financing, monitoring, tracking, underwriting, selling, transferring, assigning, pledging or hypothecating any viatical settlement contract or purchase agreement.

(c) "Chronically ill" means:

(1) Being unable to perform at least two activities of daily living including eating, toileting, transferring, bathing, dressing, continence or such other activity as determined by rules and regulations adopted by the commissioner; or

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

(d) "Commissioner" means the commissioner of insurance.

(e) "Financing entity" means any underwriter, placement agent, lender, purchaser of securities, purchaser of a policy or certificate from a viatical settlement provider, credit enhancer or any entity that has a

1 direct ownership in a policy or certificate which is the subject of a viatical
2 settlement contract, but:

3 (1) Whose principal activity related to the transaction is providing
4 funds to effect the viatical settlement or purchase of one or more viati-
5 cated policies; and

6 (2) who has an agreement in writing with one or more licensed vi-
7 atical settlement providers to finance the acquisition of viatical settlement
8 contracts.

9 Financing entity shall not include any nonaccredited investor or viatical
10 settlement purchaser.

11 (f) "Fraudulent viatical settlement act" means and includes:

12 (1) Any act or omission committed by any person who, knowingly or
13 with intent to defraud, for the purpose of depriving another of property
14 or for pecuniary gain, commits, or permits such person's employees or
15 agents to engage in acts including:

16 (A) Presenting, causing to be presented or preparing with knowledge
17 or belief that it will be presented to or by a viatical settlement provider,
18 viatical settlement broker, viatical settlement purchaser, viatical settle-
19 ment investment agent, financing entity, insurer, insurance producer or
20 any other person, false material information, or concealing material in-
21 formation, as part of, in support of or concerning a fact material to one
22 or more of the following:

23 (i) An application for the issuance of a viatical settlement contract or
24 insurance policy;

25 (ii) the underwriting of a viatical settlement contract or insurance
26 policy;

27 (iii) a claim for payment or benefit pursuant to a viatical settlement
28 contract or insurance policy;

29 (iv) premiums paid on an insurance policy, or as a result of a viatical
30 settlement purchase agreement;

31 (v) payments and changes in ownership or beneficiary made in ac-
32 cordance with the terms of a viatical settlement contract, viatical settle-
33 ment purchase agreement or insurance policy;

34 (vi) the reinstatement or conversion of an insurance policy;

35 (vii) in the solicitation, offer, effectuation or sale of a viatical settle-
36 ment contract, insurance policy or viatical settlement purchase
37 agreement;

38 (viii) the issuance of written evidence of viatical settlement contract,
39 viatical settlement purchase agreement or insurance; or

40 (ix) a financing transaction.

41 (B) Employing any device, scheme or artifice to defraud related to
42 viaticated policies;

43 (2) in the furtherance of a fraud or to prevent the detection of a fraud

1 any person commits or permits its employees or its agents to:

2 (A) Remove, conceal, alter, destroy or sequester from the commis-
3 sioner the assets or records of a licensee or other person engaged in the
4 business of viatical settlements;

5 (B) misrepresent or conceal the financial condition of a licensee, fi-
6 nancing entity, insurer or other person;

7 (C) transact the business of viatical settlements in violation of laws
8 requiring a license, certificate of authority or other legal authority for the
9 transaction of the business of viatical settlements; or

10 (D) file with the commissioner or the chief insurance regulatory of-
11 ficial of another jurisdiction a document containing false information or
12 otherwise conceals information about a material fact from the
13 commissioner;

14 (3) embezzlement, theft, misappropriation or conversion of moneys,
15 funds, premiums, credits or other property of a viatical settlement pro-
16 vider, insurer, insured, viator, insurance policy owner or any other person
17 engaged in the business of viatical settlements or insurance; or

18 (4) recklessly entering into, brokering, otherwise dealing in a viatical
19 settlement contract, the subject of which is a life insurance policy that
20 was obtained by presenting false information concerning any fact material
21 to the policy or by concealing, for the purpose of misleading another,
22 information concerning any fact material to the policy, where the viator
23 or the viator's agent intended to defraud the policy's issuer. "Recklessly"
24 means engaging in the conduct in conscious and clearly unjustifiable dis-
25 regard of a substantial likelihood of the existence of the relevant facts or
26 risks, such disregard involving a gross deviation from acceptable standards
27 of conduct;

28 (5) attempting to commit, assisting, aiding or abetting in the com-
29 mission of, or conspiracy to commit the acts or omissions specified in this
30 subsection.

31 (g) "NAIC" means the national association of insurance
32 commissioners.

33 (h) "Person" means a natural person or a legal entity, including, but
34 not limited to, an individual, partnership, limited liability company, as-
35 sociation, trust or corporation.

36 (i) "Policy" means an individual or group policy, group certificate,
37 contract or arrangement of life insurance affecting the rights of a resident
38 of this state or bearing a reasonable relation to this state, regardless of
39 whether delivered or issued for delivery in this state.

40 (j) "Related provider trust" means a titling trust or other trust estab-
41 lished by a licensed viatical settlement provider or a financing entity for
42 the sole purpose of holding the ownership or beneficial interest in pur-
43 chased policies in connection with a financing transaction. The trust shall

1 have a written agreement with the licensed viatical settlement provider
2 under which the licensed viatical settlement provider is responsible for
3 ensuring compliance with all statutory and regulatory requirements and
4 under which the trust agrees to make all records and files related to
5 viatical settlement transactions available to the commissioner as if those
6 records and files were maintained directly by the licensed viatical settle-
7 ment provider.

8 (k) “Special purpose entity” means any corporation, partnership,
9 trust, limited liability company or other similar entity formed solely to
10 provide, either directly or indirectly, access to institutional capital markets
11 for a financing entity or licensed viatical settlement provider.

12 (l) “Terminally ill” means having an illness or sickness that can rea-
13 sonably be expected to result in death in 24 months or less.

14 (m) “Viatical settlement broker” means a person that on behalf of a
15 viator and for a fee, commission or other valuable consideration offers or
16 attempts to negotiate viatical settlement contracts between a viator and
17 one or more viatical settlement providers. Notwithstanding the manner
18 in which the viatical settlement broker is compensated, a viatical settle-
19 ment broker is deemed to represent only the viator and owes a fiduciary
20 duty to the viator to act according to the viator’s instructions and in the
21 best interest of the viator. The term does not include an attorney, certified
22 public accountant or a financial planner accredited by a nationally rec-
23 ognized accreditation agency, who is retained to represent the viator and
24 whose compensation is not paid directly or indirectly by the viatical set-
25 tlement provider or purchaser.

26 (n) “Viatical settlement contract” means a written agreement estab-
27 lishing the terms under which compensation or anything of value will be
28 paid, which compensation or value is less than the expected death benefit
29 of the insurance policy or certificate, in return for the viator’s assignment,
30 transfer, sale, devise or bequest of the death benefit or ownership of any
31 portion of the insurance policy or certificate of insurance. A viatical set-
32 tlement contract also includes a contract for a loan or other financing
33 transaction with a viator secured primarily by an individual or group life
34 insurance policy, other than a loan by a life insurance company pursuant
35 to the terms of the life insurance contract, or a loan secured by the cash
36 value of a policy. A viatical settlement contract includes an agreement
37 with a viator to transfer ownership or change the beneficiary designation
38 at a later date regardless of the date that compensation is paid to the
39 viator.

40 (o) “Viatical settlement provider” means a person, other than a viator,
41 who enters into or effectuates a viatical settlement contract. Viatical set-
42 tlement provider does not include:

43 (1) A bank, savings bank, savings and loan association, credit union

1 or other licensed lending institution that takes an assignment of a life
2 insurance policy as collateral for a loan;

3 (2) the issuer of a life insurance policy providing accelerated benefits
4 under K.S.A. 40-401, and amendments thereto, and pursuant to the
5 contract;

6 (3) an authorized or eligible insurer that provides stop loss coverage
7 to a viatical settlement provider, purchaser, financing entity, special pur-
8 pose entity or related provider trust;

9 (4) a natural person who enters into or effectuates no more than one
10 agreement in a calendar year for the transfer of life insurance policies for
11 any value less than the expected death benefit;

12 (5) a financing entity;

13 (6) a special purpose entity;

14 (7) a related provider trust;

15 (8) a viatical settlement purchaser; or

16 (9) an accredited investor or qualified institutional buyer as such term
17 is defined respectively in regulation D, rule 501 or rule 144A of the fed-
18 eral securities act of 1933, as in effect upon the effective date of this act,
19 and who purchases a viaticated policy from a viatical settlement provider.

