

## SENATE BILL No. 624

By Committee on Financial Institutions and Insurance

2-14

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9 AN ACT concerning viatical settlements; amending K.S.A. 2007 Supp.  
10 40-5001, 40-5002, 40-5003, 40-5006, 40-5008 and 40-5010 and re-  
11 pealing the existing sections; also repealing K.S.A. 2007 Supp. 40-5007  
12 and 40-5009.  
13

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

15 New Section 1. (a) (1) The commissioner may conduct an examina-  
16 tion under this act of a licensee as often as the commissioner in such  
17 commissioner's sole discretion deems appropriate.

18 (2) In scheduling and determining the nature, scope and frequency  
19 of the examinations, the commissioner shall consider such matters as the  
20 consumer complaints, results of financial statement analyses and ratios,  
21 changes in management and ownership, actuarial opinions, reports of  
22 independent certified public accountants and other relevant criteria as  
23 determined by the commissioner.

24 (3) For purposes of completing an examination of a licensee under  
25 this act, the commissioner may examine or investigate any person, or the  
26 business of any person, insofar as the examination or investigation, in the  
27 sole discretion of the commissioner, is necessary or material to the ex-  
28 amination of the licensee.

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

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

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

39 (A) Proposed, offered or executed contracts, underwriting docu-  
40 ments, policy forms, and applications from the date of the proposal, offer  
41 or execution of the contract, whichever is later;

42 (B) all checks, drafts or other evidence and documentation related to  
43 the payment, transfer, deposit or release of funds from the date of the

1 transaction; and

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

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

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

12 (c) (1) Upon determining that an examination should be conducted,  
13 the commissioner shall issue an examination warrant appointing one or  
14 more examiners to perform the examination and instructing them as to  
15 the scope of the examination. The commissioner may also employ such  
16 other guidelines or procedures as the commissioner may deem  
17 appropriate.

18 (2) Every licensee or person from whom information is sought, its  
19 officers, directors and agents shall provide to the examiners timely, con-  
20 venient and free access at all reasonable hours at its offices to all books,  
21 records, accounts, papers, documents, assets and computer or other re-  
22 cordings relating to the property, assets, business and affairs of the li-  
23 censee being examined. The officers, directors, employees and agents of  
24 the licensee or person shall facilitate the examination and aid in the ex-  
25 amination so far as it is in their power to do so. The refusal of a licensee,  
26 by its officers, directors, employees or agents, to submit to examination  
27 or to comply with any reasonable written request of the commissioner  
28 shall be grounds for suspension or refusal of, or nonrenewal of any license  
29 or authority held by the licensee to engage in the viatical settlement busi-  
30 ness or other business subject to the commissioner's jurisdiction. Any  
31 proceedings for suspension, revocation or refusal of any license or au-  
32 thority shall be conducted pursuant to the Kansas administrative proce-  
33 dure act.

34 (3) The commissioner shall have the power to issue subpoenas, to  
35 administer oaths and to examine under oath any person as to any matter  
36 pertinent to the examination. Upon the failure or refusal of a person to  
37 obey a subpoena, the commissioner may petition a court of competent  
38 jurisdiction, and upon proper showing, the court may enter an order com-  
39 pelling the witness to appear and testify or produce documentary evi-  
40 dence. Failure to obey the court order shall be punishable as contempt  
41 of court.

42 (4) When making an examination under this act, the commissioner  
43 may retain attorneys, appraisers, independent actuaries, independent cer-

1   tified public accountants or other professionals and specialists as exam-  
2   iners, the reasonable cost of which shall be borne by the licensee that is  
3   the subject of the examination.

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

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

16   (d) (1) Examination reports shall be comprised of only facts appear-  
17   ing upon the books, records or other documents of the licensee, its agents  
18   or other persons examined, or as ascertained from the testimony of its  
19   officers or agents or other persons examined concerning its affairs, and  
20   such conclusions and recommendations as the examiners find reasonably  
21   warranted from the facts.

22   (2) Not later than 60 days following completion of the examination,  
23   the examiner in charge shall file with the commissioner a verified written  
24   report of examination under oath. Upon receipt of the verified report,  
25   the commissioner shall transmit the report to the licensee examined, to-  
26   gether with a notice that shall afford the licensee examined a reasonable  
27   opportunity of not more than 30 days to make a written submission or  
28   rebuttal with respect to any matters contained in the examination report.

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

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

35   (2) Except as otherwise provided in this act, all examination reports,  
36   working papers, recorded information, documents and copies thereof  
37   produced by, obtained by or disclosed to the commissioner or any other  
38   person in the course of an examination made under this act, or in the  
39   course of analysis or investigation by the commissioner of the financial  
40   condition or market conduct of a licensee shall be confidential by law and  
41   privileged, shall not be subject to the provisions of the Kansas open re-  
42   cords act, K.S.A. 45-215 et seq., and amendments thereto, shall not be  
43   subject to subpoena, and shall not be subject to discovery or admissible

1 in evidence in any private civil action. The commissioner is authorized to  
2 use the documents, materials or other information in the furtherance of  
3 any regulatory or legal action brought as part of the commissioner's of-  
4 ficial duties.

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

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

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

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

20 (4) Neither the commissioner nor any person that received the doc-  
21 uments, material or other information while acting under the authority  
22 of the commissioner, including the NAIC and its affiliates and subsidi-  
23 aries, shall be permitted to testify in any private civil action concerning any  
24 confidential documents, materials or information subject to paragraph (1)  
25 of subsection (e).

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

28 (A) Share documents, materials or other information, including the  
29 confidential and privileged documents, materials or information subject  
30 to paragraph (1) of subsection (e), with other state, federal and interna-  
31 tional regulatory agencies, with the NAIC and its affiliates and subsidi-  
32 aries, and with state, federal and international law enforcement authorities,  
33 provided that the recipient agrees to maintain the confidentiality and  
34 privileged status of the document, material, communication or other  
35 information;

36 (B) receive documents, materials, communications or information,  
37 including otherwise confidential and privileged documents, materials or  
38 information, from the NAIC and its affiliates and subsidiaries, and from  
39 regulatory and law enforcement officials of other foreign or domestic  
40 jurisdictions, and shall maintain as confidential or privileged any docu-  
41 ment, material or information received with notice or the understanding  
42 that it is confidential or privileged under the laws of the jurisdiction that  
43 is the source of the document, material or information; and

- 1 (C) enter into agreements governing sharing and use of information  
2 consistent with this subsection.
- 3 (6) No waiver of any applicable privilege or claim of confidentiality  
4 in the documents, materials or information shall occur as a result of dis-  
5 closure to the commissioner under this section or as a result of sharing  
6 as authorized in paragraph (4) of subsection (e).
- 7 (7) A privilege established under the law of any state or jurisdiction  
8 that is substantially similar to the privilege established under this subsec-  
9 tion shall be available and enforced in any proceeding in, and in any court  
10 of, this state.
- 11 (8) Nothing contained in this act shall prevent or be construed as  
12 prohibiting the commissioner from disclosing the content of an exami-  
13 nation report, preliminary examination report or results, or any matter  
14 relating thereto, to the commissioner of any other state or country, or to  
15 law enforcement officials of this or any other state or agency of the federal  
16 government at any time or to the NAIC, so long as such agency or office  
17 receiving the report or matters relating thereto agrees in writing to hold  
18 it confidential and in a manner consistent with this act.
- 19 (9) The provisions of this subsection shall expire July 1, 2013, unless  
20 the legislature acts to reenact such provisions. The provisions of this sec-  
21 tion shall be reviewed by the legislature prior to July 1, 2013.
- 22 (f) (1) An examiner may not be appointed by the commissioner if the  
23 examiner, either directly or indirectly, has a conflict of interest or is af-  
24 filiated with the management of or owns a pecuniary interest in any per-  
25 son subject to examination under this act. This section shall not be con-  
26 strued to automatically preclude an examiner from being:
- 27 (A) A viator;
- 28 (B) an insured in a viaticated insurance policy; or
- 29 (C) a beneficiary in an insurance policy that is proposed to be  
30 viaticated.
- 31 (2) Notwithstanding the requirements of this clause, the commis-  
32 sioner may retain from time to time, on an individual basis, qualified  
33 actuaries, certified public accountants or other similar individuals who are  
34 independently practicing their professions, even though these persons  
35 may from time to time be similarly employed or retained by persons  
36 subject to examination under this act.
- 37 (g) Unless provided otherwise, all fees and procedures for examina-  
38 tions under this act shall be in accordance with K.S.A. 40-223, and amend-  
39 ments thereto.
- 40 (h) (1) No cause of action shall arise nor shall any liability be imposed  
41 against the commissioner, the commissioner's authorized representatives  
42 or any examiner appointed by the commissioner for any statements made  
43 or conduct performed in good faith while carrying out the provisions of

1 this act.

