Approved:
Date: 3-19-02

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE.

The meeting was called to order by Chairperson Sandy Praeger at 9:30 a.m. on March 13, 2002 in Room 234 N of the Capitol.

All members were present except:

Committee staff present: Dr. Bill Wolff, Kansas Legislative Research Department
Ken Wilke, Office of the Revisor of Statutes
JoAnn Bunten, Committee Secretary

Conferees appearing before the committee:

Matthew All, Kansas Insurance Department
John C. Gann, Kansas Association of Insurance and Financial Advisors
David Brant, Kansas Securities Commissioner
Wiley Kannarr, Office of the Kansas Securities Commissioner
Terry Humphry, Kansas Trial Lawyers Association
Doug Head, Executive Director, Viatical & Life Settlement Association of America - Orlando

Others attending: See attached list.

Hearing on HB 2640 - NAIC Model Viatical Settlements Act

Matthew All, Kansas Insurance Department, testified before the Committee in support of **HB 2640** which would repeal the existing law relating to viatical settlements and enacts the Viatical Settlement Act of 2002. Mr. All noted that the bill contains the same language as 2001 **HB 2306**, but with additional changes as outlined in his written testimony. (Attachment 1) During Committee discussion it was noted that seven states have enacted the new model as referenced in the bill.

John C. Gann, Kansas Association of Insurance and Financial Advisors, testified before the Committee in support of **HB 2640** and outlined several good reasons why the viatical and life settlement transactions should be regulated as shown in his written testimony. (Attachment 2)

David Brant, Kansas Securities Commissioner, also expressed his support for the bill, and noted that his agency has handled thirty-one cases involving viatical investments. 131 Kansans have invested a total of almost $9.2 million, $1.5 million had been repaid, and some amounts have been totally lost. He noted that the remainder is at-risk and outstanding with the investors uncertain about if and when they would receive the return on their principal. Mr. Brant further explained that his office has investigated viatical settlement contracts, and to date, they have identified 18 insurance agents who sold risky, unregistered investments to their clients. (Attachment 3) During Committee discussion it was pointed out that viatical and life settlement transactions were started with the influx of AIDS patients in need of cash. Insurance agents are usually paid a 10% commission.

Wiley Kannarr, Office of the Kansas Securities Commissioner, testified in support of **HB 2640** and provided information on the numerous administrative actions taken by the Securities Commissioner's Office since March 1998 as well as regulatory actions in Oklahoma and Arizona. Mr. Kannarr noted that the bill would provide the Securities Commissioner with the ability to adopt the results of the project group formed by NASAA for the purpose of creating a uniform statement of policy to be employed by the states in determining eligibility of viaticals to be sold in each jurisdiction. (Attachment 4)

Terry Humphry, Kansas Trial Lawyers Association, expressed her support for the bill and the amendments, as adopted by the House Insurance Committee and House Committee of the Whole, which would allow records to be released to individuals harmed by such fraudulent acts at the discretion of the commissioner or pursuant to a court order. (Attachment 5)

Doug Head, Executive Director, Viatical & Life Settlement Association of America , Orlando, testified before the Committee in opposition to the bill that related specifically to the amendments offered by the Kansas Trial Lawyers Association and language provided by the NAIC. Mr. Head noted that the legislation does contain some major provisions of which they approve, but they object to issues relating to NAIC model legislation that carry over into the Kansas Proposal as outlined in his written testimony. (Attachment 6)

Adjournment

The meeting was adjourned at 10:30 a.m. The next meeting is scheduled for March 14, 2002.

SENATE FINANCIAL INSTITUTIONS & INSURANCE COMMITTEE GUEST LIST

DATE: 3-13-02

NAME	REPRESENTING
MATT ALL	KID
Roger Walter	KLSAA
Doug Wead	VLSAA
Wiley Kannair	Securities Commission
David Brant	Securities Commission
John Gann	KAIFA
Marilyn Burch	KID
Larry Magill	KAIA
Sandy Braden	KAIFA
Ken Nuzman	KTLA
Linda McCarthy	KS Ins. Dept
Marilyn Burch	KS Ins. Dept

Kathleen Sebelius
Commissioner of Insurance
Kansas Insurance Department

TO: Senate Committee on Financial Institutions and Insurance

FROM: Matthew All
Assistant Insurance Commissioner

RE: HB 2640– Viatical settlements law update

DATE: March 13, 2002

To the Chairperson and members of the committee:

Thank you for the opportunity to discuss this important consumer protection issue with you. My name is Matthew All, and I am the Assistant Insurance Commissioner. I am here on behalf of the Kansas Insurance Department. This bill was introduced at the request of Insurance Commissioner Sebelius.

HB 2640 contains the same language as HB 2306 of last year. It seeks to update and improve Kansas law governing viatical settlements. A viatical settlement is a transaction in which 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 or beneficiary, may have to pay future premiums, and collects the full amount of the death benefit when the insured dies.

The first NAIC model act governing viatical settlements was adopted in 1993. Because problems surrounding viatical settlements did not seem severe in Kansas at that time, we did not pass the model act immediately after the NAIC adopted it. But because problems with viatical settlements increased as the 1990s progressed, we asked for passage of the NAIC 1998 model act in 1999, and you passed it.

The reason for making these changes in our viatical law is that the viatical industry has grown and changed dramatically in recent years. The NAIC responded to these changes with an update to the NAIC model law adopted in December 2000.

As pharmaceuticals and other medical therapies have advanced dramatically in recent years, many patients once though to be near death are now living longer. Their policies, as a result, are not as profitable to the viatical settlement providers. In response, the viatical settlement industry has moved to "senior settlements" or "life settlements" through which an individual, usually an older person who is no longer in need of their life insurance policy, sells their policy to a viatical settlement provider. Unfortunately, the present law has become outdated for this development,

Senate Financial Inst. & Insurance
Date: 3-13-02
Attachment No. 1

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as well as other emerging issues. This new development has reinforced the department's commitment to protecting the rights of Kansas citizens, especially the targeted senior population.

This bill seeks to amend the 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 that 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. <u>These two sections are important because of the fraud that has occurred in this industry</u>. There are two major fraudulent acts that occur regularly in this industry – "clean sheeting" and "wet paper" transactions.
    - <u>Clean sheeting</u> occurs when an individual conceals medical problems on the life insurance application to obtain coverage, which would not have been issued had the true facts been given. These policies are quickly sold to viatical settlement companies, which in turn seek investors.
    - <u>Wet paper</u> or <u>wet ink</u> transactions occur when 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.
- Enhances regulatory authority over viatical settlements as investments.

I have included attachments to my testimony. These attachments include the following: a two-page outline of the bill components; letters of support for the bill from the American Council of Life Insurers and three companies who provide capital to licensed Viatical Settlement Providers; news articles that appeared in the *Washington Post* and *Consumer Reports* addressing the need for such an industry, but also warning of the dangers our bill addresses; and, an article from the *Lexington Herald-Leader* showing that if we have this law in place, we can stop certain unlawful activities such as fraud.

Review of the bill (HB 2640)

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.

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 ground for the Commissioner 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, the 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.

Kansas Insurance Department believes that disclosure is a fundamental protection for 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 in 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 within 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

Conclusion
In closing, having your life insurance purchased in a viatical or life settlement can be a Godsend to many Kansans. That's why the Kansas Insurance Department requested that the Legislature allow us to regulate this industry, not ban it. But there are problems with some of the investors who short-change and fleeced consumers through viatical and life settlement fraud, and we feel that has left us with insufficient consumer protection.

In 1999, the Legislature passed the existing law, but since that time the industry has changed and continues to change dramatically. In the last few years, the industry has evolved into including life settlements for healthy seniors. Currently, this market is worth over $100 billion nationwide and there is no specific regulation of it in Kansas.

The proposed law is the NAIC model act adopted in December 2000 and has input of many groups before getting to the final stages of adoption. The proposed model act is no more

burdensome for the agents and companies than is already in place for other life insurance agents or companies selling life insurance in Kansas. The advertising section of this model act, for example, was actually fashioned after the Kansas life insurance advertising regulations.

Kansans deserve the protection of this comprehensive law. It provides greater safeguards for viators' privacy, covers life settlements, and protects investors. We urge your favorable consideration of HB 2640.

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.

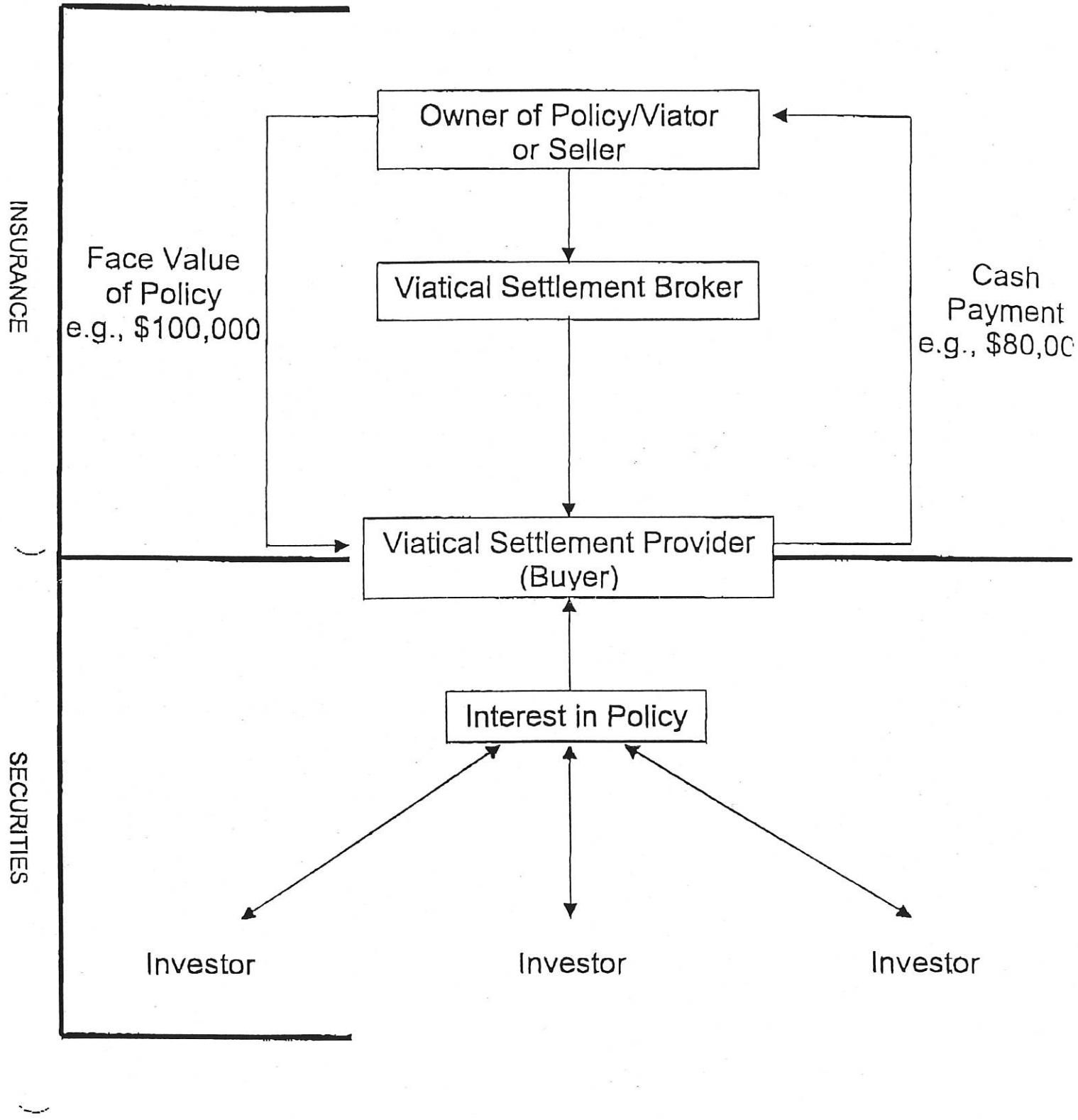
Section 11 Advertisement of viatical settlements.