20 (o) "Viator" means the owner of a life insurance policy or a certificate
21 holder under a group policy who enters or seeks to enter into a viatical
22 settlement contract. For the purposes of this act, a viator shall not be
23 limited to an owner of a life insurance policy or a certificate holder under
24 a group policy insuring the life of an individual with a terminal or chronic
25 illness or condition except where specifically addressed. Viator shall not
26 include:

27 (1) A licensee under this act;

28 (2) an accredited investor or qualified institutional buyer as such term
29 is defined respectively in regulation D, rule 501 or rule 144A of the fed-
30 eral securities act of 1933, as in effect upon the effective date of this act;

31 (3) a financing entity;

32 (4) a special purpose entity; or

33 (5) a related provider trust.

34 (p) "Viaticated policy" means a life insurance policy or certificate that
35 has been acquired by a viatical settlement provider pursuant to a viatical
36 settlement contract.

37 (q) "Viatical settlement purchaser" means a person who gives a sum
38 of money as consideration for a life insurance policy or an interest in the
39 death benefits of a life insurance policy, or a person who owns or acquires
40 or is entitled to a beneficial interest in a trust that owns a viatical settle-
41 ment contract or is the beneficiary of a life insurance policy that has been
42 or will be the subject of a viatical settlement contract, for the purpose of
43 deriving an economic benefit. Viatical settlement purchaser shall not

1 include:

2 (1) A licensee under this act;

3 (2) an accredited investor or qualified institutional buyer as such term
4 is defined respectively in regulation D, rule 501 or rule 144A of the fed-
5 eral securities act of 1933, as in effect upon the effective date of this act;

6 (3) a financing entity;

7 (4) a special purpose entity; or

8 (5) a related provider trust.

9 (r) "Viatical settlement purchase agreement" means a contract or
10 agreement, entered into by a viatical settlement purchaser, to which the
11 viator is not a party, to purchase a life insurance policy or an interest in
12 a life insurance policy, that is entered into for the purpose of deriving an
13 economic benefit.

14 (s) "Viatical settlement investment agent" means a person who solici-
15 its or arranges the funding for the purchase of a viatical settlement by a
16 viatical settlement purchaser and who is acting on behalf of a viatical
17 settlement provider. A viatical settlement investment agent shall not have
18 any contact directly or indirectly with the viator or have knowledge of the
19 identity of the viator. A viatical settlement investment agent is deemed
20 to represent the viatical settlement provider of whom the viatical settle-
21 ment investment agent is an appointed or contracted agent.

22 Sec. 3. (a) (1) No person shall operate as a viatical settlement pro-
23 vider or viatical settlement broker without first obtaining a license from
24 the commissioner or the insurance regulatory official of the state of resi-
25 dence of the viator. If there is more than one viator on a single policy
26 and the viators are residents of different states, the viatical settlement
27 shall be governed by the law of the state in which the viator having the
28 largest percentage ownership resides or, if the viators hold equal own-
29 ership, the state of residence of one viator agreed upon in writing by all
30 viators.

31 (2) No person shall operate as a viatical settlement investment agent
32 without first obtaining a license from the commissioner or the insurance
33 regulatory official of the state of residence of the viatical settlement pur-
34 chaser. If there is more than one purchaser of a single policy and the
35 purchasers are residents of different states, the viatical settlement pur-
36 chase agreement shall be governed by the law of the state in which the
37 purchaser having the largest percentage ownership resides or, if the pur-
38 chasers hold equal ownership, the state of residence of one purchaser
39 agreed upon in writing by all purchasers.

40 (b) Application for a viatical settlement provider, viatical settlement
41 broker or viatical settlement investment agent license shall be made to
42 the commissioner by the applicant on a form prescribed by the commis-
43 sioner, and these applications shall be accompanied by a nonrefundable

1 fee of \$1,000.

2 (c) Licenses may be renewed from year to year on the anniversary
3 date upon payment of the annual renewal fee of \$500. Failure to pay the
4 fees by the renewal date results in expiration of the license.

5 (d) The applicant shall provide information on forms required by the
6 commissioner. The commissioner shall have authority, at any time, to
7 require the applicant to fully disclose the identity of all stockholders,
8 partners, officers, members and employees, and the commissioner, in the
9 exercise of the commissioner's discretion, may refuse to issue a license in
10 the name of a legal entity if not satisfied that any officer, employee, stock-
11 holder, partner or member thereof who may materially influence the
12 applicant's conduct meets the standards of this act.

13 (e) A license issued to a legal entity authorizes all partners, officers,
14 members and designated employees to act as viatical settlement provid-
15 ers, viatical settlement brokers or viatical settlement investment agents,
16 as applicable, under the license, and all those persons shall be named in
17 the application and any supplements to the application.

18 (f) Upon the filing of an application and the payment of the license
19 fee, the commissioner shall make an investigation of each applicant and
20 issue a license if the commissioner finds that the applicant:

21 (1) If a viatical settlement provider, has provided a detailed plan of
22 operation;

23 (2) is competent and trustworthy and intends to act in good faith in
24 the capacity involved by the license applied for;

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

28 (4) if a legal entity, provides a certificate of good standing from the
29 state of its domicile; and

30 (5) if a viatical settlement provider or viatical settlement broker, has
31 provided an anti-fraud plan that meets the requirements of paragraph (g)
32 of section 12, and amendments thereto.

33 (g) The commissioner shall not issue a license to a nonresident ap-
34 plicant, unless a written designation of an agent for service of process is
35 filed and maintained with the commissioner or the applicant has filed
36 with the commissioner, the applicant's written irrevocable consent that
37 any action against the applicant may be commenced against the applicant
38 by service of process on the commissioner.

39 (h) A viatical settlement provider, viatical settlement broker or viat-
40 ical settlement investment agent shall provide to the commissioner new
41 or revised information about officers, 10% or more stockholders, partners,
42 directors, members or designated employees within 30 days of the
43 change.

1 Sec. 4. (a) The commissioner may refuse to issue, suspend, revoke
2 or refuse to renew the license of a viatical settlement provider, viatical
3 settlement broker or viatical settlement investment agent if the commis-
4 sioner finds that:

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

7 (2) the licensee or any officer, partner, member or key management
8 personnel has been convicted of fraudulent or dishonest practices, is sub-
9 ject to a final administrative action or is otherwise shown to be untrus-
10 tworthy or incompetent;

11 (3) the viatical settlement provider demonstrates a pattern of unrea-
12 sonable payments to viators;

13 (4) the licensee or any officer, partner, member or key management
14 personnel has been found guilty of, or has pleaded guilty or *nolo contem-*
15 *dere* to, any felony, or to a misdemeanor involving fraud or moral turpi-
16 tude, regardless of whether a judgment of conviction has been entered
17 by the court;

18 (5) the viatical settlement provider has entered into any viatical set-
19 tlement contract that has not been approved pursuant to this act;

20 (6) the viatical settlement provider has failed to honor contractual
21 obligations set out in a viatical settlement contract or a viatical settlement
22 purchase agreement;

23 (7) the licensee no longer meets the requirements for initial
24 licensure;

25 (8) the viatical settlement provider has assigned, transferred or
26 pledged a viaticated policy to a person other than a viatical settlement
27 provider licensed in this state, viatical settlement purchaser, an accredited
28 investor or qualified institutional buyer as defined respectively in regu-
29 lation D, rule 501 or rule 144A of the federal securities act of 1933, as in
30 effect on the effective date of this act, financing entity, special purpose
31 entity or related provider trust; or

32 (9) the licensee or any officer, partner, member or key management
33 personnel has violated any provision of this act.

34 (b) If the commissioner denies a license application or suspends, re-
35 vokes or refuses to renew the license of a viatical settlement provider,
36 viatical settlement broker or viatical settlement investment agent, the
37 commissioner shall conduct a hearing in accordance with the Kansas ad-
38 ministrative procedure act.

39 Sec. 5. No person shall use a viatical settlement contract or provide
40 to a viator a disclosure statement form in this state unless filed with and
41 approved by the commissioner. The commissioner shall disapprove a vi-
42 atical settlement contract form or disclosure statement form if, in the
43 commissioner's opinion, the contract or provisions contained therein are

1 unreasonable, contrary to the interests of the public or otherwise mis-
2 leading or unfair to the viator. At the commissioner's discretion, the com-
3 missioner may require the submission of advertising material to the
4 commissioner.

5 Sec. 6 (a) Each licensee shall file with the commissioner on or before
6 March 1 of each year an annual statement containing such information
7 as the commissioner may prescribe by rule and regulation.