2 (2) No cause of action shall arise, nor shall any liability be imposed  
3 against any person for the act of communicating or delivering information  
4 or data to the commissioner or the commissioner's authorized represen-  
5 tative or examiner pursuant to an examination made under this act, if the  
6 act of communication or delivery was performed in good faith and without  
7 fraudulent intent or the intent to deceive. This paragraph does not ab-  
8rogate or modify in any way any common law or statutory privilege or  
9 immunity heretofore enjoyed by any person identified in paragraph (1).

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

17 (i) The commissioner may investigate suspected fraudulent viatical  
18 settlement acts and persons engaged in the business of viatical  
19 settlements.

20 New Sec. 2. (a) (1) A viatical settlement provider entering into a  
21 viatical settlement contract shall first obtain:

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

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

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

36 (3) The viatical settlement provider shall deliver a copy of the medical  
37 release required under clause (B) of paragraph (1), a copy of the viator's  
38 application for the viatical settlement contract, the notice required under  
39 paragraph (2) and a request for verification of coverage to the insurer  
40 that issued the life policy that is the subject of the viatical transaction.  
41 The form for verification shall be developed by the commissioner.

42 (4) The insurer shall respond to a request for verification of coverage  
43 submitted on an approved form by a viatical settlement provider within

1 30 calendar days of the date the request is received and shall indicate  
2 whether, based on the medical evidence and documents provided, the  
3 insurer intends to pursue an investigation at this time regarding the va-  
4 lidity of the insurance contract or possible fraud. The insurer shall accept  
5 a request for verification of coverage made on a form approved by the  
6 commissioner. The insurer shall accept an original or facsimile or elec-  
7 tronic copy of such request and any accompanying authorization signed  
8 by the viator. Failure by the insurer to meet its obligations under this  
9 subsection shall be a violation of K.S.A. 2007 Supp. 40-5010 and 40-5014  
10 and amendments thereto.

11 (5) Prior to or at the time of execution of the viatical settlement con-  
12 tract, the viatical settlement provider shall obtain a witnessed document  
13 in which the viator consents to the viatical settlement contract, represents  
14 that the viator has a full and complete understanding of the viatical set-  
15 tlement contract, that such viator has a full and complete understanding  
16 of the benefits of the life insurance policy, acknowledges that such viator  
17 is entering into the viatical settlement contract freely and voluntarily and,  
18 for persons with a terminal or chronic illness or condition, acknowledges  
19 that the insured has a terminal or chronic illness and that the terminal or  
20 chronic illness or condition was diagnosed after the life insurance policy  
21 was issued.

22 (6) If a viatical settlement broker performs any of these activities  
23 required of the viatical settlement provider, the viatical settlement pro-  
24 vider is deemed to have fulfilled the requirements of this section.

25 (b) (1) All medical information solicited or obtained by any licensee  
26 shall be subject to the applicable provisions of state law relating to con-  
27 fidentiality of medical information.

28 (2) The provisions of this subsection shall expire on July 1, 2013,  
29 unless the legislature acts to reenact such provisions. The provisions of  
30 this section shall be reviewed by the legislature prior to July 1, 2013.

31 (c) All viatical settlement contracts entered into in this state shall  
32 provide the viator with an unconditional right to rescind the contract  
33 before the earlier of 60 calendar days after the date upon which the  
34 viatical settlement contract is executed by all parties or 30 calendar days  
35 after the viatical settlement proceeds have been sent to the viator as  
36 provided in subsection (e). Rescission by the viator may be conditioned  
37 upon the viator both giving notice and repaying to the viatical settlement  
38 provider within the rescission period all proceeds of the settlement and  
39 any premiums, loans and loan interest paid by or on behalf of the viatical  
40 settlement provider in connection with or as a consequence of the viatical  
41 settlement. If the insured dies during the rescission period, the viatical  
42 settlement contract shall be deemed to have been rescinded, subject to  
43 repayment to the viatical settlement provider or purchaser of all viatical

1 settlement proceeds, and any premiums, loans and loan interest that have  
2 been paid by the viatical settlement provider or purchaser, which shall  
3 be paid within 60 calendar days of the death of the insured. In the event  
4 of any rescission, if the viatical settlement provider has paid commissions  
5 or other compensation to a viatical settlement broker in connection with  
6 the rescinded transaction, the viatical settlement broker shall refund all  
7 such commissions and compensation to the viatical settlement provider  
8 within five business days following receipt of written demand from the  
9 viatical settlement provider, which demand shall be accompanied by ei-  
10 ther the viator's notice of rescission if rescinded at the election of the  
11 viator, or notice of the death of the insured if rescinded by reason of the  
12 death of the insured within the applicable rescission period.

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

31 (e) Failure to tender consideration to the viator for the viatical set-  
32 tlement contract within the time disclosed pursuant to clause (6) of sub-  
33 section (a) of K.S.A. 2007 Supp. 40-5008, and amendments thereto, ren-  
34 ders the viatical settlement contract voidable by the viator for lack of  
35 consideration until the time consideration is tendered to and accepted by  
36 the viator. Funds shall be deemed to have been sent by a viatical settle-  
37 ment provider to a viator as of the date that the escrow agent either  
38 releases funds for wire transfer to the viator via the United States postal  
39 service or another nationally recognized delivery service.

40 (f) Contacts with the insured for the purpose of determining the  
41 health status of the insured by the viatical settlement provider or viatical  
42 settlement broker after the viatical settlement has occurred shall only be  
43 made by the viatical settlement provider or viatical settlement broker



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

11 New Sec. 3. (a) With respect to any viatical settlement contract or  
12 insurance policy, no viatical settlement broker knowingly shall solicit an  
13 offer from, effectuate a viatical settlement contract with or make a sale  
14 to any viatical settlement provider, viatical settlement purchaser, financ-  
15 ing entity or related provider trust that is controlling, controlled by, or  
16 under common control with such viatical settlement broker.

17 (b) With respect to any viatical settlement contract or insurance pol-  
18 icy, no viatical settlement provider knowingly may enter into a viatical  
19 settlement contract with a viator, if, in connection with such viatical set-  
20 tlement contract, anything of value will be paid to a viatical settlement  
21 broker that is controlling, controlled by, or under common control with  
22 such viatical settlement provider or the viatical settlement purchaser, fi-  
23 nancing entity or related provider trust that is involved in such viatical  
24 settlement contract.

25 (c) Each violation of subsection (a) or subsection (b) shall be deemed  
26 a fraudulent settlement act.

27 (d) No person shall issue, solicit, market or otherwise promote the  
28 purchase of an insurance policy for the purpose of or with an emphasis  
29 on settling the policy.

30 (e) No person shall fail to disclose to the insurer when requested by  
31 the insurer that the prospective insured has undergone a life expectancy  
32 evaluation by any person or entity other than the insurer or any authorized  
33 representative of such insurer in connection with the issuance of the  
34 policy.