Section 12 Fraud.

Section 13 Enforcement.

1-7

VIATICAL SETTLEMENT PROCESS



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AMERICAN COUNCIL OF LIFE INSURERS
FINANCIAL SECURITY FOR LIFE

JAMES D. HALL
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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.

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.

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

Sincerely,

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Mike Pickens, Secretary-Treasurer, NAIC Executive Committee
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Diane Koken, Chair, NAIC Executive Committee
Alfonso Mastrostefano, Vice Chair, NAIC Executive Committee
Donna Lee Williams, Secretary, NAIC Executive Committee
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Nathaniel S. Shapo, Chair, NAIC Executive Committee
Lee Covington, Vice Chair, NAIC Executive Committee
Sally McCarty, Secretary, NAIC Executive Committee
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 for 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 would 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

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

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

Betting on death

Insurance settlements intended to help the dying have short-changed them and fleeced many investors instead.

Sarah Lorenti and Scott Ericsson have never met, yet the two are locked in a deal to the death. In early 1997, Lorenti and her husband, Raymond, then living in Naples, Fla., invested $50,000 to purchase a 22 percent share of Ericsson's $256,000 life insurance policy. According to papers they received from Mutual Benefits, the Fort Lauderdale company that brokered the deal, Ericsson, who does not want us to use his real name, had "advanced HIV disease" with a 6- to 12-month life expectancy. Under an arrangement called a viatical settlement ("viatical" comes from a Latin word meaning provisions for a journey), he would get a percentage of the policy for his immediate use. After he died and the insurance company paid off, investors would receive their share of the claim, in the Lorentis' case, $56,320—a solid 12.6 percent return. "The salesman said viaticals were better than CDs [certificates of deposit] or stocks," says Lorenti, 72.

Ericsson, a postal worker from the Midwest, is alive, and Lorenti is still waiting for the payoff. Though she continues to receive letters periodically from Mutual Benefits reporting that Ericsson's condition "remains terminal," Lorenti, whose husband has since passed away, now wants the funds to meet her own needs and worries that she'll never collect.

To disease-stricken people like Ericsson and investors like Lorenti, viaticals looked like an arrangement from which both sides could gain. Terminally ill patients facing devastating medical expenses could receive cash from an insurance policy to see them through their final days. Investors would be rewarded with a tidy return from a sure—albeit morbid—bet.

Such attractions have been the wellspring of a growing business. In 1998, according to a report by Conning & Co., an insurance research group, the 40 to 50 mostly small companies that made up the industry exchanged about $1 billion in life insurance policies, up from just $50 million in 1991. Now, the industry is moving to extend the marketing of viatical settlements to healthy seniors through so-called "life settlements," a vast market potentially worth $108 billion. Many viatical insiders believe that eventually Wall Street companies will sell shares in large pools of "used" insurance policies.

LEGAL AND ETHICAL DILEMMAS

The industry has been dogged by problems—and thorny ethical issues. Insufficient consumer protection has left viators (the people who cash in their policies) with inadequate payments and investors stung after promised returns up to as much as 30 percent or more fail to pan out. Fraud has been so common a problem that the North American Securities Administrators Association, a group of state investment cops, named viaticals one of the top ten investment scams of 1999, along with telemarketing schemes and get-rich-quick seminars. Thirty-three of the 73 viatical companies CONSUMER REPORTS found operating in 2000 had been in trouble with regulators in the past two years. Among their problems: failure to register with securities or insurance authorities, misuse of investor funds, misstatements about the medical condition of patients, and a fraudulent practice called "cleansheeting." Under that scheme, viatical companies solicit patients with life-threatening chronic or terminal conditions to lie about their health and apply for life insurance policies, which are then resold to investors.

Yet despite all the problems and abuses, viatical settlements can be a godsend. Arline Maisel, her three brothers, and two sisters despaired when they learned in mid-1997 that their dad, stricken with prostate cancer, had six months to live. With three children still at home to support, Hank Maisel, 61, was too ill to work, and a failed business deal had left him broke. "He was only a few payments away from losing the house," says Arline. By selling half of Hank's only asset, a $500,000 term-life insurance policy, however, the Maisels were able to raise enough after the viatical company pocketed its $59,000 share of the proceeds to meet medical expenses and clear up debts. Hank died in 1999, and, says Arline, "I am convinced he lived an extra year thanks to the money."

HOW VIATICALS WORK

Viatical settlements look fairly straightforward. A policyholder who can demonstrate that he has been diagnosed with a terminal illness sells his policy to a settlement company for a fraction of its face value, depending on estimated life expectancy. With the policy in hand, the purchasing company solicits investors who receive the death benefit when the viator dies. Out of its portion of the investment, the viatical company pays premiums on the policy to keep it in force until the viator dies. In some cases, the company may require that investors pay the premiums.

Any type of insurance can be used in a viatical settlement—whole life, universal, term, or group life provided by an employer.

Despite all the problems and abuses, viatical settlements can be a godsend.

But the policy must allow the viator to assign, or transfer, it to an unrelated beneficiary. And the viator must have owned the policy for a minimum of two years before he sells it.

Under the newer viatical arrangements called life settlements, an elderly person with a large life insurance policy he or she no longer needs would be able to convert the policy to cash. Steven Arenson, a vice president with Viaticus, a division of Chicago

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surance giant CNA, explains that his company's typical viator is 72 years old, has a high net worth, owns a $1.4 million policy, and has a life expectancy of about ten years. Viaticus does not sell to individual investors; it plans to hold the policies until maturity, calculating that at least some of its clients will die sooner rather than later. Other firms, however, are gearing up to buy policies from healthy seniors and sell shares to small investors.

PREYING ON VULNERABILITIES

Viators who are ill and often desperate may be at the mercy of viatical companies. Under a regulation developed by the National Association of Insurance Commissioners (NAIC), viators would be guaranteed to receive a minimum payment based on a sliding scale that depends on life expectancy. For instance, a viator with an estimated life expectancy of six months would receive 80 percent of a policy's face value, but someone expected to live 18 to 36 months would receive 60 percent. To date, however, just nine states (Arkansas, Connecticut, Kansas, Louisiana, Maine, Minnesota, Mississippi, Oklahoma, and Vermont) have chosen to adopt the payment schedule.

In the absence of standards, it's hard for viators to know whether they got a fair deal, though too often they do not. Joseph Belth, editor of Insurance Forum, a consumer-oriented industry newsletter, studied viatical transactions between 1994 and 1998 arranged by eight companies in Florida. He found that payment ratios varied from as low as 22 percent of a policy's death benefit to as much as 60 percent. Even within the same company, Belth found, similar policies paid out different proportions. Accelerated Benefits, an Orlando firm, for example, paid 25 percent, 33 percent, and 40 percent of death benefits to three HIV patients, each with a life expectancy of 48 months, who owned whole-life policies. The surprisingly wide variation, explains Jess LaMonda, Accelerated's president, is due to differences in premiums, brokers' fees, and loans against the policies.

Unpredictable and inadequate payments to viators aren't the only problem. Tom Foley, director of the accident and health division of the Kansas Insurance Department, is troubled by the potential invasion of viators' privacy. No laws currently require that the original policyholder's identity be concealed from investors. And while some companies do try to keep identifying information to a minimum, these efforts can be sloppy, allowing sensitive data to leak out.

That intrusiveness could have serious consequences. Viators run the risk that their policies may be sold repeatedly and end up in the wrong hands. The viatical industry has attracted some questionable players. Consider the case of Michael Lee Davis, who, along with several cronies, operated two viatical companies in Dallas. After a lengthy investigation by the Texas Department of Insurance, Davis was indicted for—and recently convicted of—cleansheeting. According to court papers, he solicited people with pre-existing terminal illnesses to apply for life insurance policies that have low face values and require no medical tests. For a fee between $4,000 and $7,000, the applicants would falsely attest to their good health, and one of Davis' partners, a complicit insurance agent, would approve the deal. Davis resold $3.6 million of the policies to investors.

A death with dignity
Suffering with cancer and beset with debts, Hank Maisel accepted a viatical settlement on his $500,000 term-life policy. With the proceeds, he was able to meet expenses and ease his family's anguish. Says his daughter: "I am convinced he lived an extra year thanks to the money."

What stunned investigators, however, wasn't Davis' scheme, which has become almost routine in the viatical business, but his background. In 1981, under the name Walter Alfred Waldhauser Jr., Davis confessed to hiring a hit man to kill the family of a friend to collect money from their estate, including insurance proceeds. The homicides got Waldhauser three concurrent 30-year sentences, but he was granted parole in 1990. Upon his release, he and another former prison inmate decided to go into the viatical business. (Texas law disqualifies applicants for viatical licenses if they had felony convictions within the previous ten years. Waldhauser's conviction was too old to count.)

Dangers for investors. Prospective investors don't hear about such problems. Like the Lorentis, they see an ad in a newspaper promising safe returns from a short-term investment. Since a 1996 federal court decision, which ruled that the Securities and Exchange Commission lacked authority to regulate viatical settlements, both salespeople and companies have been free to make almost any claims they wish. States have recently imposed stricter controls, but even so, viatical companies rarely disclose risk, provide information about themselves, or reveal returns experienced by investors in previous years—information easily obtained for stocks, bonds, and mutual funds. And investors are often introduced to viaticals by a trusted insurance agent or financial planner with whom they have done business for years. Such financial advisers may not know much about viaticals, says Bill MacDonald, enforcement director of the California Department of Corporations. Their chief concern, he adds, is "how much is my commission?"

The result is almost complete lack of understanding of basics on the part of investors. Promotional materials put out by companies like Taking Flight Investments, headquartered in Michigan, tout 42 percent returns from viaticals on patients with three years to live. But the company fails to mention that every year tacked onto the viator's life reduces an investor's return—in some cases, to less than what could be earned in a federally insured passbook savings account. Kathleen Blackham, chief deputy of enforcement for the Indiana Securities Division, notes that 80 percent of the policies she's reviewed in which her state's investors put money "have gone beyond their maturity date."