8 (b) Except as otherwise allowed or required by law, a viatical settle-
9 ment provider, viatical settlement broker, viatical settlement investment
10 agent, insurance company, insurance producer, information bureau, rat-
11 ing agency or company, or any other person with actual knowledge of an
12 insured's identity, shall not disclose that identity as an insured, or the
13 insured's financial or medical information to any other person unless the
14 disclosure is:

15 (1) Necessary to effect a viatical settlement between the viator and a
16 viatical settlement provider and the viator and insured have provided
17 prior written consent to the disclosure;

18 (2) necessary to effect a viatical settlement purchase agreement be-
19 tween the viatical settlement purchaser and a viatical settlement provider
20 and the viator and insured have provided prior written consent to the
21 disclosure;

22 (3) provided in response to an investigation or examination by the
23 commissioner or any other governmental officer or agency or pursuant
24 to the requirements of paragraph (c) of section 12, and amendments
25 thereto;

26 (4) a term of or condition to the transfer of a policy by one viatical
27 settlement provider to another viatical settlement provider;

28 (5) necessary to permit a financing entity, related provider trust or
29 special purpose entity to finance the purchase of policies by a viatical
30 settlement provider and the viator and insured have provided prior writ-
31 ten consent to the disclosure;

32 (6) necessary to allow the viatical settlement provider or viatical set-
33 tlement broker or their authorized representatives to make contacts for
34 the purpose of determining health status; or

35 (7) required to purchase stop loss coverage.

36 Sec. 7. (a) (1) The commissioner may conduct an examination under
37 this act of a licensee as often as the commissioner in such commissioner's
38 sole discretion deems appropriate.

39 (2) For purposes of completing an examination of a licensee under
40 this act, the commissioner may examine or investigate any person, or the
41 business of any person, in so far as the examination or investigation, in
42 the sole discretion of the commissioner, is necessary or material to the
43 examination of the licensee.

1 (3) In lieu of an examination under this act of any foreign or alien
2 licensee licensed in this state, the commissioner, at the commissioner's
3 discretion, may accept an examination report on the licensee as prepared
4 by the commissioner for the licensee's state of domicile or port-of-entry
5 state.

6 (b) (1) Any person required to be licensed by this act shall for five
7 years retain copies of all:

8 (A) Proposed, offered or executed contracts, purchase agreements,
9 underwriting documents, policy forms, and applications from the date of
10 the proposal, offer or execution of the contract or purchase agreement,
11 whichever is later;

12 (B) all checks, drafts or other evidence and documentation related to
13 the payment, transfer, deposit or release of funds from the date of the
14 transaction; and

15 (C) all other records and documents related to the requirements of
16 this act.

17 (2) This section shall not relieve any person licensed under this act
18 of the obligation to produce these documents and provide copies thereof
19 to the commissioner after the retention period has expired if the person
20 has retained such documents.

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

25 (c) (1) Upon determining that an examination should be conducted,
26 the commissioner shall issue an examination warrant appointing one or
27 more examiners to perform the examination and instructing them as to
28 the scope of the examination. The commissioner may also employ such
29 other guidelines or procedures as the commissioner may deem
30 appropriate.

31 (2) Every licensee or person from whom information is sought, its
32 officers, directors and agents shall provide to the examiners timely, con-
33 venient and free access at all reasonable hours at its offices to all books,
34 records, accounts, papers, documents, assets and computer or other re-
35 cordings relating to the property, assets, business and affairs of the li-
36 censee being examined. The officers, directors, employees and agents of
37 the licensee or person shall facilitate the examination and aid in the ex-
38 amination so far as it is in their power to do so. The refusal of a licensee,
39 by its officers, directors, employees or agents, to submit to examination
40 or to comply with any reasonable written request of the commissioner
41 shall be grounds for suspension or refusal of, or nonrenewal of any license
42 or authority held by the licensee to engage in the viatical settlement busi-
43 ness or other business subject to the commissioner's jurisdiction. Any

1 proceedings for suspension, revocation or refusal of any license or au-
2 thority shall be conducted pursuant to the Kansas administrative proce-
3 dure act.

4 (3) The commissioner shall have the power to issue subpoenas, to
5 administer oaths and to examine under oath any person as to any matter
6 pertinent to the examination. Upon the failure or refusal of a person to
7 obey a subpoena, the commissioner may petition a court of competent
8 jurisdiction, and upon proper showing, the court may enter an order com-
9 pelling the witness to appear and testify or produce documentary evi-
10 dence. Failure to obey the court order shall be punishable as contempt
11 of court.

12 (4) When making an examination under this act, the commissioner
13 may retain attorneys, appraisers, independent actuaries, independent cer-
14 tified public accountants or other professionals and specialists as exam-
15 iners, the reasonable cost of which shall be borne by the licensee that is
16 the subject of the examination.

17 (5) Nothing contained in this act shall be construed to limit the com-
18 missioner's authority to terminate or suspend an examination in order to
19 pursue other legal or regulatory action pursuant to the insurance laws of
20 this state. Findings of fact and conclusions made pursuant to any exami-
21 nation shall be prima facie evidence in any legal or regulatory action.

22 (6) Nothing contained in this act shall be construed to limit the com-
23 missioner's authority to use and, if appropriate, to make public any final
24 or preliminary examination report, any examiner or licensee work papers
25 or other documents, or any other information discovered or developed
26 during the course of any examination in the furtherance of any legal or
27 regulatory action which the commissioner, in such commissioner's sole
28 discretion, may deem appropriate.

29 (d) (1) Examination reports shall be comprised of only facts appear-
30 ing upon the books, records or other documents of the licensee, its agents
31 or other persons examined, or as ascertained from the testimony of its
32 officers or agents or other persons examined concerning its affairs, and
33 such conclusions and recommendations as the examiners find reasonably
34 warranted from the facts.

35 (2) Not later than 60 days following completion of the examination,
36 the examiner in charge shall file with the commissioner a verified written
37 report of examination under oath. Upon receipt of the verified report,
38 the commissioner shall transmit the report to the licensee examined, to-
39 gether with a notice that shall afford the licensee examined a reasonable
40 opportunity of not more than 30 days to make a written submission or
41 rebuttal with respect to any matters contained in the examination report.

42 (3) In the event the commissioner determines that regulatory action
43 is appropriate as a result of an examination, the commissioner may initiate

1 any proceedings or actions provided by law.

2 (e) (1) Names and individual identification data for all viators shall
3 be considered private and confidential information and shall not be dis-
4 closed by the commissioner, unless required by law.

5 (2) Except as otherwise provided in this act, all examination reports,
6 working papers, recorded information, documents and copies thereof
7 produced by, obtained by or disclosed to the commissioner or any other
8 person in the course of an examination made under this act, or in the
9 course of analysis or investigation by the commissioner of the financial
10 condition or market conduct of a licensee shall be confidential by law and
11 privileged, shall not be subject to the provisions of the Kansas open re-
12 cords act, K.S.A. 45-215 *et seq.*, and amendments thereto, shall not be
13 subject to subpoena, and shall not be subject to discovery or admissible
14 in evidence in any private civil action. The commissioner is authorized to
15 use the documents, materials or other information in the furtherance of
16 any regulatory or legal action brought as part of the commissioner's of-
17 ficial duties.

18 (3) Documents, materials or other information, including, but not
19 limited to, all working papers, and copies thereof, in the possession or
20 control of the NAIC and its affiliates and subsidiaries shall be confidential
21 by law and privileged, shall not be subject to subpoena, and shall not be
22 subject to discovery or admissible in evidence in any private civil action
23 if they are:

24 (A) Created, produced or obtained by or disclosed to the NAIC and
25 its affiliates and subsidiaries in the course of assisting an examination
26 made under this act, or assisting a commissioner in the analysis or inves-
27 tigation of the financial condition or market conduct of a licensee; or

28 (B) disclosed to the NAIC and its affiliates and subsidiaries under
29 paragraph (4) of subsection (e) by the commissioner.

30 For the purposes of paragraph (2) of subsection (e), the term "act"
31 includes the law of another state or jurisdiction that is substantially similar
32 to this act.

33 (4) Neither the commissioner nor any person that received the doc-
34 uments, material or other information while acting under the authority
35 of the commissioner, including the NAIC and its affiliates and subsidia-
36 ries, shall be permitted to testify in any private civil action concerning any
37 confidential documents, materials or information subject to paragraph (1)
38 of subsection (e).

39 (5) In order to assist in the performance of the commissioner's duties,
40 the commissioner may:

41 (A) Share documents, materials or other information, including the
42 confidential and privileged documents, materials or information subject
43 to paragraph (1) of subsection (e), with other state, federal and interna-

1 tional regulatory agencies, with the NAIC and its affiliates and subsidia-
2 ries, and with state, federal and international law enforcement authorities,
3 provided that the recipient agrees to maintain the confidentiality and
4 privileged status of the document, material, communication or other
5 information;

6 (B) receive documents, materials, communications or information,
7 including otherwise confidential and privileged documents, materials or
8 information, from the NAIC and its affiliates and subsidiaries, and from
9 regulatory and law enforcement officials of other foreign or domestic
10 jurisdictions, and shall maintain as confidential or privileged any docu-
11 ment, material or information received with notice or the understanding
12 that it is confidential or privileged under the laws of the jurisdiction that
13 is the source of the document, material or information; and

14 (C) enter into agreements governing sharing and use of information
15 consistent with this subsection.