35 (f) In the solicitation, application or issuance of a life insurance policy,  
36 no person shall employ any device, scheme or artifice in violation of K.S.A.  
37 40-450 and amendments thereto.

38 (g) No person shall enter into a premium finance agreement with any  
39 other person or agency, or any person affiliated with such person or  
40 agency, pursuant to which such person shall receive any proceeds, fees  
41 or other consideration, directly or indirectly, from the policy or owner of  
42 the policy or any other person with respect to the premium finance agree-  
43 ment or any viatical settlement contract or other transaction related to

1 such policy that are in addition to the amounts required to pay the prin-  
2 cipal, interest and service charges related to policy premiums pursuant to  
3 the premium finance agreement or subsequent sale of such agreement.  
4 Any payments, charges, fees or other amounts in addition to the amounts  
5 required to pay the principal, interest and service charges related to policy  
6 premiums paid under the premium finance agreement shall be remitted  
7 to the original owner of the policy or to the estate of such original owner  
8 of the policy if such owner of the original policy is not living at the time  
9 of the determination of overpayment.

10 (h) No viatical settlement provider shall enter into a viatical settle-  
11 ment contract unless the viatical settlement promotional, advertising and  
12 marketing materials, as may be prescribed by regulation, have been filed  
13 with the commissioner. In no event shall any marketing materials ex-  
14 pressly reference that the insurance is “free” for any period of time. The  
15 inclusion of any reference in the marketing materials that would cause a  
16 viator to reasonably believe that the insurance is free for any period of  
17 time shall be considered a violation of this act.

18 (i) No life insurance producer, insurance company, viatical settlement  
19 broker or viatical settlement provider shall make any statement or rep-  
20 resentation to the applicant or policyholder in connection with the sale  
21 or financing of a life insurance policy to the effect that the insurance is  
22 free or without cost to the policyholder for any period of time unless  
23 provided in the policy.

24 Sec. 4. K.S.A. 2007 Supp. 40-5001 is hereby amended to read as  
25 follows: 40-5001. K.S.A. 2007 Supp. 40-5001 through 40-5016 inclusive,  
26 and sections 1, 2 and 3, and amendments thereto, may be cited as the  
27 viatical settlements act of ~~2002~~ 2008.

28 Sec. 5. K.S.A. 2007 Supp. 40-5002 is hereby amended to read as  
29 follows: 40-5002. As used in this act, the following words and phrases  
30 shall have the meanings ascribed to them in this section:

31 (a) “Advertising” means any written, electronic or printed commu-  
32 nication or any communication by means of recorded telephone messages  
33 or transmitted on radio, television, the internet or similar communications  
34 media, including film strips, motion pictures and videos, published, dis-  
35 seminated, circulated or placed *directly* before the public, ~~directly or~~  
36 ~~indirectly~~, *in this state* for the purpose of creating an interest in or in-  
37 ducing a person to sell, *assign, devise, bequeath or transfer the death*  
38 *benefit or ownership* a life insurance policy pursuant to a viatical settle-  
39 ment contract.

40 (b) “Business of viatical settlements” means an activity involved in,  
41 but not limited to, offering, soliciting, negotiating, procuring, effectua-  
42 tion, purchasing, investing, financing, monitoring, tracking, underwriting,  
43 selling, transferring, assigning, pledging or ~~hypothecating any~~, *hypothe-*

- 1 *cating or in any other manner acquiring an interest in a life insurance*  
2 *policy by means of a viatical settlement contract.*
- 3 (c) “Chronically ill” means:
- 4 (1) Being unable to perform at least two activities of daily living in-  
5 cluding eating, toileting, transferring, bathing, dressing, continence or  
6 such other activity as determined by rules and regulations adopted by the  
7 commissioner; or
- 8 (2) requiring substantial supervision to protect the individual from  
9 threats to health and safety due to severe cognitive impairment.
- 10 (d) “Commissioner” means the commissioner of insurance.
- 11 (e) “Financing entity” means any underwriter, placement agent,  
12 lender, purchaser of securities, purchaser of a policy or certificate from  
13 a viatical settlement provider, credit enhancer or any entity that has a  
14 direct ownership in a policy or certificate which is the subject of a viatical  
15 settlement contract, but:
- 16 (1) Whose principal activity related to the transaction is providing  
17 funds to effect the viatical settlement or purchase of one or more viati-  
18 cated policies; and
- 19 (2) who has an agreement in writing with one or more licensed vi-  
20 atical settlement providers to finance the acquisition of viatical settlement  
21 contracts.
- 22 Financing entity shall not include any nonaccredited investor or viatical  
23 settlement purchaser.
- 24 (f) “Fraudulent viatical settlement act” means and includes:
- 25 (1) Any act or omission committed by any person who, knowingly or  
26 with intent to defraud, for the purpose of depriving another of property  
27 or for pecuniary gain, commits, or permits such person’s employees or  
28 agents to engage in acts including:
- 29 (A) Presenting, causing to be presented or preparing with knowledge  
30 or belief that it will be presented to or by a viatical settlement provider,  
31 viatical settlement broker, viatical settlement purchaser, financing entity,  
32 insurer, insurance producer or any other person, false material informa-  
33 tion, or concealing material information, as part of, in support of or con-  
34 cerning a fact material to one or more of the following:
- 35 (i) An application for the issuance of a viatical settlement contract or  
36 insurance policy;
- 37 (ii) the underwriting of a viatical settlement contract or insurance  
38 policy;
- 39 (iii) a claim for payment or benefit pursuant to a viatical settlement  
40 contract or insurance policy;
- 41 (iv) premiums paid on an insurance policy;
- 42 (v) payments and changes in ownership or beneficiary made in ac-  
43 cordance with the terms of a viatical settlement contract or insurance

- 1 policy;
- 2 (vi) the reinstatement or conversion of an insurance policy;
- 3 (vii) in the solicitation, offer, effectuation or sale of a viatical settle-
- 4 ment contract or insurance policy;
- 5 (viii) the issuance of written evidence of viatical settlement contract
- 6 or insurance; or
- 7 (ix) a financing transaction.
- 8 (B) Employing any device, scheme or artifice to defraud related to
- 9 viaticated policies; *and*
- 10 (C) *stranger-originated life insurance as defined in subsection (m)*;
- 11 (2) any act done or committed in the furtherance of a fraud or to
- 12 prevent the detection of a fraud any person commits or permits its em-
- 13 ployees or its agents to:
- 14 (A) Remove, conceal, alter, destroy or sequester from the commis-
- 15 sioner the assets or records of a licensee or other person engaged in the
- 16 business of viatical settlements;
- 17 (B) misrepresent or conceal the financial condition of a licensee, fi-
- 18 nancing entity, insurer or other person;
- 19 (C) transact the business of viatical settlements in violation of laws
- 20 requiring a license, certificate of authority or other legal authority for the
- 21 transaction of the business of viatical settlements; or
- 22 (D) file with the commissioner or the chief insurance regulatory of-
- 23 ficial of another jurisdiction a document containing false information or
- 24 otherwise conceals information about a material fact from the
- 25 commissioner;
- 26 (3) embezzlement, theft, misappropriation or conversion of moneys,
- 27 funds, premiums, credits or other property of a viatical settlement pro-
- 28 vider, insurer, insured, viator, insurance policy owner or any other person
- 29 engaged in the business of viatical settlements or insurance; or
- 30 (4) recklessly entering into, brokering, otherwise dealing in a viatical
- 31 settlement contract, the subject of which is a life insurance policy that
- 32 was obtained by presenting false information concerning any fact material
- 33 to the policy or by concealing, for the purpose of misleading another,
- 34 information concerning any fact material to the policy, where the viator
- 35 or the viator's agent intended to defraud the policy's issuer. "Recklessly"
- 36 means engaging in the conduct in conscious and clearly unjustifiable dis-
- 37 regard of a substantial likelihood of the existence of the relevant facts or
- 38 risks, such disregard involving a gross deviation from acceptable standards
- 39 of conduct;
- 40 (5) *facilitating the change of state of ownership of a policy or certifi-*
- 41 *cate or the state of residency of a viator to a state or jurisdiction that*
- 42 *does not have a law similar to this act for the express purposes of evading*
- 43 *or avoiding the provisions of this act;*