Many investors receive no proof that they own policies. Financial Federated Title & Trust (FinFed), a Lake Worth, Fla., viatical company, sold $117 million in viatical investments from 1996 to 1999. The company promised returns of 42 percent, but a lengthy probe by FBI agents revealed, in 1999, that FinFed and related companies owned only 70 policies worth just over $8 million. The company and a batch of related businesses used about $12 million of the proceeds collected from investors to pay off on policies. Most of the money went to FinFed executives' bank accounts, real-estate acquisitions, and a fleet of luxury cars, helicopters, motorcycles, and boats. Investors were kept in the dark, receiving form letters assuring them that viators' medical records had undergone review.

PHOTO BY ARLINE MAISEL

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.y, last year, the FinFed principals were charged with fraud (one was convicted and others are awaiting trial). The company was forced into bankruptcy.

The longer the deal goes on, the more likely it is that investors will face costly problems. For starters, they may discover that after a certain point they must assume responsibility for paying the viator's insurance premiums to keep the policy in force. Some viatical companies set aside only enough to pay the viator's premiums until the predicted date of death. If the viator does not die and the policy is allowed to lapse, whatever the investor put into the deal would be lost.

Over time, the investor could discover other traps. The viatical company could lose track of the patient and not know whether he is alive or dead; or the company could go out of business, leaving investors to guess what has happened to the viator or where to send insurance premiums they might have to pay. According to the Conning & Co. report, "firms go in and out of the business frequently."

MORE PROBLEMS AHEAD

Because regulators have been slow to address the industry's many problems, both viators and investors are hard put to find a viatical company they can trust. It wasn't until 1993, eight years after the first viatical companies were founded, that NAIC developed a model state law to provide protections to viators. So far, 27 states have adopted some version of the statute, while another 6 developed their own laws. A new, more comprehensive model law that would provide more safeguards for viators' privacy, cover life settlements, and lay out protections for investors will be completed this month.

Viatical industry officials say that many of the problems could disappear if the industry were able pool the risks over thousands of policies, much like Ginnie Mae bonds do for home mortgages. William E. Kelley, executive director of the Viatical and Life Settlement Association, one of the industry's two trade groups, points out that under a pooling arrangement, people who sold their policies would face fewer risks that their privacy would be violated. Investors would spread their risk among perhaps a thousand policies at once and be able to sell shares in the pool when they wanted out.

Pools may offer investors more protection, but it's doubtful they would do much to improve returns. Joseph Belth, editor of Insurance Forum, simulated what investors could expect to earn from a model pool of 1,000 whole-life policies, each with a face value of $1 million and owned by a healthy 70-year-old man. He assumed that each of the viators would receive a settlement of $522,000—equal to the cash value in the policy they would be able to fetch simply by trading in their policies. Belth estimated that were they in the pool to pay the premiums, expenses, and interest to keep the policies in force until the viators died, the investors would end up losing $10,000 per policy.

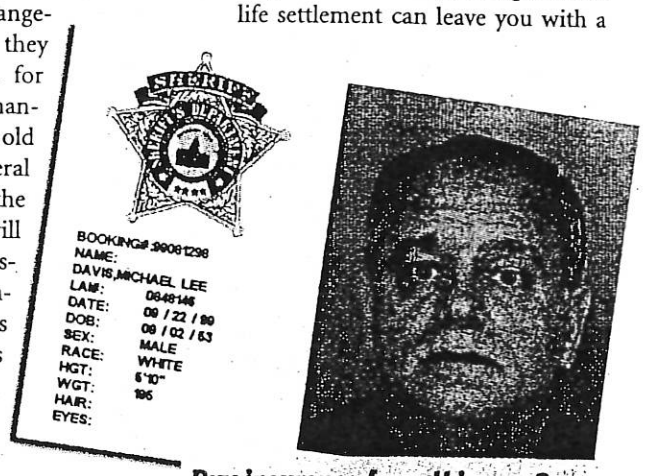
RECOMMENDATIONS

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, if the industry can work out arrangements for life settlements, they may be a source of cash for retired people who didn't manage to save enough for their old age. But until state and federal regulators can establish the necessary safeguards that will make it possible for the industry to serve these ends responsibly, viators and investors should take these precautions before entering into such arrangements:

Viators. It's unwise to make a major financial decision at a time of emotional and economic strain without first consulting your family or a trusted friend who can help you think through the situation carefully. Don't accept a viatical settlement until you've first fully investigated your alternatives. Many life insurance policies offer accelerated death benefits that allow policyholders with a life expectancy of less than six months to receive an early distribution of between 25 and 100 percent of the death benefit. You may also be able to arrange to borrow from family or friends, using future proceeds from your policy as collateral.

If you remain interested in exploring the viatical option, check first for companies affiliated with one of the two industry trade groups: The National Viatical Association (1200 G St., N.W., Suite 760, Washington, D.C. 20005; 800 741-9465; *www.nationalviatical.org*); or the Viatical and Life Settlement Association (2025 M St., N.W., Suite 800, Washington, D.C. 20036; 202 367-1136; *www.viatical.org*). Both groups have adopted a code of ethics with which members must comply. You should also check a company's licensing with state securities and insurance regulators. Inquire with your state insurance department to see whether the law recommends a minimum payment for your policy, and get bids from several companies before accepting an offer. Before you sign over your policy, consult with a financial adviser. Collecting a viatical settlement can disqualify a patient from Medicaid benefits. Settlements paid to those with less than two years to live are free of federal taxes.

Anyone thinking of converting an insurance policy should exercise extra caution before going the viatical route. Because few states now regulate life settlements, you have no protected right of privacy. You will have to allow your medical condition to be tracked for the rest of your life. If those disadvantages don't deter you, ask your tax adviser or financial planner whether collecting a viatical life settlement can leave you with a hefty tax bill. And if you own a whole-life policy, don't accept less than the cash value for it.



Buy insurance from this man?
Walter Alfred Waldhauser Jr. pled guilty to homicide charges in 1981 and was sentenced to hard time in a Texas penitentiary. But for eight years following his 1990 parole, Waldhauser (now calling himself Michael Lee Davis) and a fellow former inmate sold viatical policies until investigators indicted him for fraud.

Investors. Despite marketing claims to the contrary, viaticals are high-risk investments that could take years to pay off. And with gaping holes in the regulatory safety net, they present too many potential problems for small investors. Even well-heeled investors should approach these investments with great caution. They are not appropriate for use in Individual Retirement Accounts. IRA holders must start withdrawing funds no later than April 1 of the calendar year after they turn age 70½. If the cash isn't there, they will face a penalty equal to half the sum they were required to withdraw but didn't.

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LEXINGTON HERALD-LEADER January 12, 2002

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Market Week
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Guilty plea includes Kelco link

Defendant says he got help faking data for policies

By Jim Jordan
HERALD-LEADER BUSINESS WRITER

A new defendant alleges that unidentified "officers and employees of Kelco Inc." helped him fake blood tests and provide false information to get life insurance policies to sell to Kelco.

Carmine Carpinone, 38, of New York was indicted by a federal grand jury Wednesday and pleaded guilty yesterday to an indictment that includes the allegations.

Prosecutors have said Kelco knew fraud was being committed to get insurance policies, but Carpinone is the first to allege that Kelco officers were directly involved in illegal acts.

Kelco's attorney, Bob Webb, denied Carpinone's allegations and attacked his character, saying he was lying to get even with Kelco and to get favorable treatment from prosecutors.

Neither Kelco nor any of its top officers have been indicted, and Kelco's founder and CEO, Steve Keller, has denied any suggestion of wrongdoing.

Another defendant, Keith Hadlock, 44, who was indicted with 15 others on Jan. 3, also pleaded guilty yesterday to the same charge as Carpinone — one count of conspiring to commit mail fraud, which could mean five years in prison and a fine of up to $250,000.

Both men are cooperating with federal investigators who raided Kelco's Lexington headquarters on May 19, 2000, and

See KELCO, B2

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KELCO: Indictment lists ways defendant says he was instructed in fraud

From Page B1

seized 606 boxes of records.

The investigation involves "clean-sheeting," which occurs when a seriously ill person falsifies medical information to obtain a life insurance policy to sell to a viatical company such as Kelco.

The viatical company sells the policy to investors who pay the premiums and keep the policy in force until the insured dies and investors collect the death benefits.

Carpinone's indictment says "officers and employees of Kelco" told him:

■ To change the order of his Social Security number to prevent insurance company computers from tracking his transactions.

■ To leave blanks on insurance forms and policies "so that Kelco could insert the names of people or entities that would not alert insurance companies to the fact that Kelco was involved in the transaction."

■ To "contact a person that Kelco used to substitute the blood of healthy individuals for the blood of unhealthy individuals applying for life insurance" so the unhealthy person could pass insurance company blood tests.

Carmine Carpinone is the 18th person to be indicted in the Kelco inquiry and the third to plead guilty and agree to cooperate with prosecutors.

The indictment did not say why Carpinone was concerned that his blood wouldn't pass the insurance company tests.

Carpinone also said Kelco executives met with him in New York and asked him to recruit other New Yorkers to participate in the conspiracy to get more policies.

Webb said that Kelco executives never met with Carpinone and that the company has a letter in its files ordering him to correct his Social Security number on documents he sent it.

Webb also said it would be nearly impossible to fake blood tests because they are done by insurance company employees or vendors.

As for the blanks left on insurance forms, he said that was a routine procedure because Kelco didn't know who would buy the policies and couldn't fill in the blank until a buyer was known.

"No officer of Kelco has ever told him to make false statements on insurance documents," Webb said.

Carpinone's whole story is "like something out of a fairy tale," he added.

Only one policy obtained by Carpinone and sold to Kelco was mentioned in the indictment.

In November 1997, he applied for a $250,000 policy from United States Life Insurance Co. that was sold to Kelco in January 1998 for $32,500.

Carpinone is the 18th defendant to be indicted in the Kelco investigation. He is the third to plead guilty and agree to cooperate with prosecutors.

The first was Charles Cole, who claimed to be a former Kelco manager in California, but Kelco said he was never an employee. Cole was indicted on April 5, 2001.

■

Reach Jim Jordan at (859) 231-3242 or jordan1@herald-leader.com.

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KAIFA
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John C. Gann, LUTCF
Law and Legislative Chairman
Kansas Association of Insurance and Financial Advisors (KAIFA)

Testimony Before the Senate Committee on Financial Institutions & Insurance
House Bill No. 2640
March 13, 2002

Mr. Chairman and Committee Members:

I appreciate the opportunity to address you today on behalf of the 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 very concerned about viatical and life settlements in the state of Kansas and believes that there is a necessity of regulation of these transactions by the Kansas Insurance Department and the Kansas Securities Commissioner.

