

MINUTES OF THE HOUSE COMMITTEE ON INSURANCE.

The meeting was called to order by Chairperson Rep. Robert Tomlinson at 3:30 p.m. on February 15, 2001 in Room 527-S of the Capitol.

All members were present except: Representative John Edmonds
Representative Bonnie Sharp

Committee staff present: Bill Wolff, Legislative Research
Ken Wilke, Legislative Revisor
Mary Best, Committee Secretary

Conferees appearing before the committee: Mr. Marlyn Burch, Kansas Insurance Department
Mr. John Gann, Kansas Insurance and Financial Advisors

Others attending: See Attached Guest List

Upon calling the meeting to order Chairman Tomlinson requested the pleasure on **HB 2480**-Adoption of model regulation concerning privacy of financial and health information of consumers. A motion was made by Representative Grant to the move the bill out favorably for passage. Representative Dreher seconded the motion, and there was no discussion. The motion carried.

With this business completed the Chairman recognized Mr. Marlyn Burch, Kansas Insurance Department. Mr. Burch gave Proponent Testimony to the committee. A copy of the testimony is (Attachment #1) attached hereto and incorporated into the Minutes by reference. Mr. Burch gave the following explanation to the committee regarding viaticals, since it is a new term. "A viatical settlement is where an individual sells his or her life insurance policy to a third party for cash and receives less than the full amount of the death benefit. The buyer becomes the new owner and/or beneficiary, pays all future premiums, and collects the full amount of the death benefit when the insured dies. Mr. Burch indicated this bill was a strong consumer protection bill and that the Insurance Department was requesting to replace the entire bill. He covered the sections to be replaced or added and why, starting with the definition section (Section 1), Section 2: Requirements to license. The bill limits the number of calls to people to see if they are dead. Section 10: Prohibited Practices (these are listed in the bill); Section 11 is a new section and addresses advertising requirements; Section 12, Fraud Prevention. Mr. Burch informed the committee that the amendments were mostly technical. Mr. Burch reviewed the and spoke in depth on fraud and "wet paper" or "wet ink" transactions. He attached an outline and supporting letters and these are included in his attachment. Questions were asked by Chairman Tomlinson, Representatives Mayans, Boston, Huff, Kirk, Phelps, Huy, Vickery. The questions discussed were about the bill passing last year and this amendment, safeguarded issues, who are the violators, explaining the bill and viatical again, who gets the money. The questions continued on: act of fraud, number of states with this type of a bill, number of calls, how to recruit people to sign up for these policies and falsifying information, where they find out about these policies, fiscal note.

Mr. John Gann, Kansas Insurance and Financial Association, gave Proponent Testimony to the committee. A copy of the testimony is (Attachment #2) attached hereto and incorporated into the Minutes by reference. Mr. Gann offered no new testimony and supported Mr. Burch's testimony. Questions were asked by Representative Boston, McCreary.

Kansas Insurance Department stated they will get information on the "accelerated death benefit" clause.

With this the public hearing on the bill closed and the meeting was adjourned.

Time was 5:10 p.m.

The next meeting will be held February 20, 2001.



Kathleen Sebelius
Commissioner of Insurance

Kansas Insurance Department

TO: House Committee on Insurance

FROM: Marlyn K. Burch
Life Division Director
Kansas Insurance Department

RE: HB 2306 – Viatical settlements

DATE: February 25, 2001

Mr. Chairman and members of the committee:

My name is Marlyn Burch, and I am here on behalf of the Kansas Insurance Department. I thank you for the opportunity to discuss HB 2306 regarding viatical settlements. This bill was introduced at the request of Insurance Commissioner Sebelius.

A viatical settlement is where an individual sells his or her life insurance policy to a third party for cash and receives less than the full amount of the death benefit. The buyer becomes the new owner and/or beneficiary, pays all future premiums, and collects the full amount of the death benefit when the insured dies.