16 (6) No waiver of any applicable privilege or claim of confidentiality
17 in the documents, materials or information shall occur as a result of dis-
18 closure to the commissioner under this section or as a result of sharing
19 as authorized in paragraph (4) of subsection (e).

20 (7) A privilege established under the law of any state or jurisdiction
21 that is substantially similar to the privilege established under this subsec-
22 tion shall be available and enforced in any proceeding in, and in any court
23 of, this state.

24 (8) Nothing contained in this act shall prevent or be construed as
25 prohibiting the commissioner from disclosing the content of an exami-
26 nation report, preliminary examination report or results, or any matter
27 relating thereto, to the commissioner of any other state or country, or to
28 law enforcement officials of this or any other state or agency of the federal
29 government at any time or to the NAIC, so long as such agency or office
30 receiving the report or matters relating thereto agrees in writing to hold
31 it confidential and in a manner consistent with this act.

32 (9) The provisions of this subsection shall expire July 1, 2006, unless
33 the legislature acts to reenact such provisions. The provisions of this sec-
34 tion shall be reviewed by the legislature prior to July 1, 2006.

35 (f) (1) An examiner may not be appointed by the commissioner if the
36 examiner, either directly or indirectly, has a conflict of interest or is af-
37 filiated with the management of or owns a pecuniary interest in any per-
38 son subject to examination under this act. This section shall not be con-
39 strued to automatically preclude an examiner from being:

40 (A) A viator;

41 (B) an insured in a viaticated insurance policy; or

42 (C) a beneficiary in an insurance policy that is proposed to be
43 viaticated.

1 (2) Notwithstanding the requirements of this clause, the commis-
2 sioner may retain from time to time, on an individual basis, qualified
3 actuaries, certified public accountants or other similar individuals who are
4 independently practicing their professions, even though these persons
5 may from time to time be similarly employed or retained by persons
6 subject to examination under this act.

7 (g) Unless provided otherwise, all fees and procedures for examina-
8 tions under this act shall be in accordance with K.S.A. 40-223, and amend-
9 ments thereto.

10 (h) (1) No cause of action shall arise nor shall any liability be imposed
11 against the commissioner, the commissioner's authorized representatives
12 or any examiner appointed by the commissioner for any statements made
13 or conduct performed in good faith while carrying out the provisions of
14 this act.

15 (2) No cause of action shall arise, nor shall any liability be imposed
16 against any person for the act of communicating or delivering information
17 or data to the commissioner or the commissioner's authorized represen-
18 tative or examiner pursuant to an examination made under this act, if the
19 act of communication or delivery was performed in good faith and without
20 fraudulent intent or the intent to deceive. This paragraph does not ab-
21rogate or modify in any way any common law or statutory privilege or
22immunity heretofore enjoyed by any person identified in paragraph (1).

23 (3) A person identified in paragraph (1) or (2) shall be entitled to an
24 award of attorney fees and costs if such person is the prevailing party in
25 a civil cause of action for libel, slander or any other relevant tort arising
26 out of activities in carrying out the provisions of this act and the party
27 bringing the action was not substantially justified in doing so. For pur-
28 poses of this section a proceeding is "substantially justified" if it had a
29 reasonable basis in law or fact at the time that it was initiated.

30 (i) The commissioner may investigate suspected fraudulent viatical
31 settlement acts and persons engaged in the business of viatical
32 settlements.

33 Sec. 8. (a) With each application for a viatical settlement, a viatical
34 settlement provider or viatical settlement broker shall provide the viator
35 with at least the following disclosures no later than the time the appli-
36 cation for the viatical settlement contract is signed by all parties. The
37 disclosures shall be provided in a separate document that is signed by the
38 viator and the viatical settlement provider or viatical settlement broker,
39 and shall provide the following information:

40 (1) There are possible alternatives to viatical settlement contracts in-
41 cluding any accelerated death benefits or policy loans offered under the
42 viator's life insurance policy.

43 (2) Some or all of the proceeds of the viatical settlement may be

1 taxable under federal income tax and state franchise and income taxes,
2 and assistance should be sought from a professional tax advisor.

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

5 (4) Receipt of the proceeds of a viatical settlement may adversely
6 affect the viator's eligibility for medicaid or other government benefits or
7 entitlements, and advice should be obtained from the appropriate gov-
8 ernment agencies.

9 (5) The viator has the right to rescind a viatical settlement contract
10 for 15 calendar days after the receipt of the viatical settlement proceeds
11 by the viator, as provided in subsection (c) of section 9, and amendments
12 thereto. If the insured dies during the rescission period, the settlement
13 contract shall be deemed to have been rescinded, subject to repayment
14 of all viatical settlement proceeds and any premiums, loans and loan in-
15 terest to the viatical settlement provider or purchaser.

16 (6) Funds will be sent to the viator within three business days after
17 the viatical settlement provider has received the insurer or group admin-
18 istrator's acknowledgment that ownership of the policy or interest in the
19 certificate has been transferred and the beneficiary has been designated.

20 (7) Entering into a viatical settlement contract may cause other rights
21 or benefits, including conversion rights and waiver of premium benefits
22 that may exist under the policy or certificate, to be forfeited by the viator.
23 Assistance should be sought from a financial adviser.

24 (8) Disclosure to a viator shall include distribution of a brochure de-
25 scribing the process of viatical settlements. The form for the brochure
26 shall be developed by the commissioner.

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

37 (10) The insured may be contacted by either the viatical settlement
38 provider or broker or its authorized representative for the purpose of
39 determining the insured's health status. This contact is limited to once
40 every three months if the insured has a life expectancy of more than one
41 year, and no more than once per month if the insured has a life expectancy
42 of one year or less.

43 (b) A viatical settlement provider shall provide the viator with at least

1 the following disclosures no later than the date the viatical settlement
2 contract is signed by all parties. The disclosures shall be conspicuously
3 displayed in the viatical settlement contract or in a separate document
4 signed by the viator and the viatical settlement provider or viatical settle-
5 ment broker, and contain the following information:

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

8 (2) The name, address and telephone number of the viatical settle-
9 ment provider.

10 (3) A viatical settlement broker shall disclose to a prospective viator
11 the amount and method of calculating the broker's compensation. The
12 term "compensation" includes anything of value paid or given to a viatical
13 settlement broker for the placement of a policy.

14 (4) If an insurance policy to be viaticated has been issued as a joint
15 policy or involves family riders or any coverage of a life other than the
16 insured under the policy to be viaticated, the viator shall be informed of
17 the possible loss of coverage on the other lives under the policy and shall
18 be advised to consult with such viator's insurance producer or the insurer
19 issuing the policy for advice on the proposed viatical settlement.

20 (5) State the dollar amount of the current death benefit payable to
21 the viatical settlement provider under the policy or certificate. If known,
22 the viatical settlement provider shall also disclose the availability of any
23 additional guaranteed insurance benefits, the dollar amount of any acci-
24 dental death and dismemberment benefits under the policy or certificate
25 and the viatical settlement provider's interest in those benefits.

26 (6) State the name, business address and telephone number of the
27 independent third party escrow agent, and the fact that the viator or
28 owner may inspect or receive copies of the relevant escrow or trust agree-
29 ments or documents.

30 (c) If the provider transfers ownership or changes the beneficiary of
31 the insurance policy, the provider shall communicate the change in own-
32 ership or beneficiary to the insured within 20 days after such change.

33 (d) A viatical settlement provider or its viatical settlement investment
34 agent shall provide the viatical settlement purchaser with at least the
35 following disclosures prior to the date the viatical settlement purchase
36 agreement is signed by all parties. The disclosures shall be conspicuously
37 displayed in any viatical purchase contract or in a separate document
38 signed by the viatical settlement purchaser and viatical settlement pro-
39 vider or viatical settlement investment agent, and shall make the following
40 disclosure to the viatical settlement purchaser:

41 (1) The purchaser will receive no returns (i.e., dividends and interest)
42 until the insured dies.

43 (2) The actual annual rate of return on a viatical settlement contract

1 is dependent upon an accurate projection of the insured's life expectancy,
2 and the actual date of the insured's death. An annual "guaranteed" rate
3 of return is not determinable.

4 (3) The viaticated life insurance contract should not be considered a
5 liquid purchase since it is impossible to predict the exact timing of its
6 maturity and the funds probably are not available until the death of the
7 insured. There is no established secondary market for resale of these
8 products by the purchaser.