In viatical and life settlements the insured person sells his or her life insurance policy for cash to a stranger or a syndicate of strangers. The insured person does this to generate cash to pay for the medical costs of terminal illness or to pay for the income needs of retirement. The cash needs of the seller are so great that he or she is not afraid at all of selling an old life insurance policy to someone who stands to make a money profit from the transaction, a money profit which becomes greater the more quickly the insured person dies.

The following more formal definition of the viatical and life settlements appears in the most recent issue of The Insurance Forum, "In a viatical or life settlement transaction ownership of a life insurance policy is sold for cash to someone who does not have an insurable interest in the life of the insured. Moreover, as a consequence of the transaction, the buyer of the policy thereby acquires a financial interest in the early death of the insured." (Volume 29, Number 2, Page 13, February, 2002).

Because most life insurance executives and life insurance industry regulators would find it very difficult to enforce laws and regulations prohibiting viatical and life settlement transactions, strict regulation of these questionable transactions is now the preferred method of public policy implementation.

There are several good reasons to strictly regulate viatical and life settlement transactions, the market for which is now being called the secondary market for life insurance policies.

1) Secondary market transactions undermine the long established principle of insurable interest.

Senate Financial Inst. & Insurance
Date: 3-13-02
Attachment No. 2

2) The secondary market has provided an environment for fraudulent transactions to take place.

3) The secondary market has provided the mechanism for large amounts of life insurance to be diverted from the original purposes of the policies.

4) Secondary market transactions create numerous conflicts of interest.

The conflicts of interest are troubling to the management of many major life insurance companies and are strictly prohibited by many of these companies. These conflicts, according to various industry publications are:

A) Conflicts between the interests of the terminally ill patient who sells out of a policy and the health care provider who stands to receive some or all of the cash from the sale. The healthcare provider may regard the viatical payout as a windfall regardless of discount rates used and regardless of other financial considerations the patient may have.

B) Conflicts between the terminally ill patient who sells out of a policy and the profit motives of the viatical investment firm buying the policy. The viatical investment firm has no insurable interest in the life of the insured. The sooner the inured person dies, the greater the investor's profit. Both the insurable interest regulations and the transfer for value rules were established to prevent speculation, gambling and wagering on the lives of insured persons. But speculation on the life of another is precisely what happens in a viatical settlement.

C) Conflicts between the interests of the terminally ill person and the persons originally designated as the beneficiaries of the policy being sold into the secondary market. The original beneficiaries could argue in court that the policy was sold under duress, the threat of being without money to pay for medical expenses, and thereby, potentially nullify the viatical settlement agreement.

D) Conflicts of interest between the life insurance agent and the agent's insurance company. The agent could arrange to sell a life insurance policy to a terminally ill person by concealing information about the insured's illness from the insurance company underwriters. After the agent collects the first commission from the life policy sale, the agent could buy the inforce policy from the dying insured under a viatical arrangement and collect the death benefit and a substantial profit when the insured dies.

E) Conflicts of interest between the viatical investor and medical researchers. The development of new medical treatments extends the lives of terminally ill patients. When terminally ill persons who have sold out of their life insurance policies begin living longer that originally expected, the investment returns on viaticated policies deteriorates rapidly and places viatical investors at a tremendous disadvantage. The investors would have financial incentives to steer

investment capital away from medical research that improved the quality of life and lengthened the human life span.

KAIFA is a proponent of House Bill 2640 as it will:

- Strengthen the powers of the Insurance Commissioner to prosecute fraudulent viatical and life settlement transactions.
- Strengthen the powers of the Insurance Commissioner to require full disclosure to potential viators of the nature, costs and tax liabilities of viatical settlements.
- Define fraudulent viatical settlement acts and establish the fines and penalties for criminal viatical acts.
- Establish advertising standards and guidelines that viatical providers must follow in public solicitation of viatical business.
- Require both a viatical settlement broker and provider to hold a license before they may engage in the viatical settlement industry and provide reasons why the Insurance Commissioner may refuse to issue, revoke or refuse to renew a license.
- Require that the Insurance Department approve all viatical contracts.

Another area of concern for KAIFA is the manner in which viatical investments have been sold as so called safe investments. Viaticals have been compared to various forms of investments with the lack of full disclosure on the part of the viatical and life settlement sales people. As mentioned in the testimony of Securities Commissioner Brandt, various cases have been investigated whereas agents have sold risky, unregistered investments to their clients. We believe that those viatical investments are securities and need to be regulated by the Kansas Securities Commissioner.

KAIFA is a proponent of the amendments to KSA 17-1262 proposed by Section 17 of House Bill 2640 as they will provide the Securities Commissioner with the powers to regulate the viatical and life settlements transactions as securities and protect investors by requiring more complete disclosure be made to investors and that individuals selling viatical settlements will be registered. We support the policy statement adopted by NASAA that is mentioned in Mr. Kannarr's testimony as it will be adopted by the Securities Commissioner and used in the regulation of viatical and life settlements as securities.

We strongly recommend the favorable consideration of HB 2640 as it will give comprehensive protection for current and potential viators and investors.

Thank you for your time and consideration.

Kathleen Sebelius
Commissioner of Insurance
Kansas Insurance Department

David Brant
Securities Commissioner
Office of the Securities Commissioner

July, 1999

To Kansas Insurance Agents:

We are aware that insurance agents licensed and located in Kansas are being solicited to sell viatical settlement contracts. Under this sort of contract, a terminally ill person sells the death benefit in his life insurance policy in return for cash, which can be used for current expenses. Although this arrangement may provide some real benefits to the terminally ill insured, it can also create serious problems for the individuals that buy and sell the contracts.

As the sale of viatical settlements becomes more widespread, so do the problems associated with them. Defaults on policy premium payments, medical developments that increase life expectancies of the terminally ill, incompetence of promoters, and even fraud are just a few of the problems you may be selling your clients—and taking on for yourself.

Viatical Settlement Contracts Are Considered Securities in Kansas

Promoters of viatical settlement contracts, who solicit agents like you to sell them, often claim that these investments are not securities and that agents need not inform their broker-dealers of their activities or check with the Securities Commissioner before selling the investments. They make that claim based on a federal appeals court decision, commonly referred to as the *Life Partners* case.

You should not infer from the *Life Partners* case, however, that viatical settlement contracts sold in Kansas are not considered securities. The issues raised in the *Life Partners* case are far from settled. Only one federal appeals court has issued an opinion on the case; the Tenth Circuit, the federal appeals court that governs Kansas, has yet to rule on the issue. Given that many states and legal scholars disagree with the *Life Partners* opinion, one should not assume that the Tenth Circuit or the United States Supreme Court would affirm it. In any case, the *Life Partners* opinion is not binding on the Securities Commissioner of Kansas.

The Securities Commissioner of Kansas takes the position that most viatical settlement contracts meet the definition of an investment contract and are thus securities under the Kansas Securities Act ("the Act"). In the past year, the Office of the Securities Commissioner has investigated 14 cases involving the sale of unregistered securities by viatical companies, promoters, and agents.

If the viatical products that you wish to sell, or are selling, are in fact securities, you may violate not only the Act's securities registration requirements, but also the prohibition against selling securities without a license. Even if you are licensed to sell securities, you may violate the prohibition against "selling away"—that is, the prohibition against selling securities that have not been approved for sale by the broker-dealer by which you are employed. You must have the permission of your broker-dealer to sell any security. Selling away, in effect, constitutes selling without a license.

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618 S. Kansas Avenue
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1-800-232-9580 (Toll Free)

You should not rely on a viatical company to determine whether the investments you are selling are securities. You have the ultimate responsibility for knowing whether what you are selling is a security and ensuring that any sales of securities are made in compliance with Kansas law. Any of the violations described above could make you financially liable for rescinding the transactions and subject to regulatory sanctions by the Securities Commissioner. You should also understand that a violation of either the registration or antifraud provisions of the Securities Act may subject you to criminal prosecution for a felony.

Sellers of Viatical Settlement Contracts Must Follow Applicable Consumer Protection Laws

We are also concerned that viatical settlement contracts are not suitable investments for many of the investors to whom they are being sold. As with any investment, you as the seller must consider factors such as age, financial situation, and investment objectives of your client. Failure to do so may subject you to liability.

We are aware that some sellers of viatical settlement contracts have misled investors regarding the safety and return of the investment. Making misleading statements or material omissions of fact in the offer and sale of securities is fraud. Moreover, even if the viatical settlement contracts that you sell are not securities, making misleading statements or material omissions of fact in the offer and sale of those contracts would violate the Kansas Consumer Protection Act.

Sellers of Viatical Settlement Contracts Must Follow the Requirements of the Viatical Settlements Act

The Kansas Legislature recently passed Senate Bill No. 151, the Viatical Settlements Act, which will become law on July 1, 1999, and was sponsored by the Kansas Insurance Department. This act has many requirements that you must follow to solicit viatical settlement contracts in Kansas. These requirements include:

- **License.** You must obtain a license from the Insurance Commissioner to solicit viatical settlement contracts. The Commissioner can deny or revoke a license for a variety of reasons, including dishonest or fraudulent acts or a pattern of unreasonable payments to insureds.

- **Privacy.** You may not disclose the identity of the insured to anyone except under certain narrow circumstances defined in the Act. The Act also tightly controls who may contact the insured and the frequency of those contacts.

- **Disclosures.** You are required to disclose extensive information to the insured, including but not limited to the alternatives to selling the policy, warnings about the tax consequences and other consequences of selling the policy, the insured's right to rescind the sale within 15 days, the total dollar amount of the death benefit payable to the viatical provider, and certain information regarding the financing of the settlement.

- **Documentation.** To complete the sale of a viatical settlement contract, you or the viatical provider must obtain a statement signed by a licensed physician stating that the insured is of sound mind and is an otherwise appropriate candidate for a viatical settlement contract.

This is merely an overview of some of the requirements of the Viatical Settlements Act. You are responsible for learning and following all the details of the Act. Failure to do so will result in administrative action by the Insurance Commissioner. And keep in mind, the Viatical Settlements Act does not affect the separate authority of the Securities Commissioner to regulate the sale of investments in viatical settlements under the Securities Act, as described above.

We urge you to contact both the Office of the Securities Commissioner and the Kansas Insurance Department before you sell any viatical settlement contracts in or from Kansas. The best way to avoid financial problems, embarrassment, and sanctions is to check out any investment before you sell it. Do not hesitate to contact us if you wish to discuss this matter, either generally or regarding a particular viatical product.

Very truly yours,

KATHLEEN SEBELIUS
Insurance Commissioner

DAVID BRANT
Securities Commissioner

Kathleen Sebelius
Commissioner of Insurance
Kansas Insurance Department

David Brant
Securities Commissioner
Office of the Securities Commissioner

August 1, 2001

To Kansas Insurance Agents:

RE: Update on Viatical Settlements

Due to recent developments in the viatical industry, namely the increased marketing of life settlements or senior settlements, it is necessary to clarify the policy of both the Office of the Kansas Securities Commissioner and the Kansas Insurance Department with regard to these investment opportunities and our joint efforts to effectively regulate this growing industry.