- 1     ~~(5)~~ (6) attempting to commit, assisting, aiding or abetting in the com-  
2 mission of, or conspiracy to commit the acts or omissions specified in this  
3 subsection.
- 4     (g) “Life insurance producer” means any person licensed in this state  
5 as a resident or nonresident insurance producer who has received quali-  
6 fication or authority for life insurance coverage or a life line of coverage  
7 pursuant to paragraph (1) of subsection (a) of K.S.A. 2007 Supp. 40-4903,  
8 and amendments thereto.
- 9     ~~(g)~~ (h) “NAIC” means the national association of insurance  
10 commissioners.
- 11     ~~(h)~~ (i) “Person” means a natural person or a legal entity, including,  
12 but not limited to, an individual, partnership, limited liability company,  
13 association, trust or corporation.
- 14     ~~(i)~~ (j) “Policy” means an individual or group policy, group certificate,  
15 contract or arrangement of life insurance affecting the rights of a resident  
16 of this state or bearing a reasonable relation to this state, regardless of  
17 whether delivered or issued for delivery in this state.
- 18     ~~(j)~~ (k) “Related provider trust” means a titling trust or other trust  
19 established by a licensed viatical settlement provider or a financing entity  
20 for the sole purpose of holding the ownership or beneficial interest in  
21 purchased policies in connection with a financing transaction. The trust  
22 shall have a written agreement with the licensed viatical settlement pro-  
23 vider under which the licensed viatical settlement provider is responsible  
24 for ensuring compliance with all statutory and regulatory requirements  
25 and under which the trust agrees to make all records and files related to  
26 viatical settlement transactions available to the commissioner as if those  
27 records and files were maintained directly by the licensed viatical settle-  
28 ment provider.
- 29     ~~(k)~~ (l) “Special purpose entity” means any corporation, partnership,  
30 trust, limited liability company or other similar entity formed solely to  
31 provide, either directly or indirectly, access to institutional capital  
32 markets:
- 33     (1) For a financing entity or licensed viatical settlement provider; or  
34     (2) (A) in connection with a transaction in which the securities in the  
35 special purpose entity are acquired by the viator or by “qualified insti-  
36 tutional buyers” as defined in rule 144 promulgated under the securities  
37 act of 1933, as in effect on the effective date of this act; or  
38     (B) the securities pay a fixed rate of return commensurate with es-  
39 tablished asset-backed institutional capital markets.
- 40     (m) “Stranger-originated life insurance” means a practice or a plan  
41 to initiate a life insurance policy for the benefit of a third party investor  
42 who, at the time of policy origination, has no insurable interest in the  
43 insured under K.S.A. 40-450 and amendments thereto. Stranger-origi-

1 *nated life insurance practices include, but are not limited to, cases in*  
2 *which life insurance is purchased with resources or guarantees from or*  
3 *through a person or entity who, at the time of policy inception, could not*  
4 *lawfully initiate the policy, and where, at the time of policy inception,*  
5 *there is an arrangement or agreement, whether verbal or written, to di-*  
6 *rectly or indirectly transfer the ownership of the policy or the policy*  
7 *benefits, or both, to a third party. Any trust that is created to give the*  
8 *appearance of insurable interest, and is used to initiate one or more pol-*  
9 *icies for investors, violates K.S.A. 40-450, and amendments thereto, and*  
10 *the prohibition against wagering on human life. Stranger-originated life*  
11 *insurance arrangements do not include those practices set forth in para-*  
12 *graph (2) of subsection (p).*

13 ~~(t)~~ (n) “Terminally ill” means having an illness or sickness that can  
14 reasonably be expected to result in death in 24 months or less.

15 ~~(m)~~ (o) “Viatical settlement broker” means a person ~~that~~, *including*  
16 *a life insurance producer as provided in K.S.A. 2007 Supp. 40-5003, and*  
17 *amendments thereto, who works exclusively on behalf of a viator and for*  
18 *a fee, commission or other valuable consideration offers or attempts to*  
19 *negotiate viatical settlement contracts between a viator and one or more*  
20 *viatical settlement providers or viatical settlement brokers. Notwithstand-*  
21 *ing the manner in which the viatical settlement broker is compensated,*  
22 *a viatical settlement broker is deemed to represent only the viator and*  
23 *not the insurer or the viatical settlement provider. Such viatical settlement*  
24 *broker owes a fiduciary duty to the viator to act according to the viator’s*  
25 *instructions and in the best interest of the viator. The term does not*  
26 *include an attorney, certified public accountant or a financial planner*  
27 *accredited by a nationally recognized accreditation agency, who is re-*  
28 *tained to represent the viator and whose compensation is not paid directly*  
29 *or indirectly by the viatical settlement provider or purchaser.*

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

- 1       (p) (1) “Viatical settlement contract” means:
- 2       (A) A written agreement between a viator and a viatical settlement  
3 provider or any affiliate of the viatical settlement provider establishing  
4 the terms under which compensation or anything of value will be paid,  
5 which compensation or value is less than the expected death benefit of the  
6 insurance policy or certificate, in return for the viator’s present or future  
7 assignment, transfer, sale, devise or bequest of the death benefit or own-  
8 ership of any portion of the insurance policy or certificate of insurance;  
9 or
- 10       (B) the transfer for compensation or value of ownership or beneficial  
11 interest in a trust or other entity that owns such policy if the trust or  
12 other entity was formed or availed of for the principal purpose of acquir-  
13 ing one or more life insurance contracts, which life insurance contract  
14 insures the life of a person residing in this state; or
- 15       (C) a premium finance loan made for a life insurance policy by a  
16 lender to a viator on, or before or after the date of issuance of the policy  
17 where:
- 18       (i) The viator or the insured receives on the date of the premium  
19 finance loan a guarantee of a future viatical settlement value of the policy;  
20 or
- 21       (ii) the viator or the insured agrees on the date of the premium finance  
22 loan to sell the policy or any portion of its death benefit on any date  
23 following the issuance of the policy.
- 24       (2) “Viatical settlement contract” does not include:
- 25       (A) A policy loan or accelerated death benefit made by the insurer  
26 pursuant to the policy’s terms;
- 27       (B) loan proceeds that are used solely to pay:
- 28       (i) Premiums for the policy;
- 29       (ii) the costs of the loan, including, without limitation, interest, ar-  
30 rangement fees, utilization fees and similar fees, closing costs, legal fees  
31 and expenses, trustee fees and expenses, and third party collateral pro-  
32 vider fees and expenses, including fees payable to letter of credit issuers;
- 33       (C) a loan made by a bank or other licensed financial institution in  
34 which the lender takes an interest in a life insurance policy solely to secure  
35 repayment of a loan or, if there is a default on the loan and the policy is  
36 transferred, the transfer of such a policy by the lender, provided that  
37 neither the default itself nor the transfer of the policy in connection with  
38 such default is pursuant to an agreement or understanding with any other  
39 person for the purpose of evading regulation under this act;
- 40       (D) a loan made by a lender that does not violate the Kansas insurance  
41 premium finance act and acts amendatory thereof or supplemental  
42 thereto, unless the premium finance loan is not described in subparagraph  
43 (C) of paragraph (1) of subsection (p) of this section;