Viatical settlements are complicated transactions. I have included a diagram of the viatical settlement transaction to help explain this concept. In 1999, this legislature passed our existing law relating to viatical settlements. At that time, the viatical industry was basically limited to purchasing policies from people that had life threatening or catastrophic illnesses. Our present law reflects that practice. Since that time, the industry has changed and continues to change dramatically. Since the invention of better drugs, patients that had shortened life expectancies are now living longer and their policies are not as profitable to the viatical settlement providers. As such, the viatical settlement industry is now moving to "senior settlements" or "life settlements" whereby an individual, usually an older individual who is no longer in need of their life insurance policy, sells their policy to a viatical settlement provider. Unfortunately, our present law has become outdated for this development, as well as other emerging issues. This new development has reinforced the department's commitment to protecting the rights of senior citizens.

This is a strong consumer protection bill.

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House Comm on Ins.
Feb. 15, 2001
ATTACHMENT #1
Consumer Assistance Hotline
1 800 432-2484 (Toll Free)

Because the bill has been broadened to such an extent and introduces many new requirements, we have chosen to replace the current bill entirely.

This bill seeks to amend our existing law in a number of different ways:

- Amends the definition of viatical settlement to include and regulate all sales of life insurance policies.
- Provides protection for those selling their policies by requiring certain disclosures no later than the time of application by the viatical settlement provider or broker.
- Provides the unconditional right to rescind the contract for at least 30 days after the date of the contract or 15 days from the time of receipt of the proceeds, whichever is less.
- Includes a fraud section which defines a fraudulent settlement act to include brokers and providers accepting policies that have concealed information for the purpose of viaticating the policies. This bill also prevents a broker or provider from entering a viatical settlement contract within two years from the issuing of a life insurance policy. These two sections are important because of the rampant insurance fraud that has occurred in this industry.
- There are two major fraudulent acts that occur in this industry – “clean sheeting” and “wet paper” transactions. Briefly, clean sheeting is where an individual conceals medical problems on the life insurance application to obtain coverage just below the insurer’s non-medical limits. These policies are quickly sold to viatical settlement companies, which in turn seek investors who would not have invested in these policies if the risks had been disclosed.
- The second fraudulent transaction is the “wet paper” or “wet ink” transactions where by an individual purchases a policy and quickly turns around and sells the policy to the viatical settlement provider. The individual purchases the policy with the intent to resell the policy at a profit. Seniors, who are recruited to sell these policies, often make these purchases.

Mr. Chairman and members of the committee, HB 2306 is fairly voluminous so I have attached to my testimony a two-page outline to help you find your way through the thirty-one pages of HB 2306. I have also attached letters of support for the bill from the American Council of Life Insurers and three companies who provide capital to licensed Viatical Settlement Providers. The last attachment is an article which appeared in the Washington Post this month addressing the need for such an industry but warning of the dangers our bill addresses

I would now like to highlight specific sections of the bill.

Definitions

Section 1 of this bill defines a viatical settlement broker, provider, and viatical settlement contract. Importantly, this bill provides a definition for fraudulent viatical settlement acts which specifically defines fraudulent viatical settlement acts.

License Requirements

This section requires both a viatical settlement broker and provider to hold a license before they may engage in the viatical settlement industry.

License Revocation and Denial

This section provides reasons why the Commissioner may refuse to issue, revoke, or refuse to renew a license. Many of these items are now found in our present law.

Contract and Disclosure Approval

Presently, our law requires that this department approve all viatical settlement contracts. This section of the bill will still require contract approval, but additionally will require the approval of the disclosure statements given to viators. This department believes that disclosure is a fundamental protection needed to be given to people seeking to sell their life insurance policy, especially seniors, who are now the target of this industry. A decision to sell your insurance policy is a major decision and one that should be entered into with as much information as can be obtained. Consequently, this section provides requirements such as:

- Disclosure be given in writing signed by both the broker or provider and the viator.
- Disclosure be given no later than the time the application for the viatical settlement contract is signed by the parties.
- Funds must be sent within three business days after the viatical settlement provider has received acknowledgment that ownership of the policy has been transferred and the beneficiary has been designated. The contract can be deemed voidable if the provider does not remit the funds within the specified time period.