9 (4) The purchaser may lose all benefits or may receive substantially
10 reduced benefits if the insurer goes out of business during the term of
11 the viatical investment.

12 (5) The purchaser is responsible for payment of the insurance pre-
13 mium or other costs related to the policy, if required by the terms of the
14 viatical purchase agreement. These payments may reduce the purchaser's
15 return. If a party other than the purchaser is responsible for the payment,
16 the name and address of that party also shall be disclosed.

17 (6) The purchaser is responsible for payment of the insurance pre-
18 miums or other costs related to the policy if the insured returns to health.
19 The purchaser shall disclose the amount of such premiums, if applicable.

20 (7) State the name and address of any person providing escrow serv-
21 ices and the relationship to the broker.

22 (8) The amount of any trust fees or other expenses to be charged to
23 the viatical settlement purchaser shall be disclosed.

24 (9) State whether the purchaser is entitled to a refund of all or part
25 of such purchaser's investment under the settlement contract if the policy
26 is later determined to be null and void.

27 (10) Disclose that group policies may contain limitations or caps in
28 the conversion rights, additional premiums may have to be paid if the
29 policy is converted, name the party responsible for the payment of the
30 additional premiums and, if a group policy is terminated and replaced by
31 another group policy, state that there may be no right to convert the
32 original coverage.

33 (11) Disclose the risks associated with policy contestability including,
34 but not limited to, the risk that the purchaser will have no claim or only
35 a partial claim to death benefits should the insurer rescind the policy
36 within the contestability period.

37 (12) Disclose whether the purchaser will be the owner of the policy
38 in addition to being the beneficiary, and if the purchaser is the beneficiary
39 only and not also the owner, the special risks associated with that status,
40 including, but not limited to, the risk that the beneficiary may be changed
41 or the premium may not be paid.

42 (13) Describe the experience and qualifications of the person who
43 determines the life expectancy of the insured, i.e., in-house staff, inde-

1 pendent physicians and specialty firms that weigh medical and actuarial
2 data; the information this projection is based on; and the relationship of
3 the projection maker to the viatical settlement provider, if any.

4 (14) Disclosure to an investor shall include distribution of a brochure
5 describing the process of investment in viatical settlements. The form for
6 the brochure shall be developed by the commissioner.

7 (e) A viatical settlement provider or its viatical settlement investment
8 agent shall provide the viatical settlement purchaser with at least the
9 following disclosures no later than at the time of the assignment, transfer
10 or sale of all or a portion of an insurance policy. The disclosures shall be
11 contained in a document signed by the viatical settlement purchaser and
12 viatical settlement provider or viatical settlement investment agent, and
13 shall make the following disclosures to the viatical settlement purchaser:

14 (1) All the life expectancy certifications obtained by the provider in
15 the process of determining the price paid to the viator.

16 (2) Whether premium payments or other costs related to the policy
17 have been escrowed. If escrowed, state the date upon which the escrowed
18 funds will be depleted and whether the purchaser will be responsible for
19 payment of premiums thereafter and, if so, the amount of the premiums.

20 (3) Whether premium payments or other costs related to the policy
21 have been waived. If waived, disclose whether the investor will be re-
22 sponsible for payment of the premiums if the insurer that wrote the policy
23 terminates the waiver after purchase and the amount of those premiums.

24 (4) The type of policy offered or sold, i.e., whole life, term life, uni-
25 versal life or a group policy certificate, any additional benefits contained
26 in the policy, and the current status of the policy.

27 (5) If the policy is term insurance, disclose the special risks associated
28 with term insurance including, but not limited to, the purchaser's re-
29 sponsibility for additional premiums if the viator continues the term policy
30 at the end of the current term.

31 (6) Whether the policy is contestable.

32 (7) Whether the insurer that wrote the policy has any additional rights
33 that could negatively affect or extinguish the purchaser's rights under the
34 viatical settlement contract, what these rights are and under what con-
35 ditions these rights are activated.

36 (8) The name and address of the person responsible for monitoring
37 the insured's condition. Describe how often the monitoring of the in-
38 sured's condition is done, how the date of death is determined, and how
39 and when this information will be transmitted to the purchaser.

40 (f) The viatical settlement purchase agreement is voidable by the pur-
41 chaser at any time within three days after the disclosures mandated by
42 subsections (d) and (e) are received by the purchaser.

43 Sec. 9. (a) (1) A viatical settlement provider entering into a viatical

1 settlement contract shall first obtain:

2 (A) If the viator is the insured, a written statement from a licensed
3 attending physician that the viator is of sound mind and under no con-
4 straint or undue influence to enter into a viatical settlement contract; and

5 (B) a document in which the insured consents to the release of such
6 insured's medical records to a viatical settlement provider, viatical settle-
7 ment broker and the insurance company that issued the life insurance
8 policy covering the life of the insured.

9 (2) Within 20 days after a viator executes documents necessary to
10 transfer any rights under an insurance policy or within 20 days of entering
11 any agreement, option, promise or any other form of understanding, ex-
12 pressed or implied, to viaticate the policy, the viatical settlement provider
13 shall give written notice to the insurer that issued that insurance policy
14 that the policy has or will become a viaticated policy. The notice shall be
15 accompanied by the documents required by paragraph (3).

16 (3) The viatical provider shall deliver a copy of the medical release
17 required under clause (B) of paragraph (1), a copy of the viator's appli-
18 cation for the viatical settlement contract, the notice required under par-
19 agraph (2) and a request for verification of coverage to the insurer that
20 issued the life policy that is the subject of the viatical transaction. The
21 form for verification shall be developed by the commissioner.

22 (4) The insurer shall respond to a request for verification of coverage
23 submitted on an approved form by a viatical settlement provider within
24 30 calendar days of the date the request is received and shall indicate
25 whether, based on the medical evidence and documents provided, the
26 insurer intends to pursue an investigation at this time regarding the va-
27 lidity of the insurance contract.

28 (5) Prior to or at the time of execution of the viatical settlement con-
29 tract, the viatical settlement provider shall obtain a witnessed document
30 in which the viator consents to the viatical settlement contract, represents
31 that the viator has a full and complete understanding of the viatical set-
32 tlement contract, that such voter has a full and complete understanding
33 of the benefits of the life insurance policy, acknowledges that such voter
34 is entering into the viatical settlement contract freely and voluntarily and,
35 for persons with a terminal or chronic illness or condition, acknowledges
36 that the insured has a terminal or chronic illness and that the terminal or
37 chronic illness or condition was diagnosed after the life insurance policy
38 was issued.

39 (6) If a viatical settlement broker performs any of these activities
40 required of the viatical settlement provider, the provider is deemed to
41 have fulfilled the requirements of this section.

42 (b) (1) All medical information solicited or obtained by any licensee
43 shall be subject to the applicable provisions of state law relating to con-

1 fidentiality of medical information.

2 (2) The provisions of this subsection shall expire July 1, 2006, unless
3 the legislature acts to reenact such provisions. The provisions of this sec-
4 tion shall be reviewed by the legislature prior to July 1, 2006.

5 (c) All viatical settlement contracts entered into in this state shall
6 provide the viator with an unconditional right to rescind the contract for
7 at least 15 calendar days from the receipt of the viatical settlement pro-
8 ceeds. If the insured dies during the rescission period, the viatical settle-
9 ment contract shall be deemed to have been rescinded, subject to repay-
10 ment to the viatical settlement provider or purchaser of all viatical
11 settlement proceeds, and any premiums, loans and loan interest that have
12 been paid by the viatical settlement provider or purchaser.

13 (d) The purchaser shall have the right to rescind a viatical settlement
14 contract within three days after the disclosures mandated by subsections
15 (d) and (e) of section 8, and amendments thereto, are received by the
16 purchaser.

17 (e) The viatical settlement provider shall instruct the viator to send
18 the executed documents required to effect the change in ownership, as-
19 signment or change in beneficiary directly to the independent escrow
20 agent. Within three business days after the date the escrow agent receives
21 the document, or from the date the viatical settlement provider receives
22 the documents, if the viator erroneously provides the documents directly
23 to the provider, the provider shall pay or transfer the proceeds of the
24 viatical settlement into an escrow or trust account maintained in a state
25 or federally-chartered financial institution whose deposits are insured by
26 the federal deposit insurance corporation. Upon payment of the settle-
27 ment proceeds into the escrow account, the escrow agent shall deliver
28 the original change in ownership, assignment or change in beneficiary
29 forms to the viatical settlement provider or related provider trust. Upon
30 the escrow agent's receipt of the acknowledgment of the properly com-
31 pleted transfer of ownership, assignment or designation of beneficiary
32 from the insurance company, the escrow agent shall pay the settlement
33 proceeds to the viator.