- 1     (E) *an agreement where all the parties are closely related to the in-*  
2 *sured by blood or law or have a lawful substantial economic interest in*  
3 *the continued life, health and bodily safety of the person insured, or are*  
4 *trusts established primarily for the benefit of such parties;*
- 5     (F) *any designation, consent or agreement by an insured who is an*  
6 *employee of an employer in connection with the purchase by the em-*  
7 *ployer, or trust established by the employer, of life insurance on the life*  
8 *of the employee;*
- 9     (G) *a bona fide business succession planning arrangement between:*
- 10     (i) *One or more shareholders in a corporation or a corporation and*  
11 *one or more of its shareholders or one or more trusts established by its*  
12 *shareholders;*
- 13     (ii) *one or more partners in a partnership or a partnership and one*  
14 *or more of its partners or one or more trusts established by its partners;*  
15 *or*
- 16     (iii) *one or more members in a limited liability company or a limited*  
17 *liability company and one or more of its members or on or more trusts*  
18 *established by its members;*
- 19     (H) *an agreement entered into by a service recipient, or a trust es-*  
20 *tablished by the service recipient, and a service provider, or a trust es-*  
21 *tablished by the service provider, who performs significant services for*  
22 *the service recipient's trade or business; or*
- 23     (I) *any other contract, transaction or arrangement exempted from the*  
24 *definition of a viatical settlement contract by the commissioner based on*  
25 *a determination that the contract, transaction or arrangement is not of*  
26 *the type intended to be regulated by this act.*
- 27     ~~(Q)~~ (q) *"Viatical settlement provider" means a person, other than a*  
28 *viator, who enters into or effectuates a viatical settlement contract with*  
29 *a viator who resides in this state. Viatical settlement provider does not*  
30 *include:*
- 31     (1) *A bank, savings bank, savings and loan association, credit union*  
32 *or other licensed lending institution that takes an assignment of a life*  
33 *insurance policy as collateral for a loan;*
- 34     (2) *a premium finance company exempted by the commissioner from*  
35 *the licensing requirement under the Kansas insurance premium finance*  
36 *act and acts amendatory thereof or supplemental thereto, that takes an*  
37 *assignment of a life insurance policy solely as collateral for a loan;*
- 38     ~~(2)~~ (3) *the issuer of a the life insurance policy providing accelerated*  
39 *benefits under K.S.A. 40-401, and amendments thereto, and pursuant to*  
40 *the contract;*
- 41     ~~(3)~~ (4) *an authorized or eligible insurer that provides stop loss cov-*  
42 *erage or financial guaranty insurance to a viatical settlement provider,*  
43 *purchaser, financing entity, special purpose entity or related provider*



1 trust;

2 ~~(4)~~ (5) a natural person who enters into or effectuates no more than  
3 one agreement in a calendar year for the transfer of life insurance policies  
4 for any value less than the expected death benefit;

5 ~~(5)~~ (6) a financing entity;

6 ~~(6)~~ (7) a special purpose entity;

7 ~~(7)~~ (8) a related provider trust;

8 ~~(8)~~ (9) a viatical settlement purchaser; or

9 ~~(9)~~ (10) ~~an accredited investor or qualified institutional buyer as such~~  
10 ~~term is defined respectively in regulation D, rule 501 or rule 144A of the~~  
11 ~~federal securities act of 1933, as in effect upon the effective date of this~~  
12 ~~act, and who purchases a viaticated policy from a viatical settlement pro-~~  
13 ~~vider. any other person that the commissioner determines is not the type~~  
14 ~~of person intended to be covered by the definition of a viatical settlement~~  
15 ~~provider.~~

16 ~~(p)~~(r) (1) “Viator” means the owner of a life insurance policy or a  
17 certificate holder under a group policy who *resides in this state and* enters  
18 or seeks to enter into a viatical settlement contract. For the purposes of  
19 this act, a viator shall not be limited to an owner of a life insurance policy  
20 or a certificate holder under a group policy insuring the life of an indi-  
21 vidual with a terminal or chronic illness or condition except where spe-  
22 cifically addressed. *If there is more than one viator on a single policy and*  
23 *the viators are residents of different states, the transaction shall be gov-*  
24 *erned by the law of the state in which the viator having the largest per-*  
25 *centage of ownership resides or, if the viators all hold equal ownership*  
26 *interests, the state of residence of one viator agreed upon in writing by*  
27 *all the viators.*

28 (2) Viator shall not include:

29 ~~(1)~~ (A) A licensee under this act;

30 ~~(2)~~ (B) ~~an accredited investor or a qualified institutional buyer as such~~  
31 ~~term is defined respectively in regulation D, rule 501 or in rule 144A of~~  
32 ~~the federal securities act of 1933, as in effect upon the effective date of~~  
33 ~~this act;~~

34 ~~(3)~~ (C) a financing entity;

35 ~~(4)~~ (D) a special purpose entity; or

36 ~~(5)~~ (E) a related provider trust.

37 ~~(6)~~ (s) “Viaticated policy” means a life insurance policy or certificate  
38 that has been acquired by a viatical settlement provider pursuant to a  
39 viatical settlement contract.

40 ~~(7)~~ (t) “Viatical settlement purchaser” means a person who gives a  
41 sum of money as consideration for a life insurance policy or an interest  
42 in the death benefits of a life insurance policy, or a person who owns or  
43 acquires or is entitled to a beneficial interest in a trust that owns a viatical

1 settlement contract or is the beneficiary of a life insurance policy that has  
2 been or will be the subject of a viatical settlement contract, for the pur-  
3 pose of deriving an economic benefit. Viatical settlement purchaser shall  
4 not include:

- 5 (1) A licensee under this act;
- 6 (2) an accredited investor or qualified institutional buyer as such term  
7 is defined respectively in regulation D, rule 501 or rule 144A of the fed-  
8 eral securities act of 1933, as in effect upon the effective date of this act;
- 9 (3) a financing entity;
- 10 (4) a special purpose entity; or
- 11 (5) a related provider trust.

12 Sec. 6. K.S.A. 2007 Supp. 40-5003 is hereby amended to read as  
13 follows: 40-5003. (a) No person shall operate as a viatical settlement pro-  
14 vider or viatical settlement broker without first obtaining a license from  
15 the commissioner or the insurance regulatory official of the state of res-  
16 idence of the viator. ~~If there is more than one viator on a single policy  
17 and the viators are residents of different states, the viatical settlement  
18 shall be governed by the law of the state in which the viator having the  
19 largest percentage ownership resides or, if the viators hold equal own-  
20 ership, the state of residence of one viator agreed upon in writing by all  
21 viators.~~

22 (b) (1) *The following shall be deemed to meet the licensing require-*  
23 *ments of this section and shall be permitted to operate as a viatical settle-*  
24 *ment broker:*

25 (A) *A life insurance producer who has been duly licensed in this state*  
26 *as a resident insurance producer with a life insurance line of authority;*  
27 *or*

28 (B) *a life insurance producer who has been duly licensed as a resident*  
29 *insurance producer with a life insurance line of authority for at least one*  
30 *year in such life insurance producer's home state for at least one year and*  
31 *who is licensed as a nonresident producer in this state.*

32 (2) *No later than 30 days from the first day of operating as a viatical*  
33 *settlement broker, the life insurance producer shall notify the commis-*  
34 *sioner on a form prescribed by the commissioner, and shall pay any ap-*  
35 *plicable fee to be determined by the commissioner. Such notification shall*  
36 *include an acknowledgment by the life insurance producer that such life*  
37 *insurance producer shall operate as a viatical settlement broker in ac-*  
38 *cordance with this act.*

39 (3) *The insurer that issued the policy being viaticated shall not be*  
40 *responsible for any act or omission of a viatical settlement broker or vi-*  
41 *atical settlement provider arising out of or in connection with the viatical*  
42 *settlement transaction, unless the insurer receives compensation in con-*  
43 *nection with the viatical settlement contract for the placement of a viatical*