- Viators must be informed that certain rights might be forfeited by the viator.
- A brochure, approved by the department, must be produced and given the viator.
- Disclosure that medical, financial, or personal information may be disclosed to others as needed to affect the viatical settlement contract. This is a key disclosure. In order to effect a viatical settlement, many people do not understand that personal information is passed on to investors. The Department believes that this information is crucial to viators who may reconsider the viatical settlement once they understand that personal information is given to investors.
- Disclosure that the insured may be contacted by the viatical provider or broker regarding his or her health status and the limitations on those contracts. Contacts with insureds are limited to once every three months for insureds with a life expectancy of more than one year and no more than once per month for insured's with one year or less.

General Rules

This bill provides certain rules that providers and brokers must follow:

- Notice to the insurer that issued the policy that it has or will be viaticated. A copy of the medical release and a copy of the viator's application for the viatical settlement contract must accompany the notice. This is a very important section because communication between the insurer and the viatical company is key to combat fraudulent activities that are occurring in this industry.
- The viator may rescind the contract for at least 30 days from the date of the contract or 15 days from receipt of the proceeds, whichever is earlier.

Prohibited Practices

This section prohibits any person to enter into a viatical settlement contact within the two-year incontestability period. There are listed hardship exceptions to this two-year limitation. If the policy is viaticated within that two-year period, independent medical information must be submitted to the insurer when the viatical settlement provider requests to affect a transfer of the policy to the provider. This is required to weed out any fraudulent activities.

Advertising requirements

The purpose of this section is to provide prospective viators with clear and truthful statements in the advertisements of viatical settlements and sets out numerous guidelines and standards of permissible and impermissible advertising standards:

- Requires viatical settlement licensees to establish and maintain a system of control over all advertisements, regardless of by whom written
- Follows closely the extensive regulations governing life insurance advertising regulations.

FRAUD PREVENTION AND CONTROL

This section is not currently in our law but provides requirements for brokers and providers to prevent fraudulent activities that are occurring in this industry. This section refers back to the definition of fraudulent viatical settlement act and requires:

- That a person that is engaged in the viatical settlement industry having knowledge of a reasonable belief that a fraudulent settlement act is being committed or will be committed is under a duty to notify the Commissioner, and

Gives immunity to those furnishing information regarding the above.

This section also requires viatical settlement providers and brokers to submit an anti-fraud plan to the Commissioner. The plan must include:

- Fraud investigators – which can be employees
- Procedures to detect fraud
- Procedures to report possible fraudulent activities to the Commissioner
- Plan for anti fraud education and training of underwriters
- Anti fraud plans would not be considered an open record