34 (f) Failure to tender consideration to the viator for the viatical settle-
35 ment contract within the time disclosed pursuant to clause (6) of subsec-
36 tion (a) of section 8, and amendments thereto, renders the viatical settle-
37 ment contract voidable by the viator for lack of consideration until the
38 time consideration is tendered to and accepted by the viator.

39 (g) Contacts with the insured for the purpose of determining the
40 health status of the insured by the viatical settlement provider or viatical
41 settlement broker after the viatical settlement has occurred shall only be
42 made by the viatical settlement provider or broker licensed in this state
43 or its authorized representatives and shall be limited to once every three

1 months for insureds with a life expectancy of more than one year, and to
2 no more than once per month for insureds with a life expectancy of one
3 year or less. The provider or broker shall explain the procedure for these
4 contacts at the time the viatical settlement contract is entered into. The
5 limitations set forth in this subsection shall not apply to any contacts with
6 an insured for reasons other than determining the insured's health status.
7 Viatical settlement providers and viatical settlement brokers shall be re-
8 sponsible for the actions of their authorized representatives.

9 Sec. 10. It shall be a violation of this act for any person to enter into
10 a viatical settlement contract within a two-year period commencing with
11 the date of issuance of the insurance policy or certificate unless the viator
12 certifies to the viatical settlement provider that one or more of the fol-
13 lowing conditions have been met within the two-year period:

14 (a) The policy was issued upon the viator's exercise of conversion
15 rights arising out of a group or individual policy, provided the total of the
16 time covered under the conversion policy plus the time covered under
17 the prior policy is at least 24 months. The time covered under a group
18 policy shall be calculated without regard to any change in insurance car-
19 riers, provided the coverage has been continuous and under the same
20 group sponsorship;

21 (b) the viator is a charitable organization exempt from taxation under
22 26 U.S.C. §501 (c)(3);

23 (c) the viator is not a natural person;

24 (d) (1) The viator submits independent evidence to the viatical set-
25 tlement provider that one or more of the following conditions have been
26 met within the two-year period:

27 (A) The viator or insured is terminally or chronically ill;

28 (B) the viator's spouse dies;

29 (C) the viator divorces such viator's spouse;

30 (D) the viator retires from full-time employment;

31 (E) the viator becomes physically or mentally disabled and a physician
32 determines that the disability prevents the viator from maintaining full-
33 time employment;

34 (F) the viator was the insured's employer at the time the policy or
35 certificate was issued and the employment relationship terminated;

36 (G) a final order, judgment or decree is entered by a court of com-
37 petent jurisdiction, on the application of a creditor of the viator, adjudi-
38 cating the viator bankrupt or insolvent, or approving a petition seeking
39 reorganization of the viator or appointing a receiver, trustee or liquidator
40 to all or a substantial part of the viator's assets;

41 (H) the viator experiences a significant decrease in income that is
42 unexpected and that impairs the viator's reasonable ability to pay the
43 policy premium; or

1 (I) the viator or insured disposes of such viator's or insured's own-
2 ership interests in a closely held corporation.

3 (2) Copies of the independent evidence described in paragraph (1)
4 of this subsection and documents required by subsection (a) of section 9,
5 and amendments thereto shall be submitted to the insurer when the vi-
6 atical settlement provider submits a request to the insurer for verification
7 of coverage. The copies shall be accompanied by a letter of attestation
8 from the viatical settlement provider that the copies are true and correct
9 copies of the documents received by the viatical settlement provider.

10 (e) If the viatical settlement provider submits to the insurer a copy
11 of the owner or insured's certification described in subsection (d) when
12 the provider submits a request to the insurer to effect the transfer of the
13 policy or certificate to the viatical settlement provider, the copy shall be
14 deemed to conclusively establish that the viatical settlement contract sat-
15 isfies the requirements of this section and the insurer shall timely respond
16 to the request.

17 Sec. 11. The purpose of this section is to provide prospective viators
18 and viatical settlement purchasers with clear and unambiguous state-
19 ments in the advertisement of viatical settlements and to assure the clear,
20 truthful and adequate disclosure of the benefits, risks, limitations and
21 exclusions of any viatical settlement contract or viatical settlement pur-
22 chase agreement bought or sold. This purpose is intended to be accom-
23 plished by the establishment of guidelines and standards of permissible
24 and impermissible conduct in the advertising of viatical settlements to
25 assure that product descriptions are presented in a manner that prevents
26 unfair, deceptive or misleading advertising and is conducive to accurate
27 presentation and description of viatical settlements through the advertis-
28 ing media and material used by viatical settlement licensees.

29 (a) This section shall apply to any advertising of viatical settlement
30 contracts, viatical purchase agreements or related products or services
31 intended for dissemination in this state, including internet advertising
32 viewed by persons located in this state. Where disclosure requirements
33 are established pursuant to federal regulation, this section shall be inter-
34 preted so as to minimize or eliminate conflict with federal regulation
35 wherever possible.

36 (b) Every viatical settlement licensee shall establish and at all times
37 maintain a system of control over the content, form and method of dis-
38 semination of all advertisements of its contracts, products and services.
39 All advertisements, regardless of by whom written, created, designed or
40 presented, shall be the responsibility of the viatical settlement licensee,
41 as well as the individual who created or presented the advertisement. A
42 system of control shall include regular routine notification, at least once
43 a year, to agents and others authorized by the viatical settlement licensee

1 who disseminate advertisements of the requirements and procedures for
2 approval prior to the use of any advertisements not furnished by the
3 viatical settlement licensee.

4 (c) Advertisements shall be truthful and not misleading in fact or by
5 implication. The form and content of an advertisement of a viatical set-
6 tlement contract or viatical settlement purchase agreement, product or
7 service shall be sufficiently complete and clear so as to avoid deception.
8 It shall not have the capacity or tendency to mislead or deceive. Whether
9 an advertisement has the capacity or tendency to mislead or deceive shall
10 be determined by the commissioner from the overall impression that the
11 advertisement may be reasonably expected to create upon a person of
12 average education or intelligence within the segment of the public to
13 which it is directed.

14 (d) Certain viatical settlement advertisements shall be deemed false
15 and misleading on their face and shall be prohibited. False and misleading
16 viatical settlement advertisements include, but are not limited to, the
17 following representations:

18 (1) "Guaranteed," "fully secured," "100% secured," "fully insured,"
19 "secure," "safe," "backed by rated insurance companies," "backed by fed-
20 eral law," "backed by state law," or "state guaranty funds" or similar
21 representations;

22 (2) "no risk," "minimal risk," "low risk," "no speculation," "no fluc-
23 tuation" or similar representations;

24 (3) "qualified or approved for individual retirement accounts (IRAs),
25 Roth IRAs, 401(k) plans, simplified employee pensions (SEP), 403(b),
26 Keogh plans, TSA, other retirement account rollovers," "tax deferred" or
27 similar representations;

28 (4) utilization of the word "guaranteed" to describe the fixed return,
29 annual return, principal, earnings, profits, investment or similar
30 representations;

31 (5) "no sales charges or fees" or similar representations;

32 (6) "high yield," "superior return," "excellent return," "high return,"
33 "quick profit" or similar representations; and

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

39 (e) The information required to be disclosed under this section shall
40 not be minimized, rendered obscure, or presented in an ambiguous fash-
41 ion or intermingled with the text of the advertisement so as to be con-
42 fusing or misleading.

43 (1) An advertisement shall not omit material information or use

1 words, phrases, statements, references or illustrations if the omission or
2 use has the capacity, tendency or effect of misleading or deceiving viators,
3 purchasers or prospective purchasers as to the nature or extent of any
4 benefit, loss covered, premium payable or state or federal tax conse-
5 quence. The fact that the viatical settlement contract or viatical settlement
6 purchase agreement offered is made available for inspection prior to con-
7 summation of the sale, an offer is made to refund the payment if the
8 viator is not satisfied or that the viatical settlement contract or viatical
9 settlement purchase agreement includes a “free look” period that satisfies
10 or exceeds legal requirements, shall not remedy misleading statements.

11 (2) No advertisement shall use the name or title of a life insurance
12 company or a life insurance policy unless the advertisement has been
13 approved by the insurer.

14 (3) No advertisement shall represent that premium payments will not
15 be required to be paid on the life insurance policy that is the subject of
16 a viatical settlement contract or viatical settlement purchase agreement
17 in order to maintain that policy, unless that is the fact.

18 (4) No advertisement shall state or imply that interest charged on an
19 accelerated death benefit or a policy loan is unfair, inequitable or in any
20 manner an incorrect or improper practice.

21 (5) The words “free,” “no cost,” “without cost,” “no additional cost,”
22 “at no extra cost” or words of similar import shall not be used with respect
23 to any benefit or service unless true. An advertisement may specify the
24 charge for a benefit or a service or may state that a charge is included in
25 the payment or use other appropriate language.