1 *settlement contract from the viatical settlement provider or viatical set-*  
2 *tlement broker.*

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

9 ~~(b)~~ (d) *Application for a viatical settlement provider license shall be*  
10 *made to the commissioner by the applicant on a form prescribed by the*  
11 *commissioner, and these applications shall be accompanied by a nonre-*  
12 *fundable fee of \$1,000.*

13 ~~(c)~~ (e) *Licenses for viatical settlement providers may be renewed*  
14 *from year to year on the anniversary date upon payment of the annual*  
15 *renewal fee of \$500. Failure to pay the fees by the renewal date results*  
16 *in expiration of the license.*

17 ~~(d)~~ (f) *Application for a viatical settlement broker license shall be*  
18 *made to the commissioner by the applicant on a form prescribed by the*  
19 *commissioner. Each application shall be accompanied by a nonrefundable*  
20 *application fee of \$100.*

21 ~~(e)~~ (g) *Licenses for a viatical settlement broker license may be re-*  
22 *newed from year to year on the anniversary date upon payment of the*  
23 *annual renewal fee of \$50. Failure to pay the fees by the renewal date*  
24 *results in expiration of such license.*

25 ~~(f)~~ (h) *The applicant shall provide information on forms required by*  
26 *the commissioner. The commissioner shall have authority, at any time, to*  
27 *require the applicant to fully disclose the identity of all stockholders,*  
28 *partners, officers, members and employees, and the commissioner, in the*  
29 *exercise of the commissioner's discretion, may refuse to issue a license in*  
30 *the name of a legal entity if not satisfied that any officer, employee, stock-*  
31 *holder, partner or member thereof who may materially influence the*  
32 *applicant's conduct meets the standards of this act.*

33 ~~(g)~~ (i) *A license issued to a legal entity authorizes all partners, officers,*  
34 *members and designated employees to act as viatical settlement providers*  
35 *or viatical settlement brokers, as applicable, under the license, and all*  
36 *those persons shall be named in the application and any supplements to*  
37 *the application.*

38 ~~(h)~~ (j) *Upon the filing of an application and the payment of the license*  
39 *fee, the commissioner shall make an investigation of each applicant and*  
40 *issue a license if the commissioner finds that the applicant:*

41 (1) *If a viatical settlement provider, ~~has provided a detailed plan of~~*  
42 *~~operation;~~*

43 (A) *Has provided a detailed plan of operation;*

- 1 (B) *has demonstrated evidence of financial responsibility in a format*  
2 *prescribed by the commissioner through either a surety bond executed*  
3 *and issued by an insurer authorized to issue surety bonds in this state or*  
4 *a deposit of cash, certificates of deposit or securities or any combination*  
5 *thereof in the amount of \$250,000; and*
- 6 (C) *has provided an anti-fraud plan that meets the requirements of*  
7 *paragraph (g) of K.S.A. 2007 Supp. 40-5012 and amendments thereto;*  
8 (2) *if a viatical settlement broker:*
- 9 (A) *Has demonstrated evidence of financial responsibility in a format*  
10 *prescribed by the commissioner through either of the following means:*
- 11 (i) *A surety bond executed and issued by an insurer authorized to*  
12 *issue surety bonds in this state. Such bond shall be in favor of this state*  
13 *and shall authorize recovery by the commissioner on behalf of any person*  
14 *in this state who sustains damages as a result of an erroneous act, failure*  
15 *to act, conviction of fraud or conviction of unfair practices by a licensee.*
- 16 (ii) *A deposit of cash, certificates of deposit or securities in any com-*  
17 *bination.*
- 18 ~~(2)~~ (3) *is competent and trustworthy and intends to act in good faith*  
19 *in the capacity involved by the license applied for;*
- 20 ~~(3)~~ (4) *has a good business reputation and has had experience, train-*  
21 *ing or education so as to be qualified in the business for which the license*  
22 *is applied for; and*
- 23 ~~(4)~~ (5) *if a legal entity, provides a certificate of good standing from*  
24 *the state of its domicile; and*
- 25 ~~—(5)— if a viatical settlement provider or viatical settlement broker, has~~  
26 ~~provided an anti-fraud plan that meets the requirements of paragraph (g)~~  
27 ~~of K.S.A. 2007 Supp. 40-5012, and amendments thereto.~~
- 28 (k) *The commissioner may require an applicant to provide proof of*  
29 *financial responsibility in format prescribed by the commissioner through*  
30 *either of the following means:*
- 31 (1) *A surety bond executed and issued by an insurer authorized to*  
32 *issue surety bonds in this state. Such bond shall be in favor of this state*  
33 *and shall authorize recovery by the commissioner on behalf of any person*  
34 *in this state who sustains damages as a result of an erroneous act, failure*  
35 *to act, conviction of fraud or conviction of unfair practices by a licensee.*
- 36 (2) *A deposit of cash, certificates of deposit or securities in any*  
37 *combination.*
- 38 (1) *If an applicant is licensed as a viatical settlement provider or vi-*  
39 *atical settlement broker in another state, the commissioner may accept as*  
40 *valid any similar proof of financial responsibility the applicant filed in*  
41 *such state.*
- 42 ~~(i)~~ (m) *The commissioner shall not issue a license to a nonresident*  
43 *applicant, unless a written designation of an agent for service of process*

1 is filed and maintained with the commissioner or the applicant has filed  
2 with the commissioner, the applicant's written irrevocable consent that  
3 any action against the applicant may be commenced against the applicant  
4 by service of process on the commissioner.

5 ~~(j)~~ (n) A viatical settlement provider or viatical settlement broker shall  
6 provide to the commissioner new or revised information about officers,  
7 10% or more stockholders, partners, directors, members or designated  
8 employees within 30 days of the change.

9 (o) (1) *Except as provided in paragraph (2), any individual licensed*  
10 *as a viatical settlement broker shall complete on a biennial basis at least*  
11 *15 hours of training related to viatical settlements and viatical settlement*  
12 *transactions, as required by the commissioner.*

13 (2) *Any life insurance producer who is operating as a viatical settle-*  
14 *ment broker pursuant to subsection (b) shall not be subject to the require-*  
15 *ments of paragraph (1).*

16 (3) *Any person failing to meet the requirements of this subsection*  
17 *shall be subject to the penalties imposed by the commissioner.*

18 Sec. 7. K.S.A. 2007 Supp. 40-5006 is hereby amended to read as  
19 follows: 40-5006. (a) (1) *For any policy settled within five years of such*  
20 *policy's date of issuance, each licensee shall file with the commissioner*  
21 *on or before March 1 of each year an annual statement containing such*  
22 *information as the commissioner may prescribe by rule and regulation.*

23 (2) *In addition to any other requirements, the annual statement shall*  
24 *specify the total number, aggregate face amount and life settlement pro-*  
25 *ceeds of policies settled during the immediately preceding calendar year,*  
26 *together with a break down of the information by policy issue year. The*  
27 *annual statement shall also include the names of the insurance companies*  
28 *whose policies have been settled and the viatical settlement brokers that*  
29 *have settled such policies. Such information shall be limited to only those*  
30 *transactions where the viator is a resident of this state. Individual trans-*  
31 *action data regarding the business of viatical settlements or data that*  
32 *could compromise the privacy of personal, financial and health informa-*  
33 *tion of the viator or insured shall be filed with the commissioner on a*  
34 *confidential basis.*

35 (b) Except as otherwise allowed or required by law, a viatical settle-  
36 ment provider, viatical settlement broker, insurance company, insurance  
37 producer, information bureau, rating agency or company, or any other  
38 person with actual knowledge of an insured's identity, shall not disclose  
39 that identity as an insured, or the insured's financial or medical infor-  
40 mation to any other person unless the disclosure is:

41 (1) Necessary to effect a viatical settlement between the viator and a  
42 viatical settlement provider and the viator and insured have provided  
43 prior written consent to the disclosure;

1 (2) provided in response to an investigation or examination by the  
 2 commissioner or any other governmental officer or agency or pursuant  
 3 to the requirements of paragraph (c) of K.S.A. 2007 Supp. 40-5012, and  
 4 amendments thereto;

5 (3) a term of or condition to the transfer of a policy by one viatical  
 6 settlement provider to another viatical settlement provider;

7 (4) necessary to permit a financing entity, related provider trust or  
 8 special purpose entity to finance the purchase of policies by a viatical  
 9 settlement provider and the viator and insured have provided prior writ-  
 10 ten consent to the disclosure;

11 (5) necessary to allow the viatical settlement provider or viatical set-  
 12 tlement broker or their authorized representatives to make contacts for  
 13 the purpose of determining health status; or

14 (6) required to purchase stop loss coverage.