AMENDMENTS

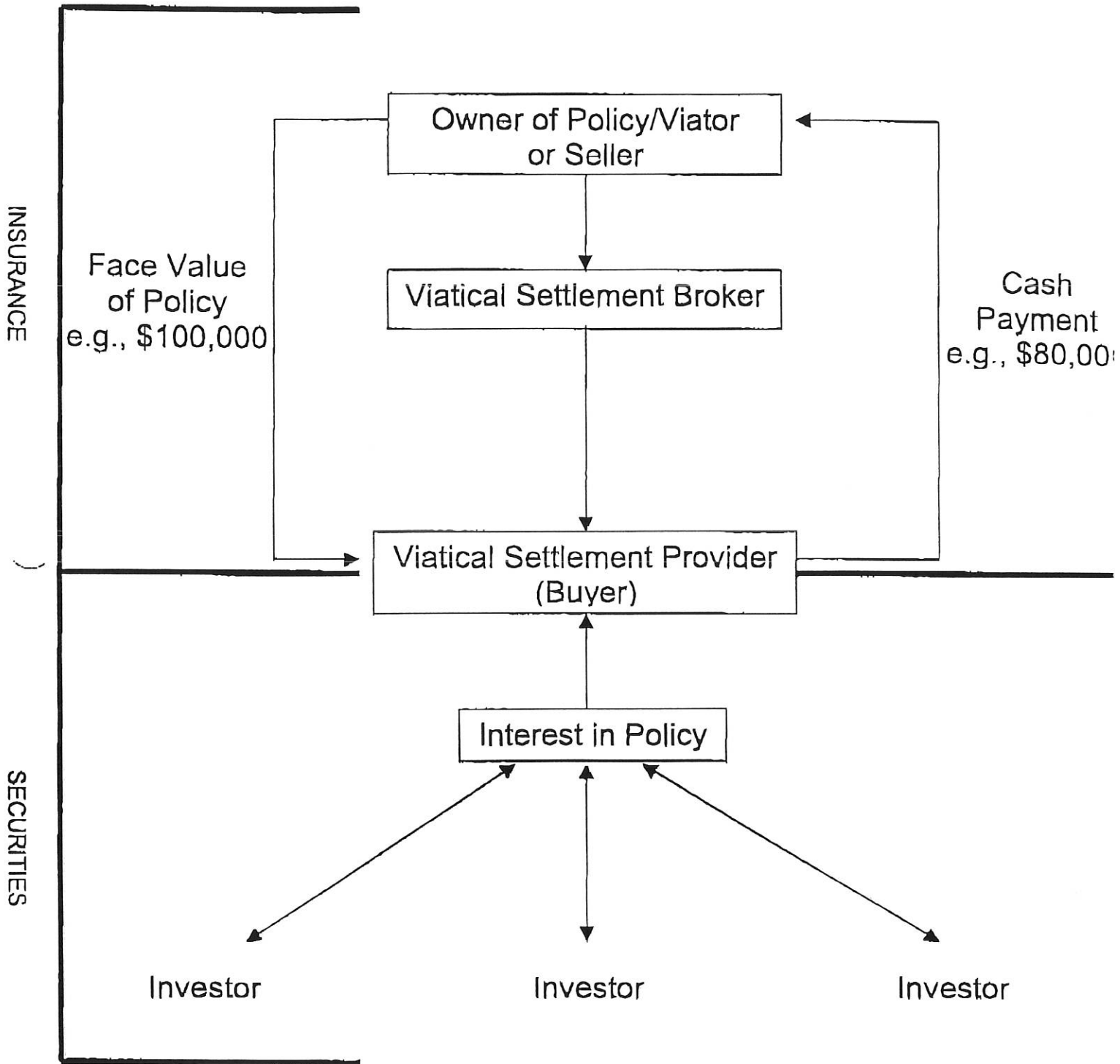
Mr. Chairman, we do have amendments to this bill, and have attached a balloon that denotes the changes. Most of the areas stricken were included in error. When the National Association of Insurance Commissioners (NAIC) develops a model act, they try to write the act to apply to all situations. In some states, the Insurance Commissioner is also regulator for the financial institutions and securities. We failed to strike the language included for those states.

On page seven of the balloon, we forgot to include the application fee for the viatical settlement broker, and also the renewal fee for the viatical settlement broker. We have included language to correct that oversight.

Most of the other changes you will see are merely technical in nature.

That concludes my remarks, Mr. Chairman and members of the committee. I would stand for any questions.

VIATICAL SETTLEMENT PROCESS



VIATICAL SETTLEMENTS ACT SUMMARY

- Section 1 Title of act.
- Section 2 Definitions.
- Section 3 Licensure.
- Viatical settlement provider application fee is \$1,000. Annual renewal fee is \$500.
 - Viatical settlement broker application fee is \$100. Annual renewal fee is \$50. (amendment we are proposing)
 - Requirements for licensure
- Section 4 License denial, non-renewal or revocation
- Section 5 Viatical settlement contract, disclosure statement and advertising required to be approved by commissioner.
- Section 6 Annual statement filed with commissioner.
Exemptions to disclosing the identity as an insured or the insured's financial or medical information.
- Section 7 Examinations.
- Documents licensees are required to keep for five (5) years.
 - Conducting an examination.
 - Examination report requirements.
 - Confidentiality and privacy issues with regard to information gathered during the examination and in the examination report.
 - Conflict of interest and status of appointed examiner.
 - Fees and procedures for examination.
 - Civil cause of action deriving from examination.
 - Investigation of suspected fraudulent viatical settlement acts and persons engaged in the business of viatical settlements.
- Section 8 Disclosures.
- Disclosures to be provided to the viator with the application for a viatical settlement.
 - Disclosures to be provided to the viator with the viatical settlement contract.

Section 9 Viatical Settlement Contract.