We would also like to remind you, that contrary to what a viatical company may tell you, almost all viatical products sold in Kansas are securities. As the agent, you have the ultimate responsibility for knowing whether what you are selling is a security and ensuring that any sales of securities are made in compliance with the Kansas Securities Act.

Life Settlements are Viaticals

We want to make it clear that we consider a life settlement or senior settlement a viatical contract. The recent attempts by some members of the viatical industry to create products that no longer target only life insurance policies of terminally or chronically ill individuals in no way changes the analysis applied to viatical investments. The National Association of Insurance Commissioners (NAIC) in its adoption of the Viatical Settlements Model Act has rejected the argument by the industry that life settlements, senior settlements or similar products are not "viaticals". The Kansas Securities Commissioner concurs with this position and considers the following to be an accurate definition of what constitutes a "viatical investment":

> "Any sale or offer to sell the death benefit or ownership, or any portion of the death benefit or ownership, of a life insurance policy or certificate, for consideration that is less than the expected death benefit of the life insurance policy or certificate. "Viatical investment" does not include:
>
> a. any transaction between a viator and a viatical settlement provider as defined by §2(L) NAIC Model Viatical Settlement Act;
>
> b. the assignment of a life insurance policy to a bank, savings bank, savings and loan association, credit union, or other licensed lending institution as collateral for a loan; or
>
> c. the exercise of accelerated benefits pursuant to the terms of a life insurance policy issued in accordance with the insurance laws of this state."

420 SW 9th Street
Topeka, Kansas 66612-1678
785-296-3071
1-800-432-2484 (toll free)
www.ksinsurance.org

618 S. Kansas Avenue
Topeka, Kansas 66603-3804
785-296-3307
1-800-232-9580 (toll free)
www.securities.state.ks.us

Recent Court Decisions

In July 1999, we notified all agents that Kansas is not bound by and does not concur with the opinion of the Appellate Court for the District of Columbia issued in *Life Partners*. Our position is further underscored by two state court decisions issued this spring which consider viaticals to be securities. An Oklahoma District court in O*klahoma Department of Securities v. Accelerated Benefits Corporation* held that viatical contracts sold on behalf of Accelerated Benefits were securities and that agents selling them were required to be registered under the Oklahoma Securities Act. Likewise, the appellate court of Arizona, in S*iporin v. Carrington*, held that sales of viaticals were subject to the Arizona Securities Act. This court specifically stated that it would not follow the *Life Partners* decision because it did not "advance the Arizona policy of protecting the public from unscrupulous investment promoters."

Legislative and Regulatory Progress

The Kansas Insurance Department has legislation pending which will be considered in 2002. The bill proposes implementation of the NAIC Model Viatical Settlements Act which clarifies that life settlements are viaticals.

The North American Securities Administrators Association (NASAA) has formed a viatical project group charged with the drafting of uniform guidelines for the regulation of viatical investments. Their recommendations are expected by December 2001.

Cooperation between NASAA and the NAIC generally and the Office of the Kansas Securities Commissioner and the Kansas Insurance Department continues to expand in an effort to protect all parties involved in viatical transactions. Through this continued cooperation we hope to provide a seamless functional regulatory scheme that provides for the protection of all Kansans and fosters opportunities for legitimate business.

We encourage you to contact us if you have any questions regarding the sale of viatical settlement contracts in Kansas.

Sincerely,

Kathleen Sebelius

KATHLEEN SEBELIUS
Insurance Commissioner

David Brant

DAVID BRANT
Securities Commissioner

LaVon H. Maxon
1109 Roaonke St. Seneca, Ks., 66538
January 22, 2002

Honorable David Brant
Office of the Securities Commissioner
618 S. Kansas Avenue
Topeka, Kansas 66603-3804

Dear Sir:

I am in receipt of your letter of January 22, 2002 informing me of the introduction of **House Bill No. 2640**. **I am certainly in agreement with the proposed legislation that would require securities regulation of the viatical business and the agents involved.**

I retired in 1993, after having spent my adult life working in the insurance industry, the last 21 years working for an agent in Kansas City, Kansas that handled property, casualty, life, accident and health. My experience was predominately in the surety bond area.

When I was **approached by someone I trusted** (my nephew) to consider investing my **retirement funds in viatical settlements, a nd when I was told that this was being handled under licensing** from the **Kansas Insurance Department. I felt assured that this was authentic.** After all, in all my years in the insurance business, I had seen only professionalism from that Department!

I felt I knew more about "insurance" than I did about "securities"! Unfortunately **I knew even less about how to tell the difference!**

I support House Bill No. 2640. While it won't help me, I hope that it will keep others from making the same mistake! I believe **licensing by the Securities Commission** will **alert the public to the fact it is an investment! This is not an insurance transaction!**

Very truly yours,

LaVon H. Maxon

LaVon H.Maxon

CC: Rep. Rep. Robert Tomlinson, State Capitol, Topeka, Ks 66603
Senator Sandy Praegar, State Capitol, Topeka, Ks 66603

2-9

January 25, 2002

Representative Robert Tomlinson, Chairman
House Insurance Committee, Room 303-N

Senator Sandy Praegor, Chair
Senate Financial Institutions and Insurance Committee

Mr. David Brant, Commissioner

Re: House Bill No. 2640

Dear Chairs and Commissioner:

I would support whole-heartedly the passage of House Bill No. 2640 as I have a personal history of attempting to deal with the companies involved. The following narrative will outline the problems concerning the verticals in my name. I have also included copies of the various letters of correspondence received during the last five and a half years.

In April, 1996, our investment counselor, Mr. Larry Scoville of Manhattan, invited us to a session with Mr. Craig Bridgeforth, an agent of Cambridge Money Management Institute. The topic of the day concerned verticals and ultimately we invested $52,000 in the program. There was never any discussion about risks or regulation and I didn't know the correct questions to ask. Our investment counselor, Mr. Scoville, was positive so we accepted that and proceeded.

In looking back I can honestly say we invested for two reasons: 1. We had been reading and keeping up on the development and spread of aids. We were aware of the need for insurance for the afflicted and the difficulty in purchasing the same. 2. Obviously the financial return was excellent and basically it was for three years. What wasn't stressed was if the survival time was greater than three years, the money would go stagnant. So for the last three years most of our investment has drawn no further interest.

Our service company was Pensco Pension Service out of San Francisco, California. It was from Pensco that we received our financial statements. In the spring of 2001 Pensco informed us that they would no longer service our account and we would need to find another company. We currently have the account with Retirement Accounts Inc., P.O. Box 173785, Denver Colorado.

In September of 1999 one of our accounts passed away and we transferred that money, $12,000 to another account apart from verticals, that portion is secure. After that transfer was complete, we still had $49,000, including interest, in the viatical program.

Last spring we began to hear that Accelerated Benefits Corporation had gone bankrupt and the investments were gone. Since the I have visited with another viatical investor from Florida and was told the policies are in the hands of either "American Titles" in Orlando, Florida or "Life Partners" in Texas.

Also last spring, 2001, I was informed I would have to share in paying the premium or lose the investment. It was a small policy so I paid the premium to see where it leads. I anticipate I'll receive another bill this spring. I have also contacted the State of Florida and found they are also investigating the schemes.

Given the experience, I would support the House Bill No. 2640 to regulate these things. The loss incurred by my wife and I amounts to 16% of our savings. Thank you for whatever can be done and best of luck with this bill.

Sincerely,

Marvin J. Marsh
Phone # 1-785-539-1566
E-Mail - Ksbubbadoris@aol.com

Enclosures:

1. First notification of Pensco removing themselves from program
2. Pensco letter of instruction
3. Letter from ABC verifying Pensco letter

4a. Financial statement
4b. Pensco financial statement

5. Financial statement 10/15/98 (ABC) Accelerated Benefits Corporation
6. Settlement sheet for Frank Bolle
7. Reconciliation ledger 4/20/ 01 (ABC)
8. Change of address and number for ABC 10/13/98
9. ABC warning about unscrupulous attorneys
10. Fee schedule for Pensco
11. Reconciliation ledger 9/9/96
12. Reconciliation ledger 9/9/96
13. Reconciliation ledger 7/23/96
14. Reconciliation ledger 7/12/96
15. Reconciliation ledger 7/15/96
16. Reconciliation ledger 6/21/96
17. Purchase request agreement.

The Color of Money

Michelle Singletary

A Foolish (And Ghoulish) Investment

By Michelle Singletary
Sunday, March 10, 2002; Page H01

Nancy del Valle thought she and her husband were investing in a sure thing. The Arizona couple gambled that an ailing 78-year-old man would die within a two-year period and that they could collect on his insurance policy.

The man is still alive, and the del Valles may lose all of their investment.

As ghoulish as it may sound, that was a legitimate investment the del Valles bought. It's called a viatical settlement contract, in which investors buy an interest in the death benefits of seniors or the terminally ill. The sooner the person dies, the more money the investors get.

Not surprisingly, these contracts have gotten enormous criticism from state and federal regulators because of deceptive marketing practices and fraud. Officials say investors are routinely told a viatical will give them a safe, guaranteed return similar to that of a bank certificate of deposit. But viaticals are anything but safe and secure.

Securities regulators from 21 states have reported that thousands of investors, many of them elderly, have been defrauded of more than $400

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• Michelle Singletary hosts bi-monthly discussions on personal finance issues, such as love and money and kids and finances.

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investors, many of them elderly, have been defrauded of more than $400 million over the past three years, according to the North American Securities Administrators Association (NASAA). In one case in Texas, a viatical settlement company sold investors shares in nonexistent insurance policies.

If you haven't ever heard of viaticals, it's probably because they're relatively new as an investment. The industry began around 1990 as a way to help the terminally ill, most notably AIDS patients, raise cash for medical and living expenses.

In a typical transaction, the terminally ill person sells his or her insurance policy to a third-party broker. In return, the insured gets a percentage of the death benefit while still living. For example, someone might sell a $100,000 policy for $20,000.

The broker, after taking a substantial sales commission, then sells shares of the policy to investors, who ultimately collect a percentage of the death benefit from the broker when the original policyholder dies.

Brokers often market these investments as a humanitarian way to aid poor dying folks. Here's a typical pitch I found on the Internet: "Looking for a secured rate of high returns at virtually no risk? This is one purchase you can really feel good about."

The online ad goes on to tout the following:

• "Safety of principal!"

• "Safety of returns!"

• "Ideal purchases for individuals."

"Anybody marketing this type of investment as a risk-free high-return investment is talking out both sides of their month," said Ashley Baker, a spokesman for NASAA. "You can't have a high-return and low-risk investment."

Here's what is true about viatical settlement contracts:

• They are extremely risky. The biggest risk is that the insured might not die soon enough, thus greatly reducing the investor's annual return. And if the insured person lives longer than expected, investors can be held responsible for paying the insurance premiums so the policy doesn't lapse.

• Because the name of the insured is kept secret, investors can't verify they have a policy for someone who is on their deathbed. While secrecy of the insured is maintained so investors won't try to hasten their demise, this also has led con artists to promote and sell stakes in policies that

don't exist.