26 (6) Testimonials, appraisals or analysis used in advertisements must
27 be genuine; represent the current opinion of the author; be applicable to
28 the viatical settlement contract or viatical settlement purchase agreement,
29 product or service advertised, if any; and be accurately reproduced with
30 sufficient completeness to avoid misleading or deceiving prospective vi-
31 tors or purchasers as to the nature or scope of the testimonials, appraisal,
32 analysis or endorsement. In using testimonials, appraisals or analysis, the
33 viatical settlement licensee makes as its own all the statements contained
34 therein, and the statements are subject to all the provisions of this section.

35 (A) If the individual making a testimonial, appraisal, analysis or an
36 endorsement has a financial interest in the viatical settlement provider or
37 related entity as a stockholder, director, officer, employee or otherwise,
38 or receives any benefit directly or indirectly other than required union
39 scale wages, that fact shall be prominently disclosed in the advertisement.

40 (B) An advertisement shall not state or imply that a viatical settlement
41 contract or viatical settlement purchase agreement, benefit or service has
42 been approved or endorsed by a group of individuals, society, association
43 or other organization unless that is the fact and unless any relationship

1 between an organization and the viatical settlement licensee is disclosed.
2 If the entity making the endorsement or testimonial is owned, controlled
3 or managed by the viatical settlement licensee, or receives any payment
4 or other consideration from the viatical settlement licensee for making
5 an endorsement or testimonial, that fact shall be disclosed in the
6 advertisement.

7 (C) When an endorsement refers to benefits received under a viatical
8 settlement contract or viatical settlement purchase agreement all perti-
9 nent information shall be retained for a period of five years after its use.

10 (f) No advertisement shall contain statistical information unless it ac-
11 curately reflects recent and relevant facts. The source of all statistics used
12 in an advertisement shall be identified.

13 (g) No advertisement shall disparage insurers, viatical settlement pro-
14 viders, viatical settlement brokers, viatical settlement investment agents,
15 insurance producers, policies, services or methods of marketing.

16 (h) The name of the viatical settlement licensee shall be clearly iden-
17 tified in all advertisements about the licensee or its viatical settlement
18 contract or viatical settlement purchase agreements, products or services,
19 and if any specific viatical settlement contract or viatical settlement pur-
20 chase agreement is advertised, the viatical settlement contract or viatical
21 settlement purchase agreement shall be identified either by form number
22 or some other appropriate description. If an application is part of the
23 advertisement, the name of the viatical settlement provider shall be
24 shown on the application.

25 (i) No advertisement shall use a trade name, group designation, name
26 of the parent company of a viatical settlement licensee, name of a partic-
27 ular division of the viatical settlement licensee, service mark, slogan, sym-
28 bol or other device or reference without disclosing the name of the viatical
29 settlement licensee, if the advertisement would have the capacity or ten-
30 dency to mislead or deceive as to the true identity of the viatical settle-
31 ment licensee, or to create the impression that a company other than the
32 viatical settlement licensee would have any responsibility for the financial
33 obligation under a viatical settlement contract or viatical settlement pur-
34 chase agreement.

35 (j) No advertisement shall use any combination of words, symbols or
36 physical materials that by their content, phraseology, shape, color or other
37 characteristics are so similar to a combination of words, symbols or phys-
38 ical materials used by a government program or agency or otherwise ap-
39 pear to be of such a nature that they tend to mislead prospective viators
40 or purchasers into believing that the solicitation is in some manner con-
41 nected with a government program or agency.

42 (k) An advertisement may state that a viatical settlement licensee is
43 licensed in the state where the advertisement appears, provided it does

1 not exaggerate that fact or suggest or imply that competing viatical settle-
2 tlement licensee may not be so licensed. The advertisement may ask the
3 audience to consult the licensee's web site or contact the department of
4 insurance to find out if the state requires licensing and, if so, whether the
5 viatical settlement provider, viatical settlement broker or viatical settle-
6 ment investment agent is licensed.

7 (l) No advertisement shall create the impression that the viatical settle-
8 ment provider, its financial condition or status, the payment of its
9 claims or the merits, desirability or advisability of its viatical settlement
10 contracts or viatical settlement purchase agreement forms are recom-
11 mended or endorsed by any government entity.

12 (m) The name of the actual licensee shall be stated in all of its ad-
13 vertisements. No advertisement shall use a trade name, any group des-
14 ignation, name of any affiliate or controlling entity of the licensee, service
15 mark, slogan, symbol or other device in a manner that would have the
16 capacity or tendency to mislead or deceive as to the true identity of the
17 actual licensee or create the false impression that an affiliate or controlling
18 entity would have any responsibility for the financial obligation of the
19 licensee.

20 (n) No advertisement shall, directly or indirectly, create the impres-
21 sion that any division or agency of the state or of the united states gov-
22 ernment endorses, approves or favors:

23 (1) Any viatical settlement licensee or its business practices or meth-
24 ods of operation;

25 (2) the merits, desirability or advisability of any viatical settlement
26 contract or viatical settlement purchase agreement;

27 (3) any viatical settlement contract or viatical settlement purchase
28 agreement; or

29 (4) any life insurance policy or life insurance company.

30 (o) If the advertiser emphasizes the speed with which the viatication
31 will occur, the advertising shall disclose the average time frame from
32 completed application to the date of offer and from acceptance of the
33 offer to receipt of the funds by the viator.

34 (p) If the advertising emphasizes the dollar amounts available to via-
35 tors, the advertising shall disclose the average purchase price as a percent
36 of face value obtained by viators contracting with the licensee during the
37 past six months.

38 Sec. 12. (a) No person shall:

39 (1) Commit a fraudulent viatical settlement act.

40 (2) Knowingly or intentionally interfere with the enforcement of any
41 provision of this act or any investigation of suspected or actual violations
42 of this act.

43 (3) Knowingly or intentionally permit any person, employed by a per-

1 son in the business of viatical settlements, convicted of a felony involving
2 dishonesty or breach of trust to participate in the business of viatical
3 settlements. No person in the business of viatical settlements shall know-
4 ingly or intentionally permit any person convicted of a felony involving
5 dishonesty or breach of trust to participate in the business of viatical
6 settlements.

7 (b) (1) Viatical settlements contracts and purchase agreement forms
8 and applications for viatical settlements, regardless of the form of trans-
9 mission, shall contain the following statement or a substantially similar
10 statement:

11 "Any person who knowingly presents false information in an application
12 for insurance, viatical settlement contract or a viatical settlement purchase
13 agreement is guilty of a crime and may be subject to fines and confine-
14 ment in prison."

15 (2) The lack of a statement as required in paragraph (1) shall not
16 constitute a defense in any prosecution for a fraudulent viatical settlement
17 act.

18 (c) (1) Any person engaged in the business of viatical settlements
19 having knowledge or a reasonable belief that a fraudulent viatical settle-
20 ment act is being, will be or has been committed shall provide to the
21 commissioner the information required by, and in a manner prescribed
22 by, the commissioner.

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

27 (d) (1) No civil liability shall be imposed on and no cause of action
28 shall arise from a person's furnishing information concerning suspected,
29 anticipated or completed fraudulent viatical settlement acts or suspected
30 or completed fraudulent insurance acts, if the information is provided to
31 or received from:

32 (A) The commissioner or the commissioner's employees, agents or
33 representatives;

34 (B) federal, state or local law enforcement or regulatory officials or
35 their employees, agents or representatives;

36 (C) any person involved in the prevention and detection of fraudulent
37 viatical settlement acts or that person's agents, employees or
38 representatives;

39 (D) the NAIC, national association of securities dealers, the north
40 american securities administrators association, or their employees, agents
41 or representatives, or other regulatory body overseeing life insurance,
42 viatical settlements, securities or investment fraud; or

43 (E) the life insurer that issued the life insurance policy covering the

1 life of the insured.

2 (2) Paragraph (1) shall not apply to statements made with actual mal-
3 ice. In an action brought against a person for filing a report or furnishing
4 other information concerning a fraudulent viatical settlement act or a
5 fraudulent insurance act, the party bringing the action shall plead specif-
6 ically any allegation that paragraph (1) does not apply because the person
7 filing the report or furnishing the information did so with actual malice.

8 (3) A person identified in paragraph (1) shall be entitled to an award
9 of attorney fees and costs if such person is the prevailing party in a civil
10 cause of action for libel, slander or any other relevant tort arising out of
11 activities in carrying out the provisions of this act and the party bringing
12 the action was not substantially justified in doing so. For purposes of this
13 section a proceeding is substantially justified if it had a reasonable basis
14 in law or fact at the time that it was initiated.