- Information a viatical settlement provider must obtain before entering into the contract.
- Confidentiality of the medical information obtained for the viatical settlement contract.
- Right to rescind option required in the viatical settlement contract.
- Procedures after the viatical settlement contract is executed.
- Failure to tender consideration consequence.
- Procedure for contacts with the insured for the purpose of determining the health status of the insured after the viatical settlement has occurred.

Section 10 Exemptions from entering into a viatical settlement contract within a two-year period commencing with the date of issuance of the insurance policy.

Section 11 Advertisement of viatical settlements.

Section 12 Fraud.

Section 13 Enforcement.

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February 14, 2001

Mr. Marlyn Burch
Life Division Director
Kansas Department of Insurance
420 S.W. 9th Street
Topeka, Kansas 66612

Subject: House Bill 2306

Dear Marlyn:

I am writing you on behalf of the American Council of Life Insurers, whose 426 member companies account for 80 percent of the life insurance premiums and 81 percent of the annuity considerations in the United States among legal reserve life insurance companies. We have 340 member companies licensed to do business in Kansas. I am writing to express our support for your House Bill 2306, which would enact the Kansas Viatical Settlement Act of 2001.

ACLI and its members participated in developing the NAIC Viatical Settlement Model Law upon which your Kansas Act is based. During our participation in that development process we noted that you played a key role among the regulators assigned to develop the Model. It is therefore fitting that you would take the lead in introducing the HB 2306 for enactment in Kansas.

Viatication of life insurance policies is a business practice in need of regulatory oversight, particularly in the area of fraud related activity. We strongly believe such oversight is most appropriately conducted by the Department of Insurance, whose existing authority and expertise regarding insurance makes the Department a natural regulator for this emerging area of commerce. House Bill 2306 creates the needed regulatory oversight and places that authority with the Department of Insurance. Accordingly, we support your bill.

Very truly yours



James D. Hall

cc: Julie Spiezio – ACLI
Victoria Fimea – ACLI

**Viaticus, Inc Enhance Life Benefits LLC
ViatiCare Financial Services Life Capital, BV**

February 9, 2001

Kathleen Sebelius, Chair
NAIC Executive Committee
President, NAIC
Kansas Department of Insurance
420 S.W. 9th Street
Topeka, Kansas 66612-1678

VIA FACSIMILE 785-296-2283

RE: Viatical Settlements Model Act

Viaticus, Inc., Enhance Life Benefits and ViatiCare Financial Services are all institutionally funded provider companies. Life Capital, BV is an institutionally backed Financing Entity that provides capital to licensed Viatical Settlement Providers. All of these companies have worked closely with the National Association of Insurance Commissioners (NAIC) Viatical Settlements Working Group in the drafting of the Model Act

Thank you for allowing us to comment on the Viatical Settlements Model Act. **We have reviewed and support the proposed model act.**

The Act provides strong protections for consumers such as:

- Regulating advertising
- Addressing the issue of fraudulent viatical settlement acts
- Recognizing the role of institutional funding in the industry
- Regulating life settlements as well as viatical settlements
- Requiring disclosures to consumers.

We do however suggest one change to the model that was not fully reviewed due to time constraints. We had raised the issue of an exemption from licensure for licensed life insurance agents, CPAs, attorneys and financial planners. This concept was not fully fleshed out when initially proposed to members of the Working Group. Since then considerable work has been done to develop an appropriate exemption for these regulated professionals. Our four companies worked with members of ACLI, Allstate Insurance and NAIFA in the development of the current proposal.



Kathleen Sebelius, Chair
NAIC Executive Committee
February 9, 2001
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The proposed model requires a licensed life insurance agent, certified accountant, attorney or financial planner to obtain a separate viatical broker license to participate in the business even if they engage in only one or two transactions a year and are primarily engaged in the insurance or financial planning industry, rather than the viatical industry. These individuals who have no desire to engage extensively in the viatical business are the most likely source of information for the occasionally client who may benefit from a viatical settlement. While we argue that all persons engaged in a significant number of viatical transactions should be licensed, it is unduly burdensome to require these otherwise licensed professionals to obtain an additional license on the chance that they may encounter one or two of these transactions a year.