Unfortunately, the del Valles found out too late how risky this type of investment could be. They put a large sum of their retirement savings in a viatical settlement contract in 1998.

The couple said they were told their principal was protected and they could expect a return of 37 percent. So they bought a 2 percent ownership in a multimillion-dollar life insurance policy for an elderly man they were told had hypertension, a heart condition, depression and a host of other health problems.

"We were assured by the person who sold us the contract that 18 months would be a long time for this gentleman to live," del Valle said. "I know this sounds morbid, but . . . we tried to pull the personal out of it. We tried to think of this as a man who needs money."

Four years later the man is still alive. The company that sold the contract to the del Valles has been ordered by the Arizona securities division to stop selling securities because of alleged misconduct. The couple had to make a $2,000 payment on an insurance policy they're now not sure is legitimate. Another $2,000 is due this month.

Even lawyer Stephen B. Mercer, an advocate for people who sell their insurance policies, said he discouraged his own parents from investing in a viatical contract.

"I believe viatical settlements have an important social purpose. But too much of the money is going to the fat cats in the middle," Mercer said. "As the industry is currently structured, I would not recommend anybody put a dime in this."

However altruistic the intent of this investment vehicle is, investors are hoping to profit from someone's death. If the insured lives longer than expected, it's inevitable investors will be put in the position of wishing someone would die. To want otherwise would mean losing a great deal of money. Could you live with that?

While Michelle Singletary welcomes comments and column ideas, she cannot offer specific personal financial advice. Readers can write to her at The Washington Post, 1150 15th St. NW, Washington, D.C. 20071, or by e-mail at singletarym@washpost.com.

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Money

SECTION B

Thursday, January 24, 2002

17 people charged in viatical scheme

Federal and state investigators charged 17 people Wednesday for attempting to defraud 2,800 investors of $105 million in a life insurance scheme. Authorities say Liberte Capital Group bought the life insurance policies of terminally ill people for a fraction of the payout, then sold the policies to investors, who would be paid off when the person died, as viaticals. But brokers suggested that some ill people conceal their conditions, such as AIDS, to obtain the policies. Investors were never warned the policies were fraudulent and could be canceled, prosecutors said.

KANSAS

Bill Graves
Governor

OFFICE OF THE SECURITIES COMMISSIONER

David Brant
Commissioner

TESTIMONY IN SUPPORT OF HOUSE BILL No. 2640

Viatical Settlements Act

Financial Institutions and Insurance Committee

Kansas Senate

DAVID BRANT

Securities Commissioner

March 13, 2002

Madam Chair and members of the committee, thank you for this opportunity to testify in support of House Bill No. 2640 which would enact needed laws to regulate viatical settlement contracts and viatical investments.

First, I want to thank Insurance Commissioner Sebelius and her staff for their on-going cooperation in working together and in referring complaints from Kansans who have invested in viatical investments. Our two agencies have worked together to publish an informational pamphlet for the public and we have issued two joint letters which were sent to all insurance agents in 1999 and 2001.

I want to recognize Steve Hornberger, Director of Enforcement, and Wiley Kannarr, Associate General Counsel, as the Kansas securities staff experts on viatical investments.

Presumably, a legitimate viatical settlement will repay the investor's principal upon the death of the viator. The problem is the question of when the insured will die – and many terminally ill people are living longer due to medical advances. The longer the viator lives, the lower the rate of return on the investment and the greater the risk in the timely payment of premiums to keep the viator's life insurance policy in force. And in some cases, the investors are now paying the premiums.

You have been provided copies of letters from Marvin Marsh of Manhattan and from LaVon Maxon of Seneca. Mr. Marsh and Ms. Maxon are examples of Kansas investors who invested in viatical settlements. They were not told and they did not understand the risks they were undertaking. They will be lucky if they get their money back.

√ To date, our agency has handled thirty-one cases involving viatical investments. Based on the information obtained, we know that at least 131 Kansans have invested a total of almost $9.2 million in viatical investments. We estimate that $1.5 million has been repaid, some amount has been totally lost, and the remainder is at risk and outstanding with the investors uncertain about if and when they will receive the return of their principal.

Senate Financial Inst. & Insurance
Date: 3-13-02
Attachment No. 3

Investor Services 1-800-232-9580
http://www.ink.org/public/ksecom

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TOPEKA, KANSAS 66603-3804

We have investigated viatical settlement contracts packaged by the following viatical companies, all of which have been located out of state:

Life Partners, Inc.	Waco, TX
Dedicated Resources	Del Ray Beach, FL
Viatical Solutions, Inc.	Dayton, OH
Legacy Capital Corporation	New York, NY
AMG, Inc.	Skokie, IL
Life Options International, Inc.	Tuscaloosa, AL
Mutual Benefits Corporation	Ft. Lauderdale, FL
Personal Choice Opportunities	Palm Springs, CA
American Benefits Group, Inc.	Atlanta, GA
Trade Partners, Inc.	Grand Rapids, MI
Aide the Living, Inc.	Iron Mountain, MI
American Benefits Services, Inc.	Lake Worth, FL
Beneficial Assistance	Baltimore, MD
Liberte Capital Group	Syvania, OH
Justus Viatical Group, Inc.	Pompano Beach, FL
Accelerated Benefits Corporation	Orlando, FL
Robin Hood International, Ltd.	Juno Beach, FL
Bald Eagle Viaticals	Traverse City, MI

These companies paid commissions to salespeople to sell their viatical investments. To date, we have identified 18 insurance agents who sold these risky, unregistered, investments to their clients. 15 of the 18 are Kansas agents and they are from across the state including Topeka, Wichita, Lawrence, Manhattan, Lenexa, Oxford, and Overland Park. Of the 18 agents, seven were also registered to sell securities.

One of our biggest concerns has been the manner in which viatical investments have been sold as "safe" investments. Viaticals have been compared to bank certificates of deposits. Many of the newspaper ads and slick brochures have referred to "guaranteed return of principal." The lack of full disclosure prompted us to cooperate with the Insurance Department to develop the pamphlet which encourages investors to ask a number of questions before investing.

House Bill No. 2640 recognizes the need for functional regulation of viaticals. The Insurance Commissioner needs the enhanced powers to regulate the insurance aspects of a viatical transaction. As for securities regulation... Section 17, on page 30 of the bill, formalizes our determination that viatical investments are securities and authorizes the adoption of regulations. Wiley Kannarr will now present brief testimony to further explain the securities issues.

Thank you for your consideration.

Attachments:
March 1999 article from *Kiplinger's Personal Finance Magazine* entitled "Death Watch"
July 1999 Joint Letter to Agents to Warn about Pitfalls of Selling Viaticals
August 2001 Joint Letter to Agents to Clarify that Life Settlements are also Viaticals`

KANSAS

Bill Graves
Governor

OFFICE OF THE SECURITIES COMMISSIONER

David Brant
Commissioner

TESTIMONY IN SUPPORT OF HOUSE BILL No. 2640
Viatical Settlements Act
Financial Institutions and Insurance Committee
Kansas Senate

WILEY KANNARR
Associate General Counsel
Office of the Kansas Securities Commissioner
March 13, 2002

My name is Wiley Kannarr, Associate General Counsel for the Office of the Kansas Securities Commissioner. I am here today to address the amendments to K.S.A. 17-1262 proposed by Section 17 of House Bill No. 2640 regarding viatical investments.

I would first like to commend the work of the National Association of Insurance Commissioners (NAIC) in the drafting of its Model Viatical Settlements Act, before you as Sections 1-16 of House Bill No. 2640. Due to the spirit of cooperation that has developed among regulators with regard to regulation of the viatical industry, I and other members of the North American Securities Administrator's Association (NASAA) Viaticals Working Group were able to attend meetings of the NAIC Viaticals Project Group and provide and receive input of both regulators and industry representatives on the best manner in which to regulate this developing industry.

Viatical Investments as a Security

In November 1995, the Office of the Kansas Securities Commissioner issued an opinion that Viaticals were considered securities under the Kansas Securities Act. At that time, this opinion was in concurrence with the only legal precedent. That precedent was overturned in the Life Partners decision issued in 1996. For almost two years, there was little progress in regulating viatical investments as a result of that decision. As complaints of widespread fraud and unethical sales practices rose, Kansas and other state securities regulators reasserted regulatory jurisdiction.

As described by Commissioner Brant, we have engaged in numerous administrative actions since March 1998. Numerous other states have engaged in regulatory actions involving viaticals. Most notably, the Oklahoma Department of Securities received a favorable opinion on March 13, 2001, in its action against Accelerated Benefits Corporation. That opinion refuted the rationale employed in the Life Partners decision. Likewise, the court in Arizona, in a civil action, held that a viatical was a security for purposes of the Arizona Securities Act. In a civil action filed by an investor in a Dedicated Resources viatical in Shawnee County District Court, the court came to the same conclusion in response to a motion to dismiss on the basis that a viatical was not a

security. In all of these cases, it was demonstrated that the Life Partners decision was not a proper interpretation of the test used to determine if a particular investment is an "investment contract" and, therefore, a security, and that the decision did not serve the prophylactic purpose of the various Securities Acts.

Exemption from securities registration

In addition to taking regulatory action against issuers and sellers of viaticals, NASAA has formed a project group with the purpose of creating a uniform statement of policy to be employed by the states in determining eligibility of viaticals to be sold in each jurisdiction.

The amendments to K.S.A. 17-1262 proposed by Section 17 of House Bill No. 2640 provide the Securities Commissioner with the ability to adopt the results of that committee's efforts. The proposed amendment provides a transactional exemption to the registration provisions of the Kansas Securities Act. The terms of the exemption require that sales be made through registered persons and that a filing is made in compliance with conditions set forth by the Securities Commissioner.

The NASAA Viaticals Project Group has completed a draft Statement of Policy and received approval to send it out for an internal comment period. The Statement of Policy is designed to protect investors by requiring more complete disclosure be made to investors and that individuals selling viatical investments will be registered, thereby imposing ethical guidelines on sellers and granting the Securities Commissioner the ability to address issues short of outright fraud.

The principal features of the proposed NASAA Statement of Policy are as follows:

1. Filing of a disclosure document with the state securities commissioner,

2. Providing both a pre and post investment disclosure document to each investor, detailing the features and risks of the investment,

3. Limiting sales only to suitable investors,

4. Requiring that the insurance policy or portion thereof being sold as a viatical investment be obtained in accordance with the NAIC Model Viatical Settlements Act or similar state law,

5. Requiring that an independent escrow agent be utilized to hold investor funds until the policy is transferred to the investor,

6. Filing of an annual report of activity by a viatical issuer, and

7. Limiting the availability of the exemption to persons who do not have relevant criminal or disciplinary history.

We expect that the Kansas Securities Commissioner will adopt the NASAA Statement of Policy once it is finalized, which we anticipate to occur in the summer or fall of 2002.