15 (4) This section does not abrogate or modify common law or statutory
16 privileges or immunities enjoyed by a person described in paragraph (1).

17 (e) (1) The documents and evidence provided pursuant to subsection
18 (d) of this section or obtained by the commissioner in an investigation of
19 suspected or actual fraudulent viatical settlement acts shall be privileged
20 and confidential and shall not be a public record and shall not be subject
21 to discovery or subpoena in a civil or criminal action.

22 (2) Paragraph (1) of this subsection shall not prohibit release by the
23 commissioner of documents and evidence obtained in an investigation of
24 suspected or actual fraudulent viatical settlement acts:

25 (A) In administrative or judicial proceedings to enforce laws admin-
26 istered by the commissioner;

27 (B) to federal, state or local law enforcement or regulatory agencies,
28 to an organization established for the purpose of detecting and preventing
29 fraudulent viatical settlement acts or to the NAIC; or

30 (C) at the discretion of the commissioner, to a person in the business
31 of viatical settlements that is aggrieved by a fraudulent viatical settlement
32 act.

33 (3) Release of documents and evidence under paragraph (2) of this
34 subsection does not abrogate or modify the privilege granted in paragraph
35 (1).

36 (f) This act shall not:

37 (1) Preempt the authority or relieve the duty of other law enforce-
38 ment or regulatory agencies to investigate, examine and prosecute sus-
39 pected violations of law;

40 (2) prevent or prohibit a person from disclosing voluntarily infor-
41 mation concerning viatical settlement fraud to a law enforcement or reg-
42 ulatory agency other than the insurance department; or

43 (3) limit the powers granted elsewhere by the laws of this state to the

1 commissioner or an insurance fraud unit to investigate and examine possible violations of law and to take appropriate action against wrongdoers.

2
3 (g) Viatical settlement providers and viatical settlement brokers shall
4 have in place antifraud initiatives reasonably calculated to detect, prosecute and prevent fraudulent viatical settlement acts. At the discretion of
5 the commissioner, the commissioner may order, or a licensee may request
6 and the commissioner may grant, such modifications of the following
7 required initiatives as necessary to ensure an effective antifraud program.
8 The modifications may be more or less restrictive than the required initiatives
9 so long as the modifications reasonably may be expected to accomplish the purpose of this section. Antifraud initiatives shall include:

10
11 (1) Fraud investigators, who may be viatical settlement providers or
12 viatical settlement broker employees or independent contractors; and

13
14 (2) an antifraud plan, which shall be submitted to the commissioner.
15 The antifraud plan shall include, but not be limited to:

16 (A) A description of the procedures for detecting and investigating
17 possible fraudulent viatical settlement acts and procedures for resolving
18 material inconsistencies between medical records and insurance
19 applications;

20 (B) a description of the procedures for reporting possible fraudulent
21 viatical settlement acts to the commissioner;

22 (C) a description of the plan for antifraud education and training of
23 underwriters and other personnel; and

24 (D) a description or chart outlining the organizational arrangement
25 of the antifraud personnel who are responsible for the investigation and
26 reporting of possible fraudulent viatical settlement acts and investigating
27 unresolved material inconsistencies between medical records and insurance
28 applications; and

29 (3) antifraud plans submitted to the commissioner shall be privileged
30 and confidential and shall not be a public record and shall not be subject
31 to discovery or subpoena in a civil or criminal action.

32 (h) The provisions of this subsection shall expire July 1, 2006, unless
33 the legislature acts to reenact such provisions. The provisions of this section
34 shall be reviewed by the legislature prior to July 1, 2006.

35 Sec. 13. (a) If the commissioner determines after notice and opportunity
36 for a hearing that any person has engaged or is engaging in any act
37 or practice constituting a violation of any provision of this act, the Kansas
38 insurance statutes or any rule and regulation or order thereunder, the
39 commissioner may in the exercise of discretion, order any one or more
40 of the following:

41 (1) Payment of a monetary penalty of not more than \$1,000 for each
42 and every act or violation, unless the person knew or reasonably should
43 have known such person was in violation of this act, the Kansas insurance

1 statutes or any rule and regulation or order thereunder, in which case the
2 penalty shall be not more than \$2,000 for each and every act or violation;

3 (2) suspension or revocation of the person's license or certificate if
4 such person knew or reasonably should have known that such person was
5 in violation of this act, the Kansas insurance statutes or any rule and
6 regulation or order thereunder; or

7 (3) that such person cease and desist from the unlawful act or practice
8 and take such affirmative action as in the judgment of the commissioner
9 will carry out the purposes of the violated or potentially violated provision.

10 (b) If any person fails to file any report or other information with the
11 commissioner as required by statute or fails to respond to any proper
12 inquiry of the commissioner, the commissioner, after notice and oppor-
13 tunity for hearing, may impose a penalty of up to \$500 for each violation
14 or act, along with an additional penalty of up to \$100 for each week
15 thereafter that such report or other information is not provided to the
16 commissioner.

17 (c) If the commissioner makes written findings of fact that there is a
18 situation involving an immediate danger to the public health, safety or
19 welfare or the public interest will be irreparably harmed by delay in is-
20 suing an order under paragraph (3) of subsection (a), the commissioner
21 may issue an emergency temporary cease and desist order. Such order,
22 even when not an order within the meaning of K.S.A. 77-502, and amend-
23 ments thereto, shall be subject to the same procedures as an emergency
24 order issued under K.S.A. 77-536, and amendments thereto. Upon the
25 entry of such an order, the commissioner shall promptly notify the person
26 subject to the order that: (1) It has been entered; (2) the reasons therefor;
27 and (3) that upon written request within 15 days after service of the order
28 the matter will be set for a hearing which shall be conducted in accord-
29 ance with the provisions of the Kansas administrative procedure act. If
30 no hearing is requested and none is ordered by the commissioner, the
31 order will remain in effect until it is modified or vacated by the commis-
32 sioner. If a hearing is requested or ordered, the commissioner, after no-
33 tice of and opportunity for hearing to the person subject to the order, by
34 written findings of fact and conclusions of law, shall vacate, modify or
35 make permanent the order.

36 (d) (1) Any person who violates the provisions of this act shall be
37 guilty of a:

38 (A) Severity level 7, nonperson felony if the value of the viatical set-
39 tlement contract is \$25,000 or more;

40 (B) severity level 9, nonperson felony if the value of the viatical set-
41 tlement contract is at least \$500 but less than \$25,000; or

42 (C) class A nonperson misdemeanor if the value of the viatical settle-
43 ment contract is less than \$500.

1 (2) If the value of the insurance premium is less than \$500 and such
2 agent or broker has, within five years immediately preceding commission
3 of the crime, been convicted of violating this section two or more times
4 shall be guilty of a severity level 9, nonperson felony.

5 (e) Restitution may be ordered in addition to, but not in lieu of, any
6 other penalty imposed under this act.

7 Sec. 14. Any violation of this act shall also be considered an unfair
8 or deceptive act or practice under K.S.A. 40-2404, and amendments
9 thereto, and subject to the penalties contained in K.S.A. 40-2401 *et seq.*,
10 and amendments thereto.

11 Sec. 15. The commissioner shall have the authority to:

12 (a) Promulgate rules and regulations necessary to implement the pro-
13 visions of this act;

14 (b) establish standards for evaluating reasonableness of payments un-
15 der viatical settlement contracts for persons who are terminally or chron-
16 ically ill. Such authority includes, but is not limited to, regulation of dis-
17 count rates used to determine the amount paid in exchange for
18 assignment, transfer, sale, devise or bequest of a benefit under a life
19 insurance policy;

20 (c) establish appropriate licensing requirements, fees and standards
21 for continued licensure for viatical settlement providers, brokers and in-
22 vestment agents;

23 (d) require a bond or other mechanism for financial accountability
24 for viatical settlement providers and brokers; and

25 (e) adopt rules and regulations governing the relationship and re-
26 sponsibilities of both insurers and viatical settlement providers, viatical
27 settlement brokers and viatical settlement investment agents during the
28 viatication of a life insurance policy or certificate.

29 Sec. 16. A viatical settlement provider, viatical settlement broker or
30 viatical settlement investment agent transacting business in this state may
31 continue to do so pending approval or disapproval of the provider, broker
32 or investment agent's application for a license as long as the application
33 is filed with the commissioner by July 1, 2001.

34 Sec. 17. K.S.A. 40-2,171, 40-2,172, 40-2,173, 40-2,174, 40-2,175, 40-
35 2,176, 40-2,177, 40-2,178, 40-2,179, 40-2,180, 40-2,181, 40-2,182 and 40-
36 2,183 are hereby repealed.

37 Sec. 18. This act shall take effect and be in force from and after its
38 publication in the Kansas register.

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