15 Sec. 8. K.S.A. 2007 Supp. 40-5008 is hereby amended to read as  
 16 follows: 40-5008. (a) With each application for a viatical settlement, a  
 17 viatical settlement provider or viatical settlement broker shall provide the  
 18 viator with at least the following disclosures no later than the time the  
 19 application for the viatical settlement contract is signed by all parties. The  
 20 disclosures shall be provided in a separate document that is signed by the  
 21 viator and the viatical settlement provider or viatical settlement broker,  
 22 and shall provide the following information:

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

26 (2) *That a viatical settlement broker represents exclusively the viator*  
 27 *and not the insurer or the viatical settlement provider. Furthermore the*  
 28 *viatical settlement broker owes a fiduciary duty to the viator including*  
 29 *the duty to act according to the viator's instructions and in the best in-*  
 30 *terest of the viator.*

31 ~~(2)~~ (3) Some or all of the proceeds of the viatical settlement may be  
 32 taxable under federal income tax and state franchise and income taxes,  
 33 and assistance should be sought from a professional tax advisor.

34 ~~(3)~~ (4) Proceeds of the viatical settlement could be subject to the  
 35 claims of creditors.

36 ~~(4)~~ (5) Receipt of the proceeds of a viatical settlement may adversely  
 37 affect the viator's eligibility for medicaid or other government benefits or  
 38 entitlements, and advice should be obtained from the appropriate gov-  
 39 ernment agencies.

40 ~~(5)~~ (6) The viator has the right to rescind a viatical settlement contract  
 41 ~~for 15~~ *on or before the earlier of 60* calendar days after the ~~receipt of date~~  
 42 *upon which the viatical settlement contract is executed by all parties or*  
 43 *30 calendar days after the viatical settlement proceeds ~~by~~ have been paid*

1 the viator, as provided in subsection (c) of ~~K.S.A. 2007 Supp. 40-5009~~  
 2 *section 2*, and amendments thereto. *If exercised by the viator, rescission*  
 3 *shall be effective only if both notice of the rescission is given and the viator*  
 4 *repays all proceeds and any premiums, loans and loan interest paid on*  
 5 *account of the viatical settlement within the rescission period.* If the in-  
 6 surer dies during the rescission period, the settlement contract shall be  
 7 deemed to have been rescinded, subject to repayment *by the viator or*  
 8 *the viator's estate* of all viatical settlement proceeds and any premiums,  
 9 loans and loan interest to the viatical settlement provider or purchaser  
 10 *within 60 days of the death of the insured.*

11 ~~(6)~~ (7) Funds will be sent to the viator within three business days  
 12 after the viatical settlement provider has received the insurer or group  
 13 administrator's acknowledgment that ownership of the policy or interest  
 14 in the certificate has been transferred and the beneficiary has been  
 15 designated.

16 ~~(7)~~ (8) Entering into a viatical settlement contract may cause other  
 17 rights or benefits, including conversion rights and waiver of premium  
 18 benefits that may exist under the policy or certificate, to be forfeited by  
 19 the viator. Assistance should be sought from a financial adviser.

20 ~~(8)~~ (9) Disclosure to a viator shall include distribution of a brochure  
 21 describing the process of viatical settlements. The form for the brochure  
 22 shall be developed by the commissioner.

23 ~~(9)~~ (10) The disclosure document shall contain the following lan-  
 24 guage: "All medical, financial or personal information solicited or ob-  
 25 tained by a viatical settlement provider or viatical settlement broker about  
 26 an insured, including the insured's identity or the identity of family mem-  
 27 bers, a spouse or a significant other may be disclosed as necessary to effect  
 28 the viatical settlement between the viator and the viatical settlement pro-  
 29 vider. If you are asked to provide this information, you will be asked to  
 30 consent to the disclosure. The information may be provided to someone  
 31 who buys the policy or provides funds for the purchase. You may be asked  
 32 to renew your permission to share information every two years."

33 ~~(10)~~ (11) The insured may be contacted ~~by either the viatical settle-~~  
 34 ~~ment provider or viatical settlement broker or such viatical settlement~~  
 35 ~~provider's or viatical settlement broker's authorized representative~~ for the  
 36 purpose of determining the insured's health status *and to confirm the*  
 37 *insured's residential or business street address and telephone number or*  
 38 *as otherwise provided in this act.* This contact ~~is~~ shall be limited to once  
 39 every three months if the insured has a life expectancy of more than one  
 40 year, and no more than once per month if the insured has a life expectancy  
 41 of one year or less. *All such contacts shall be made only by a viatical*  
 42 *settlement provider licensed in the state in which the viator resided at the*  
 43 *time of the viatical settlement or by an authorized representative of a duly*

- 1 *licensed viatical settlement provider.*
- 2 (b) A viatical settlement provider shall provide the viator with at least  
3 the following disclosures no later than the date the viatical settlement  
4 contract is signed by all parties. The disclosures shall be conspicuously  
5 displayed in the viatical settlement contract or in a separate document  
6 signed by the viator and the viatical settlement provider or viatical settle-  
7 ment broker, and contain the following information:
- 8 (1) The affiliation, if any, between the viatical settlement provider  
9 and the issuer of the insurance policy to be viaticated.
- 10 (2) The name, address and telephone number of the viatical settle-  
11 ment provider.
- 12 (3) A viatical settlement broker shall ~~disclose to a prospective viator~~  
13 ~~the amount and method of calculating the broker's compensation. The~~  
14 ~~term "compensation" includes anything of value paid or given to a viatical~~  
15 ~~settlement broker for the placement of a policy.~~ *provide the viator with*  
16 *at least the following disclosures no later than the date the viatical settle-*  
17 *ment contract is signed by all parties. The disclosures shall be conspicu-*  
18 *ously displayed in the viatical settlement contract or in a separate docu-*  
19 *ment signed by the viator and provide the following information:*
- 20 (A) *The name, business address and telephone number of the viatical*  
21 *settlement broker;*
- 22 (B) *a full, complete and accurate description of all offers, counter-*  
23 *offers, acceptances and rejections relating to the proposed viatical settle-*  
24 *ment contract;*
- 25 (C) *a written disclosure of any affiliations or contractual arrange-*  
26 *ments between the viatical settlement broker and any person making an*  
27 *offer in connection with the proposed viatical settlement contracts;*
- 28 (D) *the amount and method of calculating the broker's compensation,*  
29 *which term "compensation" includes anything of value paid or given to*  
30 *a viatical settlement broker for the placement of a policy; and*
- 31 (E) *where any portion of the viatical settlement broker's compensa-*  
32 *tion, as defined in paragraph (D), is taken from a proposed viatical set-*  
33 *tlement offer, the broker shall disclose the total amount of the viatical*  
34 *settlement offer comprised by the viatical settlement broker's compensa-*  
35 *tion.*
- 36 (4) If an insurance policy to be viaticated has been issued as a joint  
37 policy or involves family riders or any coverage of a life other than the  
38 insured under the policy to be viaticated, the viator shall be informed of  
39 the possible loss of coverage on the other lives under the policy and shall  
40 be advised to consult with such viator's insurance producer or the insurer  
41 issuing the policy for advice on the proposed viatical settlement.
- 42 (5) State the dollar amount of the current death benefit payable to  
43 the viatical settlement provider under the policy or certificate. If known,