To address the very limited involvement of these professionals, we propose the addition of language that would include them under the definition of broker (keeping them within the regulatory oversight of the Commissioner) but exempt them from the licensing, fraud plan and reporting requirements of the model provided they transact no more than five cases per year.

Each provider would have the responsibility to report annually to the Commissioner payments made to this type of agent, to assist the Commissioner in monitoring volume. These professionals do not perform the same functions as viatical settlement brokers. They do not actively advertise or solicit viatical business, do not negotiate the terms of the settlement agreement, and do not do any pre-underwriting steps commonly performed by viatical settlement brokers (i.e.; obtaining medical records, verifying policy coverage, etc.)

Requiring these licensed life insurance agents or other regulated professionals who do only a couple of transactions per year (if any) to be separately licensed as a broker would prohibit them from serving the needs of the clients – possibly denying their clients information about and assistance with a viatical settlement. Further, we believe that the licensure requirement currently in the model act will lead many of these professionals to ‘go underground’ and work through unscrupulous brokers thereby avoiding regulation by the insurance departments of the very people in direct contact with the viator.

We would be happy to provide specific language for this proposed change to the model act or to work further with the working group if this were made a charge for 2001.

We appreciate the opportunity to comment on the model act and voice our support of the model. The Working Group did an outstanding job of working with the various interested parties and learning about the ways in which the industry functions and is evolving.



Kathleen Sebelius, Chair
NAIC Executive Committee
February 9, 2001
Page 3

If you have any questions, please feel free to contact any of the signers of this letter.

Sincerely,

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 William J. Kirven III, Chair, NAIC Executive Committee
 Merwin Stewart, Vice Chair, NAIC Executive Committee
 Bob Lohr, Secretary, NAIC Executive Committee
 Lester Dunlap, Chair, NAIC Viatical Working Group
 Carolyn Johnson, NAIC Viatical Working Group

including about 400,000 in Greater Cincinnati and Northern Kentucky.

Community Mutual Insurance Co. of Cincinnati merged with an Indianapolis insurer in 1995 to form Anthem.

Converting from a mutual insurance company - owned by policy holders - to a stock company is called demutualization.

Under Indiana law the company's entire value is paid to members eligible under Indiana law in the form of stock, the company said.

The conversion is subject to approval by the Indiana Department of Insurance.

Any stock distribution would likely include more than 1 million members - mostly in Indiana, Kentucky, Ohio and Connecticut - who are covered under Anthem health plans.

However, not all of the members in those states would be eligible for stock. The distribution could be governed by laws in the specific states.

"The details of who those members are have not been defined," said Anthem spokeswoman Lauren Green-Caldwell.

A spokesman for the Ohio Department of Insurance said that Anthem will most likely have to file its approval by Indiana officials and that distribution of the stock is governed by its contracts with employers.

A spokesman for the Kentucky Insurance Department said if an employer paid the entire premium, it would most likely be entitled to the stock to be distributed.

However, if the employer and employee both paid the premiums, each could be entitled to a share.

He said the department would hold a public hearing on the issue and that each case would be determined individually.

"If you look at our industry, it's rapidly consolidating into larger and larger companies," Anthem spokeswoman Patty Coyle Locke said.

Anthem said the conversion would not affect premiums and other terms of health care plans.

4. Viatical Settlements Could Be a Godsend, or a Swindle, for the Dying

The Washington Post

02/13/2001

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For some they're a godsend -- a way to tap life insurance money to ease the debts and worries of impending death.

For others, they're an investment -- offering a tidy return from a sure, if

morbid, bet.

But for the shadier elements within a growing industry, viatical settlements are an opportunity to swindle both the insured and the investor. Indeed, viaticals (derived from a Latin word meaning "provisions for a journey") were named by the North American Securities Administrators Association as one of the top 10 investment scams of 1999, along with telemarketing schemes and get-rich-quick seminars.

Should you even consider entering into a viatical agreement? Perhaps, but certainly not without first thinking it through carefully.