KANSAS TRIAL LAWYERS ASSOCIATION

Lawyers Representing Consumers

To: Members of the Senate Financial Institution and Insurance Committee

From: Terry Humphrey, executive director
Kansas Trial Lawyers Association

Re: HB 2640

Date: March 13, 2002

Chairman Praeger and members of the Senate Financial Institution and Insurance Committee: thank you for the opportunity to submit comments in support of HB 2640. I am Terry Humphrey, executive director of the Kansas Trial Lawyers Association.

We appreciate the cooperation of the Kansas Insurance Department and other supporters of the bill in working with us to amend the language in Sec. 12(e)(1). The amendments, as adopted by the House Insurance Committee and House Committee of the Whole allow these records to be released to individuals harmed by such fraudulent acts "at the discretion of the commissioner or pursuant to a court order." With these amendments, KTLA supports HB 2640.

Thank you for the opportunity to submit our comments regarding HB 2640.

Terry Humphrey, Executive Director

Jayhawk Tower • 700 SW Jackson, Suite 706 • Topeka, Kansas 66603-3758 • 785.

E-Mail: triallaw @ ink.org

Senate Financial Inst. & Insurance
Date: 3-13-02
Attachment No. 5

VLSAA
Viatical & Life Settlement Association of America

800 Mayfair e
Orlando, FL 32803
Phone: 407.897-3797
Fax: 407.897-1325
Toll Free: 800-842-9811
Email: viatical@cfl.rr.com
Website: www.viatical.org

March 12, 2002

Senator Sandy Praeger
Chair, Financial Institutions and Insurance Committee
Room 235 East
300 SW 10th Avenue
State Capitol
Topeka, KS 66612-1504
By Hand Delivery

Re: Opposition to HB 2640

Dear Senator Praeger:

I write to highlight some significant facts surrounding proposed Viatical legislation in Kansas.

As Commissioner Sibelius states, on her website, Viatical Settlements are insurance products undergoing rapid change. Begun in compassion, dealing with death and money, the industry has, suffered from a variety of issues. Are sellers treated fairly? Should buyers have any rights at all? What happens when a person sells and dies immediately? And all of the issues have been extensively debated.

In this context, NAIC Models, (on which the Kansas proposals have been based) have swung from strong protections for sellers to the current Model which implies that all policy sellers and industry participants must be bad actors and should be examined.

We believe that this is a market which has produced generally good, if bumpy results for both buyers and sellers of policies and that it should be encouraged. But the proposal in Kansas HB 2640 is weighted so heavily to onerous regulation that we fear that there will be no market in Kansas.

Last year the Legislature considered and declined to move on proposed NAIC Model law in this area. The proposal had some significant issues not supported by the regulated industry. That has not changed.

* This legislation contains some major provisions of which we approve.(1) It expands the law to cover insured individuals who are not sick, but sell their policies for more than cash value for other reasons. These sellers are growing in number, as a result of inheritance tax reform, and for other financial planning reasons as they recognize the value in their policies.(2) The proposal also authorizes reasonable regulation of the market for buyers of the policy by the Securities Commissioner. But the proposal does not significantly improve on Kansas legislation already in place for terminally-ill individuals, the most vulnerable group protected in viatical law. Instead, the proposal establishes extraordinary and expensive governmental oversight of every aspect of this tiny industry in the Kansas market. And, in some ways, it treats innocent sellers as suspicious parties.

Senate Financial Inst. & Insurance
Date: 3-13-02
Attachment No. 6

, only eight entities are licensed to buy policies in Kansas. Of these eight, two have not now purchas policies anywhere in the country for a year or more. Of the remaining six, two operate exclusively in the arena of "life settlements", longer-term policies. **That leaves just four entities actually participating in the regulated Kansas market of today.** All of them are members of our association and share my concerns about this bill. None of these members are licensed in Nevada, North Dakota, or Nebraska which have adopted the provisions which we object to in this bill. In fact, those states have *no* new licensees a year after adoption of their laws based on the NAIC Model. A number of small states have found themselves with no licensees doing business and a few have the odd situation of just one legitimate licensee, essentially operating a monopoly.

Expanding onerous regulation, will eliminate the market for the policies of Kansas citizens who wish to sell their un-needed or un-wanted life insurance policies for more than the meager cash values paid by insurers or, more seriously, will allow for no cash for the terminally-ill when it is not offered in an approved advance death benefit within six months of death by the insurers themselves.

Based on this observation, I believe that few companies will wish to do business in the Kansas market if this law is adopted. The compliance burden is just too great. The withdrawal from the market already underway with the current licensees will speed up. Kansas, like North Dakota or Montana, (which issued rules on the same pattern) may find itself with no licensees willing to do business in the state – willing to buy the policies of Kansas residents who want to sell.

Advocates of this Bill have described this as a "consumer protection issue". I do not believe that it is consumer protection to eliminate markets by creating rules that make entering the market impossible or so difficult that good companies just leaves Kansas. Nor does it protect consumers when they are deprived of their current rights.

If the legislature wishes to make it illegal for Kansans to sell their life insurance policies, their personal property, then the legislature may do so. But to enact a law that asserts that it will provide consumer protection by making the market participants leave the market, seems to us to be an odd approach.

This proposal can be fixed if the legislature will make some changes. The whole issue could also be treated conservatively this year, with the expansions I have noted above, simply redefining the Viator to include persons in relatively good health. It should also include reasonable authority for the Securities Commissioner to create protections for buyers. Then, we hope, Kansas will have an effective market for the personal property of Kansans who, with good information, want to sell, or buy insurance policies.

Our changes are detailed and technical, (see attachment). We believe that the flaws represent major barriers to the Kansas market for our members and all participants in the industry. We hope that you will refrain from enacting this proposal so that a law is in place, which will protect the people it is intended to protect – Kansas consumers – while allowing the industry to survive and thrive.

Sincerely,

Doug Head
Executive Director

6-2

Detailed observations on Kansas HB 2640 by the VLSAA

As introduced, the Bill has been presented to some as an "NAIC Model", though it has a number of different provisions. Because we have voiced to all the NAIC Commissioners our concerns with some aspects of the NAIC Model, we are interested in seeing that you are aware of our concerns with the NAIC Model language and with other issues raised in provisions of the Kansas proposal that may conflict with current Kansas law or may be questioned by Kansas Legislators for their public policy ramifications.

Issues on which we differ with the NAIC Model previously communicated to the NAIC

Though we generally support the intent and content of the NAIC proposal, we objected as follows to some issues that carry over into the Kansas Proposal:

1. The Model requires that private consumer medical information of insured individuals, who have held a policy for many years and are under no investigation or suspicion, but merely wish to use their property to their best advantage, should be turned over to insurers. This assumption of "fraud" by any insurer is an improper invasion of the privacy of legitimately insured individuals and flies in the face of the NAIC/ Gramm-Leach-Bliley privacy initiatives. It has the effect of casting a cloud over any viatical transaction and has the effect, warned against by the Chair of the Viatical Working Group, of discouraging indirectly an industry which the NAIC supports. We suggest that legislators who consider this element of the Model will find, as did the National Conference of Insurance Legislators, that it is a modified form of post-claims underwriting and an assault on the established doctrine of incontestability in life insurance.
(Section 9(1) B (2), (3) of HB 2640)

2. The Model differs remarkably from the Life Insurance fraud model in that the element of "knowledge and intent" in the commission of fraud has been removed.
The NAIC Insurance Fraud Model (Section 2, Paragraph C) for the entire industry reads:
"Fraud...means an act or omission committed by a person who, knowingly and with intent to defraud..."
HOWEVER, the Viatical Model (Section 2, Paragraph F) reads:
"Fraud...mean acts or omissions committed by a person who, knowingly or with intent to defraud..."
Your neighbor, Nebraska, which has taken up the Model has already recognized this inequity and corrected the language. Others have not. The Viatical Working Group did not agree with us, but the inequity will, in our opinion, significantly and negatively affect the ability of the industry to engage in commerce in any state that adopts the odd wording of the Viatical Model. We accept the idea that our process should meet the same standard of the life insurer in this regard. But we should not be held to a new higher standard in which innocent transactions may lead to a threat of criminal charges. The definition of "fraud" also contains a remarkable paragraph that was inserted after all amendments had been considered and was added without any written comment by the public. Section 2, F(4) includes the term "recklessly" which is not an element of "fraud". We did not have an opportunity in Boston for advance review or clarification of this language in detail with our industry. Despite our vehement objection, this language, which sets forth broad new parameters for fraud, was adopted in the Working Group and accepted by the NAIC. Furthermore, the Life Insurance Fraud Model protects the life insurance industry from fraud by the public. It does not protect the public against fraud by the life insurance industry. Whereas, the Viatical Fraud Model language protects the life insurance industry against fraud by the viatical industry and the public, but does not protect the Viatical and Life Settlement Industry from fraud by the life insurance industry or the public. We believe that protection against fraud should be afforded to all parties in these regulated transactions.
(Section 1,(f) (Section 1,(f),(4))

As we told the NAIC, the Model required correction. These corrections were not made in the product offered to you by the Kansas Commissioner as HB 2640.

Additionally, we advised the NAIC of two issues that had been extensively vetted in the Viatical Working Group discussions. We raised them only to inform commissioners of our view. They deserve, as we told the Commissioners, extensive debate in the states. The Association continues to believe that the model act and the Kansas Act would better serve the public by segregating the terms "life settlements" and "viatical settlements" and by placing the voluminous advertising provisions in the model viatical regulation, soon to be proposed, where it rightfully belongs and has been historically considered for numerous insurance entities in all other model regulations by the NAIC and the states.

Issues over which we have concerns with the specific Kansas Proposal

There are numerous issues in the Kansas Proposal that arise from specific language being proposed for Kansas. On some of them, we agree that Kansas has appropriately altered NAIC Model Language.

But on many of these points, ***we see the Kansas proposal as narrowing the rights of consumers*** with additional language with which we disagree and which will discourage participation in the Kansas market by many legitimate businesses. This, in turn, will damage the interests of Kansas consumers in a national market. We have noted these (and referred to the comments above) in the following Section-by-Section analysis.

Section 1
(c) (1) The addition of the language "or such other activity as determined by rules and regulations adopted by the commissioner" expands the definition of "Chronically Ill" contained in all national law including the IRS Code. We feel that this expansion is both unnecessary and an indication of possible consideration of rules in Kansas which will be far different from the intent of the legislature and the national norm of the NAIC Model. We hope that this language will be stricken or clarified. One possible solution is to restore the reference to the decisions of the Secretary of HHS as proposed by the National Model in a stricken Paragraph (3) of the Model here.
(f) We reviewed our concern with the overbroad language of this section above. We note that the Kansas Legislature has NOT made similar provisions for the crime of Insurance Fraud.

Contrast the definition of Fraudulent Insurance Act *now in Kansas Law* with Fraudulent Viatical Settlement Act as proposed. The emphasis added demonstrates the higher standard for our industry, which has been resisted by the Insurance Industry.