1 the viatical settlement provider shall also disclose the availability of any  
 2 additional guaranteed insurance benefits, the dollar amount of any acci-  
 3 dental death and dismemberment benefits under the policy or certificate  
 4 and the ~~viatical settlement provider's interest in those benefits~~ *extent to*  
 5 *which the viator's interest in those benefits will be transferred as a result*  
 6 *of the viatical settlement contract.*

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

11 (7) *If the viatical settlement provider transfers ownership or changes*  
 12 *the beneficiary of the insurance policy, the provider shall communicate*  
 13 *in writing the change in ownership or beneficiary to the insured within*  
 14 *20 days after such change.*

15 (8) *Prior to the initiation of a plan, transaction or series of transac-*  
 16 *tions, a viatical settlement broker or viatical settlement provider shall fully*  
 17 *disclose to an insurer a plan, transaction or series of transactions, to which*  
 18 *the viatical settlement broker or viatical settlement provider is a party, to*  
 19 *originate, renew or continue to finance a life insurance policy with the*  
 20 *insurer for the purpose of engaging in the business of viatical settlements*  
 21 *at any time prior to, or during the first five years after, issuance of the*  
 22 *policy.*

23 Sec. 9. K.S.A. 2007 Supp. 40-5010 is hereby amended to read as  
 24 follows: 40-5010. It shall be a violation of this act for any person to enter  
 25 into a viatical settlement contract *at any time prior to the application or*  
 26 *issuance of a policy which is the subject of a viatical settlement contract*  
 27 *within a ~~two-year~~ five-year period commencing with the date of issuance*  
 28 *of the insurance policy or certificate unless the viator certifies to the*  
 29 *viatical settlement provider that one or more of the following conditions*  
 30 *have been met within the ~~two-year~~ five-year period:*

31 (a) The policy was issued upon the viator's exercise of conversion  
 32 rights arising out of a group or individual policy, provided the total of the  
 33 time covered under the conversion policy plus the time covered under  
 34 the prior policy is at least ~~24~~ 60 months. The time covered under a group  
 35 policy shall be calculated without regard to any change in insurance car-  
 36 riers, provided the coverage has been continuous and under the same  
 37 group sponsorship;

38 (b) ~~the viator is a charitable organization exempt from taxation under~~  
 39 ~~26 U.S.C. §501 (c)(3);~~

40 ~~—(c)—the viator is not a natural person;~~

41 ~~—(d)—(1) The viator submits independent evidence to the viatical set-~~  
 42 ~~tlement provider that one or more of the following conditions have been~~  
 43 ~~met within the ~~two-year~~ five-year period:~~

- 1 (A) The viator or insured is terminally or chronically ill;  
 2 (B) the viator's spouse dies;  
 3 (C) the viator divorces such viator's spouse;  
 4 (D) the viator retires from full-time employment;  
 5 (E) the viator becomes physically or mentally disabled and a physician  
 6 determines that the disability prevents the viator from maintaining full-  
 7 time employment; *or*  
 8 ~~(F) the viator was the insured's employer at the time the policy or~~  
 9 ~~certificate was issued and the employment relationship terminated; a final~~  
 10 ~~order, judgment or decree is entered by a court of competent jurisdiction,~~  
 11 ~~on the application of a creditor of the viator, adjudicating the viator bank-~~  
 12 ~~rupt or insolvent, or approving a petition seeking reorganization of the~~  
 13 ~~viator or appointing a receiver, trustee or liquidator to all or a substantial~~  
 14 ~~part of the viator's assets; *or*~~  
 15 (G) *the sole beneficiary of the policy is a family member of the viator*  
 16 *and and the beneficiary dies.*  
 17 ~~(H) the viator experiences a significant decrease in income that is~~  
 18 ~~unexpected and that impairs the viator's reasonable ability to pay the~~  
 19 ~~policy premium; *or*~~  
 20 ~~(I) the viator or insured disposes of such viator's or insured's own-~~  
 21 ~~ership interests in a closely held corporation.~~  
 22 (2) Copies of the independent evidence described in ~~paragraph (1)~~  
 23 ~~of this subsection (b) and documents required by subsection (a) of K.S.A.~~  
 24 ~~2007 Supp. 40-5009 section 2, and amendments thereto, shall be sub-~~  
 25 ~~mitted to the insurer when the viatical settlement provider submits a~~  
 26 ~~request to the insurer for verification of coverage. The copies shall be~~  
 27 ~~accompanied by a letter of attestation from the viatical settlement pro-~~  
 28 ~~vider that the copies are true and correct copies of the documents re-~~  
 29 ~~ceived by the viatical settlement provider.~~  
 30 (c) *The viator enters into a viatical settlement contract more than two*  
 31 *years after the date of issuance of a policy and, with respect to the policy,*  
 32 *at all times prior to the date that is two years after policy issuance, the*  
 33 *following conditions are met:*  
 34 (1) *Policy premiums have been funded exclusively with unencum-*  
 35 *bered assets, including an interest in the life insurance policy being fi-*  
 36 *nanced only to the extent of its net cash surrender value, provided by, or*  
 37 *fully recourse liability incurred by, the insured or a person described in*  
 38 *subparagraph (E) of paragraph (2) of subsection (p) of K.S.A. 40-5002*  
 39 *and amendments thereto;*  
 40 (2) *there is no agreement or understanding with any other person to*  
 41 *guarantee any such liability or to purchase, or stand ready to purchase,*  
 42 *the policy, including through an assumption or forgiveness of the loan;*  
 43 *and*

- 1     (3) *neither the insured nor the policy has been evaluated for settle-*  
2 *ment in connection with the issuance of the policy.*
- 3     ~~(c)~~ (d) *If the viatical settlement provider submits to the insurer a copy*  
4 *of the owner or insured's certification described in subsection ~~(c)~~ (b)*  
5 *when provider submits a request to the insurer to effect the transfer of*  
6 *the policy or certificate to the viatical settlement provider, the copy shall*  
7 *be deemed to conclusively establish that the viatical settlement contract*  
8 *satisfies the requirements of this section and the insurer shall timely re-*  
9 *spond to the request.*
- 10    (e) *As a condition of responding to a request for verification of cov-*  
11 *erage or effecting the transfer of a policy pursuant to a viatical settlement*  
12 *contract, no insurer may, require that the viator, insured, viatical settle-*  
13 *ment provider or viatical settlement broker sign any form, disclosure,*  
14 *consent or waiver form that has not been expressly approved by the com-*  
15 *missioner for use in connection with viatical settlement contracts in this*  
16 *state.*
- 17    (f) *Upon receipt of a properly completed request for change of own-*  
18 *ership or beneficiary of a policy, the insurer shall respond in writing*  
19 *within 30 calendar days with written acknowledgment confirming that*  
20 *the change has been effected or specifying the reasons why the requested*  
21 *change cannot be processed. The insurer shall not unreasonably delay*  
22 *effecting change of ownership or beneficiary and shall not otherwise seek*  
23 *to interfere with any viatical settlement contract lawfully entered into in*  
24 *this state.*
- 25    Sec. 10. K.S.A. 2007 Supp. 40-5001, 40-5002, 40-5003, 40-5006, 40-  
26 5007, 40-5008, 40-5009 and 40-5010 are hereby repealed.
- 27    Sec. 11. This act shall take effect and be in force from and after its  
28 publication in the statute book.