Under a viatical settlement, a policyholder who can demonstrate that he has been diagnosed with a terminal illness sells his life insurance policy to a settlement company for a fraction of its face value. With the policy in hand, the purchasing company solicits investors who buy a percentage of the policy's death benefit. (An investor might, for example, spend \$50,000 to purchase a 22-percent share of a \$256,000 policy. Upon the insured's death, the investor would collect \$56,320 -- a 12.6-percent return.) Out of its portion of the investment, the viatical company pays premiums on the policy to keep it in force until the viator (the person who cashes in his policy) dies. In some cases, the company may require that investors pay the premiums.

The amount a viator receives for his policy depends on his estimated life expectancy. Under a regulation developed by the National Association of Insurance Commissioners, a viator with an estimated life expectancy of six months should receive 80 percent of a policy's face value, but someone expected to live 18 to 36 months would receive 60 percent. As of January 2001, however, only nine states have chosen to adopt that payment schedule. In the others, it's hard for viators to know whether they got a fair deal. Too often, they don't.

Potential investors are often lured to viatical settlements through newspaper ads promising safe returns from a short-term investment. But because the Securities and Exchange Commission lacks authority to regulate viatical settlements, both salespeople and companies are free to make almost any claims they wish.

States have recently imposed stricter controls, but, even so, viatical companies rarely provide information about themselves, reveal returns experienced by investors in previous years, or disclose risk.

And there is risk. Many investors, for example, receive no proof that they own policies. Investors involved in a protracted deal, moreover, may discover that they must assume responsibility for paying the viator's insurance premiums. Or (as often happens) the viatical company could go out of business, leaving investors to guess what happened to the viator or where to send insurance premiums they might have to pay.

Still, for all its troubles, the viatical industry fills a real need. In the

absence of comprehensive health insurance that covers all costs, viatical settlements have emerged to help critically ill people who may otherwise be rendered destitute paying for medical care. And a new model law that states could use to protect investors is scheduled to be completed soon.

If you are interested in exploring the viatical option, check first for companies affiliated with one of two industry trade groups: The National Viatical Association (800-741-9465; www.nationalviatical.org) or the Viatical and Life Settlement Association (202-367-1136; www.viatical.org). You should also check a company's licensing with state securities and insurance regulators.

Before you sign over your policy, consult with a financial adviser. Settlements paid to those with less than two years to live are free of federal taxes, but collecting a settlement can disqualify a patient from Medicaid benefits.

<http://www.washingtonpost.com>

5. Question: What To Do With Regulator?

Credit Union Journal

02/12/2001

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ORLANDO, Fla. -- Florida State Treasurer Tom Gallagher and State Comptroller Bob Milligan expressed diametrically opposite views on reorganizing state government prior to a January 2003 deadline for doing just that. Gallagher and Milligan spoke at a town hall meeting sponsored by the Florida league to discuss issues surrounding reorganization.

The reorganization of the state's financial regulatory agencies is necessary as a result of a constitutional amendment approved by Florida's voters in November 1998, that merges the constitutional duties of the treasurer and comptroller into one elected officer called the chief financial office, and abolishes the office of education commissioner and secretary of state, leaving a three-person cabinet. However, no direction was provided on the fate of the regulatory duties assigned to both offices statutorily. Under the adopted amendment the state cabinet will consist of the attorney general, commissioner of agriculture and the CFO.

Comptroller Milligan's proposal would take the regulation of the state's financial industries and place it in a separate department headed by Florida's governor and cabinet. Currently, five state departments are headed in this manner. Regulation of banks and credit unions, securities and insurance would be housed in a new department. A commissioner would head each area, and the whole department would have an executive director that would report to the Governor and Cabinet. Milligan said his goal was to get the politics out of regulation.

Treasurer Gallagher countered that all the regulatory functions of the treasurer and comptroller should be housed with the new chief financial

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~~ ~~or~~ ~~viatical settlement purchase~~ ~~agreement;~~ Or

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

39 (ix) a financing transaction.

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

42 (C) ~~(2) In the furtherance of a fraud or to prevent the detection of a fraud~~ In

- 1 any person commits or permits its employees or its agents to:
- 2 (i) ~~(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 (ii) ~~(B)~~ misrepresent or conceal the financial condition of a licensee, fi-
- 6 nancing entity, insurer or other person;
- 7 (iii) ~~(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 (iv) ~~(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 (v) ~~(E)~~ 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 (f) ~~(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 (g) ~~(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 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 solie-~~
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 res-
25 idence 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

for viatical settlement providers

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 ~~(h)~~ 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 ~~(i)~~ 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 ~~(j)~~ 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.