Here is the simple and straightforward definition of a Fraudulent Insurance Act:

Fraudulent insurance act defined; [penalty.] (a) For purposes of this act a "fraudulent insurance act" means an act committed by any person who, knowingly and with intent to defraud, presents, causes to be presented or prepares with knowledge or belief that it will be presented to or by an insurer, purported insurer, broker or any agent thereof, ***any written statement*** as part of, or in support of, an application for the issuance of, or the rating of an insurance policy for personal or commercial insurance, or a claim for payment or other benefit pursuant to an insurance policy for commercial or personal insurance which such person knows to contain materially false information concerning any fact material thereto; or conceals, for the purpose of misleading, information concerning any fact material thereto.

Here is the complex and lengthy proposed definition of Fraudulent Viatical Settlement Act containing language which is different from the insurance provision and also confusing to any reader trying to understand the acts which may be prohibited. This language seems designed to discourage any viatical settlement, not just improper activity:

"Fraudulent viatical settlement act" means ***and includes***:
(1) ***Any act or omission*** committed by any person who, knowingly ***or*** with intent to defraud, for the purpose of depriving another of property or for pecuniary gain, commits, or permits such person's employees or agents to engage in acts

ng:

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

(i) An application for the issuance of a viatical settlement contract or insurance policy; (ii) the underwriting of a viatical settlement contract or insurance policy; (iii) a claim for payment or benefit pursuant to a viatical settlement contract or insurance policy; (iv) premiums paid on an insurance policy; (v) payments and changes in ownership or beneficiary made in accordance with the terms of a viatical settlement contract or insurance policy; (vi) the reinstatement or conversion of an insurance policy; (vii) in the solicitation, offer, effectuation or sale of a viatical settlement contract or insurance policy; (viii) the issuance of written evidence of viatical settlement contract or insurance; or (ix) a financing transaction.

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

(2) any act done or committed in the furtherance of a fraud or to prevent the detection of a fraud any person commits or permits its employees or its agents to:

(A) ***Remove, conceal, alter, destroy or sequester from the commissioner the assets or records of a licensee or other person engaged in the business of viatical settlements;***

(B) ***misrepresent or conceal the financial condition of a licensee, financing entity, insurer or other person;***

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

(D) ***file with the commissioner or the chief insurance regulatory official of another jurisdiction a document containing false information or otherwise conceals information about a material fact from the commissioner;***

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

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

(5) ***attempting to commit, assisting, aiding or abetting in the commission of, or conspiracy to commit the acts or omissions specified in this subsection.***

The scope of the proposal is almost breathtaking. Persons seeking to be licensed in Kansas may find that, reading these provisions, they are concerned that almost anything they do in the viatical industry may be seen to be a violation of this broad definition. As insurers have *not* adopted similar language, and would oppose such language for their industry, we see this as burdensome and difficult. A suggested revision might track the current Kansas Insurance Fraud law and read:

Fraudulent viatical settlement act: (a) For purposes of this act a "fraudulent viatical settlement act" means an act committed by any person who, knowingly and with intent to defraud, presents, causes to be presented or prepares with knowledge or belief that it will be presented to or by an insurer, purported insurer, broker viatical settlement provider, viatical settlement broker or any agent thereof, any written statement as part of, or in support of, an application for a viatical settlement issuance of, or the rating of an insurance policy for personal or commercial insurance, or a claim for payment or other benefit pursuant to an insurance policy for commercial or personal insurance which such person knows to contain materially false information concerning

ct material thereto; or conceals, for the purpose of misleading, information concerning any fact mate thereto.

The simplicity of this proposal would allow for case law, which may have emerged from the insurance statute to be applied to the viatical Statute with little dispute.

Section 6

Section 6 (b) (1). This section carries the phrase "effect a viatical settlement between" which may be ambiguous in interpretation. We suggest that the proper phrase be "effect a viatical settlement contract between", which would is the defined term for this activity in Section 1.

Section 7

Section 7 (e) (9). We note the sunset provision and commend the Department and the legislature for including it in light of possible changes to the market in the approaching years.

Section 9

Section 9 (a) (1) (B). The document required by this provision would require any seller of a policy to consent to the release of his confidential medical records to the insurer of record, though that insurer has collected premiums for many years and has no current ability to review these documents. We feel very strongly that the opportunity to review these medical records, perhaps decades after the issuance of the policy, is a modified form of post claims underwriting. Nothing in the language or intent of current Kansas law allows insurers to collect premiums on a policy for years and then to demand medical records for review after a possible claim. The provision is antithetical to the current Kansas law regarding privacy of insured information as it requires people to disclose to insurers information to which they are not entitled under current law *simply because* they wish to viaticate their policies. We further note that this provision has no requirement of notification to the Kansas consumer that their personal medical information will be sent to their insurer for review. This provision has been drafted to allow insurers to review files for evidence of fraud. We support that effort, but by including the files of all insureds in this provision, the proposal attacks the innocent to get at the guilty. We strongly oppose the provision of this information to insurers and urge the members of the legislature to consider what information they would wish to supply to their current insurers regarding their health many years after the purchase of a policy. When Providers are compelled to act as the agents of the insurer, they are further compromised, as are brokers, who have a fiduciary duty to the insured. If the insurer misuses this information, utilizing the consent provided by the insured, the Broker and Provider may well be held liable in civil litigation. We suggest that the language of this section delete the reference to the insurer. It should read:

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

We advance the same reasoning for our opposition to the final sentence of 9 (a) (2) and oppose the provision of these releases from the viator to the insurance company *after* the sale of the policy. This thinly disguised post-transaction underwriting vehicle will discourage any investor from purchasing a policy in Kansas, no matter how long that policy has been in effect. We feel strongly that the final sentence of this provision should be deleted.

And we advance the same reasoning in our opposition to 9 (a) (3) which requires Providers to act as information suppliers to insurers. This provision will sharply discourage any Kansas citizen from offering their policy for sale in a viatical transaction. Insurers will obtain information on the insured to which they are not otherwise entitled. On reviewing the information, they may consider "pursuing an investigation" (paragraph (4)) and immediately stop the transaction for an indefinite period while investigating the insureds medical history.

4) is damaging to the interests of Kansas's insured individuals in that it has the direct effect of casting cloud over policies which are legitimate, in force and cannot be contested, simply because the Kansas insured considers entering into a viatical settlement. What sort of "investigation" might be opened and what would be the time frame for completion of the investigation. What "validity of the contract" might be brought into this situation, which exists under Kansas law, for a policy which has been in force for more than five years? We are deeply troubled by the implication of this paragraph which seems to threaten the rights of Kansas consumers innocent of any wrong-doing. We believe that this entire paragraph should be deleted.

Section 11

Section 11 is inappropriate in our view in that it seeks – in lengthy language – to codify details better left to rule. The NAIC has proposed only rules for the advertisement by insurance companies, not laws which detail the advertisement practices of insurers. We urge that this principle prevail and that the entire section be replaced with a simple instruction to the Commissioner to establish rules for the advertisement of viatical settlements. We would be glad to work with the Commissioner to craft such language.

Section 12

Section 12 (a) (2) should conform to the model Insurance Fraud Act by stating "knowingly ~~or~~ and intentionally".

Section 12 (a) (3) contains an unintentional repetition of the same language. We believe that this should be corrected. However,, if it is retained, this clause also should conform to the Insurance Model Act and state, "knowingly ~~or~~ and intentionally".

Section 12 (b)(1) contains a paragraph that is to be placed into viatical settlement contracts and applications. The statement should properly read "Any person who knowingly **and intentionally** presents false information in an application for insurance or viatical settlement contract is guilty of a crime and may be subject to fines and confinement in prison." This is standard language for the insurance code of many states and is required for the initial issuance of policies in many states, though we are unable to find it in Kansas law covering the initial policy purchase.

Section 12 (g) contains a regimen of anti-fraud measures which must be pursued by licensed Viatical Settlement Providers and Brokers. These provisions are not in conformance with the current Kansas law for Insurers, which require none of these measures. We support the battle against fraud. But the costs of the contemplated programs and the fact that they are mandated by the proposed law while such programs are not mandated by law or rule for insurers, strikes us as unfair, burdensome and damaging to our industry. We know of many small brokers who will not be able to implement such a regimen and may be forced out of the industry. If this is the intent of the law, we would understand. But other provisions seems to contemplate the activity of many small brokers in the market. We urge that these provisions be deleted from this law until such time as insurers, viatical companies and the Commissioner can agree on a comprehensive regimen for fighting fraud in the entire life insurance industry.

Thanks you for the opportunity to comment on the sections of the proposal most related to the "NAIC Model Viatical Act". Under separate cover, Michael McNerney, of the law firm of Brinkley McNerney, representing our members, has already commented extensively on the provisions of Section 13 of the proposed Act.

We would welcome the opportunity to further discuss the provisions of the Act in Kansas with members of your Committee, the Commissioner or other interested parties and hope that such an opportunity will be forthcoming. I regret that I am unable to travel to Kansas for the hearings you propose, but trust that our comments will be read into the record and that they will receive appropriate consideration.

We have attached the Kanasas Insurance Fraud Statute for your easy reference as you consider this bill.

e also now aware that the Kansas Trial Lawyers Association (KTLA) have proposed amendments recently. These would take away the confidentiality of certain records provided to the Commissioner. The VLSAA believes that these amendments constitute and invasion of the privacy rights of Kansas consumers and should not be adopted.

40-2,118

Chapter 40.--INSURANCE
Article 2.--GENERAL PROVISIONS

40-2,118. Fraudulent insurance act defined; penalty. (a) For purposes of this act a "fraudulent insurance act" means an act committed by any person who, knowingly and with intent to defraud, presents, causes to be presented or prepares with knowledge or belief that it will be presented to or by an insurer, purported insurer, broker or any agent thereof, any written statement as part of, or in support of, an application for the issuance of, or the rating of an insurance policy for personal or commercial insurance, or a claim for payment or other benefit pursuant to an insurance policy for commercial or personal insurance which such person knows to contain materially false information concerning any fact material thereto; or conceals, for the purpose of misleading, information concerning any fact material thereto.

(b) Except as otherwise specifically provided in K.S.A. 21-3718 and amendments thereto and K.S.A. 44-5,125 and amendments thereto, a fraudulent insurance act shall constitute a severity level 6, nonperson felony if the amount involved is $25,000 or more; a severity level 7, nonperson felony if the amount is at least $5,000 but less than $25,000; a severity level 8, nonperson felony if the amount is at least $1,000 but less than $5,000; a severity level 9, nonperson felony if the amount is at least $500 but less than $1,000; and a class C nonperson misdemeanor if the amount is less than $500.

(c) In addition to any other penalty, a person who violates this statute shall be ordered to make restitution to the insurer or any other person or entity for any financial loss sustained as a result of such violation. An insurer shall not be required to provide coverage or pay any claim involving a fraudulent insurance act.

(d) This act shall apply to all insurance applications, ratings, claims and other benefits made pursuant to any insurance policy.

History: L. 1985, ch. 155, § 1; L. 1994, ch. 43, § 1; July 1.