- (d) Application for a viatical settlement broker license shall be made to the commissioner by the applicant on a form prescribed by the commissioner, and these applications shall be accompanied by a nonrefundable fee of \$100.
- (e) Licenses for a viatical settlement broker may be renewed from year to year on the anniversary date upon payment of the annual renewal fee of \$50. Failure to pay the fees by the renewal date results in expiration of the license.

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

or
In the event that investigation by the commissioner
discloses 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 untrust-~~
10 worthy or incompetent;

in another state

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.

or

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 ~~(2)~~ ~~(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 ~~(3)~~ ~~(4)~~ a term of or condition to the transfer of a policy by one viatical
27 settlement provider to another viatical settlement provider;

28 ~~(4)~~ ~~(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 ~~(5)~~ ~~(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 ~~(6)~~ ~~(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 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.~~

viatical settlement

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 settlement
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- viator
32 tlement contract, that such ~~voter~~ viator has a full and complete understanding viator
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 confidentiality 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 (d) ~~(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 ~~(e) (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 ~~(f) (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

viatical settlement

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.

viatical settlement
viatical settlement

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 ~~(d)~~(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, ^{or} 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 ~~(3)-(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 ~~(4)-(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 ~~(5)-(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 via-
 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 (e) ~~(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 ~~(f)~~ ~~(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 ~~(g)~~ ~~(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 ~~(h)~~ ~~(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 ~~(i)~~ ~~(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 ~~(j)~~ ~~(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 set-
 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-~~ cr
 6 ~~ment investment agent~~ is licensed.

7 (k) ~~(h)~~ No advertisement shall create the impression that the viatical set-
 8 tlement 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 (l) ~~(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 (m) ~~(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 (n) ~~(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 (o) ~~(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~~ ^{or}
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 (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~~ *or viatical settlement*
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 *Viatical settlement*
24 for viatical settlement providers and ~~brokers~~; and

25 (e) adopt rules and regulations governing the relationship and re- *or*
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~~ *or*
30 ~~viatical settlement investment agent~~ transacting business in this state may *viatical settlement*
31 continue to do so pending approval or disapproval of the provider, ~~broker~~ *or viatical settlement broker's*
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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John C. Gann, LUTCF
Law and Legislation Committee Chairman
Kansas Association of Insurance and Financial Advisors (KAIFA)

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Testimony Before the House Committee on Insurance
House Bill No. 2306
February 15, 2001

Mr. Chairman and Committee Members:

I appreciate the opportunity to address you today on behalf of the many members of the Kansas Association of Insurance and Financial Advisors. Our membership consists of 1,500 Kansans located in all Kansas counties who are actively engaged as insurance agents and brokers.

KAIFA is a proponent of House Bill No. 2306 for the following reasons:

- The bill strengthens the powers of the Insurance Commissioner to prosecute fraudulent viatical and life settlement transactions.
- The bill strengthens the powers of the Insurance Commissioner to require full disclosure to potential viators of the nature, costs and tax liabilities of viatical settlements.
- The bill defines fraudulent viatical settlement acts and establishes the fines and penalties for criminal viatical acts.
- The bill establishes advertising standards and guidelines that viatical providers must follow in public solicitation of viatical business.

We believe that there is a growing amount of fraud in the viatical business and that it would be good public policy for both the Insurance Commissioner and life insurance companies to promote alternatives to viatical settlements. Usually the best of the alternatives is acceleration of death benefits from inforce policies. Acceleration of death benefits is income tax free, commission free and efficient since 90% to 95% of the net face amount of the viaticated policy will be paid to the insured. By promoting accelerated death benefits, both the Insurance Commissioner and the life insurance companies will serve and promote the public good.

Thank you for your time and consideration.

*House Comm on Ins
Feb 15, 2001
Attachment 2*

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George E. Moore, LUTCF
- VICE-PRESIDENT
J. Fred Thurlow, LUTCF
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